

<b>MAYOR &amp; CABINET</b>		
<b>Report Title</b>	New Bermondsey (formerly Surrey Canal Triangle)– Proposed Compulsory Purchase Order	
<b>Key Decision</b>	Yes	Item No.
<b>Ward</b>	New Cross	
<b>Contributors</b>	DIRECTOR FOR REGENERATION AND ASSET MANAGEMENT/ HEAD OF PLANNING/HEAD OF LAW/	
<b>Class</b>	Part 1	Date: 17 February 2016

## **1.0 Purpose of report**

- 1.1 To update the Mayor on progress of the Surrey Canal Triangle (SCT) Regeneration by the developer, Renewal Group Limited, and the current land assembly position. For the purposes of this report, the developer is referred to throughout as “Renewal”. The Surrey Canal Triangle site is now known as ‘New Bermondsey’ and is referred to as such in this Report.
  
- 1.2 To seek the Mayor's approval for the Council to use its compulsory purchase powers under Section 226(1)(a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to enable land assembly and acquisition of new rights so as to facilitate the comprehensive re-development of the New Bermondsey site (“the Site”) and in turn contribute to the wider regeneration of the Deptford/New Cross Area as supported by the Council’s Core Strategy and other applicable policy. The land and rights proposed to be acquired are described in Section 5 of this Report.
  
- 1.3 This Report further seeks the Mayor’s approval to the acquisition by the Council for planning purposes of Renewal’s freehold interest (both its existing freehold and any freehold interest that Renewal may subsequently acquire by private treaty) in Phases 1A, 1B, 2 and 3 of the Site and the grant of a lease of that land to Renewal with an option for Renewal to then repurchase the freehold. The purpose of this arrangement is to facilitate the comprehensive re-development of the Site by ensuring that third party rights do not impede the carrying out of the development. Further details are provided in Section 7 of this Report. Consequential upon this proposed arrangement, a variation to the existing CPO Indemnity Agreement is proposed which is also addressed in Section 7 of this Report.

- 1.4 A draft Statement of Reasons (“draft SoR”) for making the proposed CPO is attached to this Report at **Appendix 1**. Although the Statement of Reasons is non-statutory, it is an important document and if the CPO is made, it will be served on owners, lessees/tenants and occupiers with the relevant statutory notices of making of the CPO. The draft SoR has been prepared in accordance with Government’s Guidance on Compulsory Purchase process published in October 2015 (**CPO Guidance**) which replaces the advice in Circular 06/04. Should the Mayor resolve to proceed with the CPO, the draft SoR will be finalised to reflect matters as at the time the Order is made and this is reflected in the delegation sought for the Executive Director of Resources and Regeneration.
- 1.5 This Report and the attached draft SoR describe the factors which are relevant to any decision on compulsory purchase, including the applicable planning policy framework for the Scheme, matters relevant to deliverability of the Scheme within a reasonable timeframe, its impact on affected land owners and occupiers and whether the proposals could be achieved by other means. It includes matters for the Mayor’s consideration in relation to the Council’s public sector equality duty and the implications for the Human Rights of third parties. It addresses the overall question of whether there is a compelling case in the public interest for compulsory acquisition.
- 1.6 References are made to the draft SoR throughout this Report, but Mayor and Cabinet are referred to the attached draft SoR generally and are asked to read that alongside the content of this Report.

## **2.0 Policy Context**

- 2.1 The applicable Planning Policy framework for the Scheme is set out in Section 4 of the draft SoR and is discussed further below. Also relevant are the Council’s regeneration and community strategies, as well as its Corporate priorities and asset management policies.
- 2.2 ‘People, prosperity, place’, Lewisham’s regeneration strategy 2008-2020, sets out the Council’s aspiration for a vibrant, dynamic Lewisham focussed around the themes of people - investing in the individuals and communities which are Lewisham’s greatest asset - prosperity - fostering the skills and economic opportunities for Lewisham to flourish and thrive - and place - developing high quality public spaces, sustainable buildings and protecting the areas which are sensitive to change. The strategy identifies the area as a strategic site with the Borough. The strategy is also placed within the framework of the key national and regional policies which affect the Council’s work around regeneration of the Borough, including the Mayor of London’s London Plan (2015).
- 2.3 ‘Shaping our future’, Lewisham’s Sustainable Community Strategy 2008 - 2020, includes the ‘Dynamic and Prosperous’ theme, where people are part of vibrant communities and town centres, well connected to London and beyond. It details the Local Strategic

