

## Decision under Delegated Powers

### Officer Requesting Decision

Regeneration and Economic Development Officer

### Officer Making the Decision

Head of Planning & Growth

### Recommendation

That a Section 278 Legal Agreement be signed to enable works to start on the public highways to deliver Phase two of the public realm improvements proposed by the Shepshed Public Realm Project.

### Reason

The S278 Legal Agreement is required to enable works to start on the public highways to deliver Phase Two of the public realm improvements proposed by the Shepshed Public Realm Project. The S278 Legal Agreement has to be signed both by the Council and Leicestershire County Council, as the local Highway Authority.

### Authority for Decision

Cabinet Minute 11E 2022/23 refers that authority be delegated to the Head of Planning and Regeneration to enter into a Section 278 Legal Agreement with Leicestershire County Council, along with any other contracts and legal obligations necessary, to deliver the Shepshed Public Realm Improvement Scheme.

### Decision and Date



12 July 2024

### Background

Section 278 of the Highways Act 1980 makes provisions for developers (in this case, Charnwood Borough Council) to enter into a legal agreement with the Highway Authority (in this case, Leicestershire County Council) to make permanent alterations or improvements to a public highway. In the case of the Shepshed Public Realm Project, this will include public realm improvement works in Market Place, Bull Ring and Hall Croft.

Work affecting the public highway can only begin when both the following have happened:

- A S278 Legal Agreement is signed by the developer (i.e. the Council) and the Highway Authority (Leicestershire County Council), with some form of bond or surety agreed.
- All pre-commencement requirements listed in the S278 Legal Agreement have been met and approved by the Highway Authority.

A separate Section 278 legal agreement was signed in June 2023 for Phase One of the project to deliver public realm improvements in the Market Place area of Shepshed. Following discussions with Leicestershire County Council, it was agreed that the best way forward was to prepare a separate legal agreement for Phase Two rather than issuing a Deed of Variation to incorporate Phase Two into the original legal agreement. In that way, it would be possible to consider the formal handover of Phase One to the County Council before Phase Two was in a position to be considered.

Work on Phase Two will include improvements in the Bull Ring and Hall Croft areas in Shepshed town centre. It should be noted that only the works in Hall Croft require a Section 278 agreement as the works in Bull Ring do not fall within the public highway (but on land in the ownership of Shepshed Town Council).

As with the legal agreement for Phase One, the Council is required to secure by way of a Deed of Indemnity with Leicestershire County Council a Deposit sum of £7,200.00 to secure the County Council against the risks of the Council defaulting on their obligation to deliver the works in Phase Two in accordance with the terms of the S278 Legal Agreement. Following the issue of the Provisional Certificate (normally at the end of the construction works) the County Council will repay 50% of the Deposit (with interest) to the Council and when the Final Certificate is issued (normally 12 months after the completion of the construction contract), the County Council will repay the remaining 50% of the Deposit (with interest) to the Council.

The Council will also be required to pay Leicestershire County Council an Inspection Fee of £7,199.30 on execution of the S278 Legal Agreement in respect to the costs incurred by the Highway Authority in inspection, design checking and administration of the highway works associated with Phase Two. The cost of the Inspection Fee will be met within the Project Capital Budget.

The Council is also required to effect public liability insurance with an insurer in the minimum sum of £10m upon execution of the S278 Legal Agreement, to include indemnity with a maximum excess of £1k against any legal liability for damage loss or injury to any property or any persons as a direct or indirect result of the execution and maintenance of the highway works or any part thereof and the Council shall ensure that the Highway Authority's interests under this agreement are endorsed on the insurance policy. The Council currently has public liability cover of £25m, which is sufficient to meet the requirements of the S278.

The Council is also required to pay Leicestershire County Council a sum of £1,900.00 for executing the S278 Legal Agreement in respect of the legal costs incurred by the County Council in preparing and entering into the S278 Legal Agreement. The cost of the Legal Fee will be met within the Project Capital Budget.

### Comments from HR

N/A

### Financial Implications

There is already provision in the current Capital Plan for the scheme and therefore there are no further financial implications.

### Risk Management

There are no significant risks arising from this decision.

Risk Identified	Likelihood	Impact	Overall Risk	Risk Management Actions Planned
That the Council does not comply with the S278 Legal Agreement.	Unlikely (2)	Significant (2)	Low (4)	Routine monitoring of the S278 Legal Agreement.

### Key Decision

No

### Background Papers

Draft S278 Agreement Phase Two Document, (01/07/2024)