

Urgent Update for Policy and Resources Committee 8th March 2018

Phase 3 Public Realm

This urgent update is being provided following comments of Mid Kent Legal, to ensure that Members fully understand the options available to allow them to make an informed decision. The original report published on the agenda went into less detail. Despite the changes below, the preferred option remains the same.

Paragraph numbers remain the same as in the original report, to allow easy cross-referencing.

1.9

A section 278 (s278) agreement is the preferred option for this project. A s278 agreement is a legally binding document between MBC (as the developer) and KCC (as the highway authority) to permit MBC to improve the public highway and to ensure that the works carried out on the highway are completed to the standard and satisfaction of the Highway Authority. There is a fee associated with the s278 agreement which must be paid to KCC, however this has already been allowed for within the project costs.

1.11

It must be noted that an alternative option was found which could negate the need for a s278 agreement. Mid Kent Legal officers have identified an alternative section of the Highways Act (section 42) which would allow the Borough Council to serve a notice on KCC specifying any unclassified roads within the borough (in this instance Week St and Gabriel's Hill), step in to the shoes of the Highway Authority and carry out the improvement works without the need for a s278 agreement, therefore saving the s278 fees. The capital cost of the improvement works could then also be recharged to KCC for reimbursement. The s42 notice expires 6 weeks after it is served unless it is challenged by KCC. If it is not challenged then MBC would step in to the shoes of the Highways Authority for the specified roads. KCC are only entitled to challenge the service of the notice on the question of whether the roads are or are not classified roads. If KCC and MBC cannot agree on whether the roads are or are not classified roads then the matter is referred to the Minister for determination and the Minister's decision is final.

2.3

The third option is to do nothing. The works cannot lawfully take place without either a s278 agreement or a s42 notice.

3.2

The second option described in paragraph 2.2 is not recommended as there are various 'unknowns' relating to s42 of the Highways Act. Although officers in Mid Kent Legal are familiar with it, following a discussion at CLT it was felt that there are too many risks associated with it. For example, if MBC take ownership of the Highway we would be responsible for any repairs and maintenance as well as granting permits which we do not have the capability to deal with. S42 of the Highways Act does go on to detail that MBC can recharge the costs of acting as Highways Authority to KCC, which would enable MBC to recoup the capital costs of the project.. However it was agreed at CLT that taking such action would harm our relationship with KCC.

3.3

The third option, 'do nothing' is not recommended as the works cannot take place without either a s278 agreement or a s42 notice in place.

4.1

The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are acceptable and will be managed as per the Policy.

7.

Legal	Both option 1 detailed at paragraph 2.1 and option 2 detailed at paragraphs 1.10 and 2.2 are legal avenues open to the Council. Option 3 is not a legal avenue as the Council cannot carry out the project without lawful permission to undertake improvements to the highway.	Mid Kent Legal Services (planning)
Privacy and Data Protection	No impact on data protection identified.	Donna Price Interim Deputy Head of Legal Partnership