Partnership's commitment to 'improving the quality and vitality of Lewisham's town centres and localities', and aspirations to 'support the growth and development of our town centres by working with commercial partners and developers', and 'maximise the use of our town centres as places to engage the local community'.

- 2.4 Shaping our future' identifies 'Active healthy citizens as a key priority – where the Council are committed to ensuring that people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities'.
- 2.5 Strengthening the local economy is a corporate priority, emphasising the importance of 'gaining resources to regenerate key localities, strengthen employment skills and promote public transport'.
- 2.6 The Council's Asset Management Plan sets out the approach to using property effectively in order to achieve the Council's objective of making Lewisham the best place in London to live, work and learn. It acknowledges that the Council's assets have a key role to play in supporting the Borough's regeneration aims.
- 2.7 The Council's Local Development Framework (LDF) sets the vision, objectives, strategy and policies that will guide development and regeneration in the Borough up to 2025. The Lewisham Core Strategy, the Lewisham Development Management Local Plan, the Lewisham Site Allocations Local Plan and the Lewisham Town Centre Local Plan, together with the Mayor of London's London Plan (consolidated with alterations since 2011) form the statutory development plan for the Borough.

### **3.0 Recommendations**

- 3.1 The Mayor is recommended to:
  - (a) agree that, as set in this Report at Section 6, the pre-conditions for compulsory purchase set by Mayor & Cabinet on 7 March 2012 have been met.
  - (b) resolve to make a Compulsory Purchase Order pursuant to powers under Sections 226(1)(a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (in accordance with the procedures in the Acquisition of Land Act 1981) for:
    - i) the acquisition of the land shown coloured pink on the plan attached to the Internet version of this report at **Appendix 2**, save for the interests of the Council, Renewal and persons with the benefit of rights of light; and

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3866>

- ii) the acquisition of new rights over the land shown coloured blue on the plan attached to the Internet version of this report at **Appendix 2**

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3866>

for the purpose of facilitating the comprehensive redevelopment, development and improvement of the Site to provide a mixed use residential-led scheme.

- (c) grant delegated authority to the Executive Director for Resources and Regeneration in consultation with the Head of Law:
  - i) subject to a satisfactory Deposit or satisfactory alternative security being provided by Renewal pursuant to the CPO Indemnity Agreement dated 20 December 2013, to take all necessary and appropriate steps to secure the making, confirmation and implementation of the Compulsory Purchase Order (**CPO**) including the publication and service of all notices and promotion of the Council's case at any Public Inquiry, including but not limited to the steps described below;
  - ii) to carry out any further or additional land referencing as may be considered appropriate, including service or requisitions for information pursuant to Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or Section 330 of the Town and Country Planning Act 1990;
  - iii) to make any amendments, deletions, or additions to the draft Order Map and/or draft Schedules to the CPO so as to include and describe all interests in land and rights required to facilitate the carrying out of the Scheme;
  - iv) to make such changes as may be considered necessary or appropriate to the draft Statement of Reasons prior to publication;
  - v) to acquire interests and new rights in the Order Land either by agreement or compulsorily (including pursuant to any blight or purchase notices) and dispose of the same to Renewal
  - vi) to negotiate, agree terms and enter into agreement with interested parties, including agreements for the withdrawal of blight or purchase notices and/or objections to the CPO and/or undertakings not to enforce the CPO on specified terms, including where appropriate seeking the exclusion of land or rights from the CPO;

- vii) in the event that the Secretary of State notifies the Council that it has been given the power to confirm the CPO to confirm the CPO if the Executive Director is satisfied that it is appropriate to do so;
  - viii) in the event the CPO is confirmed by the Secretary of State (or by the Council if given power to do so), to complete all necessary statutory procedures and to take steps to implement the CPO, including by way of General Vesting Declaration and/or Notice to Treat/Notice of Entry;
  - ix) to take all steps in relation to any legal proceedings relating to the CPO, including defending or settling claims referred to the Upper Tribunal (Lands Chamber) and/or applications made to the courts and any appeals;
  - x) to retain and/or appoint external professional advisers and consultants to assist in facilitating the promotion, confirmation and implementation of the CPO, the settlement of compensation and any other claims or disputes;
  - xi) to take all such other steps as may be considered necessary or appropriate to acquire all interests and rights required for the Scheme (whether by agreement or CPO) and to dispose of the same to Renewal.
- (d) agree the acquisition by the Council for planning purposes pursuant to Section 227 of the Town and Country Planning Act 1990 of Renewal's freehold interest (both its existing freehold and any freehold interest that Renewal may subsequently acquire by private treaty) in land within Phases 1A, 1B, 2 and 3 as shown coloured grey on the plan attached to Internet version of this report at **Appendix 3** and the grant of a lease of that land to Renewal (with an option for Renewal to repurchase the freehold interest) on the terms set out in the Heads of Terms attached to this report at **Appendix 4**, including any variation thereto as the Executive Director for Resources and Regeneration, in consultation with the Head of Law, may consider appropriate;
- (e) agree the variation of the CPO Indemnity Agreement of 20<sup>th</sup> December 2013 to ensure the agreement provides for the Council to be indemnified by Renewal in respect of all compensation and other costs arising in respect of any interference with rights affecting the land acquired by the Council and leased back to Renewal as provided for in recommendation (d) above.

## 4.0 Background

4.1 For over 10 years now, Renewal has been assembling the Site with a view to its re-development. Renewal promoted the Site through the

development plan process leading to the adoption of the Council's Core Strategy in 2011.

- 4.2 In January 2011, Renewal (through its subsidiary, Renewal New Bermondsey Two Limited) submitted an application for planning permission for comprehensive mixed use residential led re-development of the Site.
- 4.3 In March 2012, a report was presented to Mayor and Cabinet regarding in principle support for the use of CPO powers to assist with land assembly for the Scheme. The Mayor resolved in principle to use such powers, subject to certain pre-conditions being satisfied which are addressed in this Report.
- 4.4 On 30 March 2012, the Council granted outline planning permission (**Outline Planning Permission**) for the comprehensive phased, mixed-use development of the Site. The Outline Planning Permission permits the development of the Site based upon a set of planning parameters that would enable detailed proposals to come forward for the following:

The comprehensive, phased, mixed use development of the site for up to 240,000 square metres (Gross External Area) of development comprising Class A1/A2 (Shops and Financial and Professional Services) up to 3,000 square metres, Class A3/A4 (Cafes/Restaurants and Drinking Establishments) up to 3,000 square metres, Class A5 (Hot Food Takeaways) up to 300 square metres, Class B1 (Business) between 10,000 -15,000 square metres, Class C1 (Hotels) up to 10,000 square metres, Class C3 (Dwelling Houses) between 150,000 - 190,000 square metres (up to 2,400 homes of different sizes and types), Class D1 (Non-residential Institutions) between 400 - 10,000 square metres, Class D2 (Leisure and Assembly) between 4,260 - 15,800 square metres, involving the demolition of all existing buildings on the site with the exception of the Millwall FC Stadium (which is to be retained and its façade upgraded and /or re-clad), Plot Excelsior 2 – Guild House (which is to be retained and extended), and Plot Excelsior 5 – Rollins House (which is to be retained, but not altered or extended as part of the planning application); the demolition and replacement of the existing Millwall FC grounds-person's store of approximately 140 sqm; redevelopment to provide a series of new buildings (including roof top and basement plant); re-profiling of site levels; alterations to Surrey Canal road and the re-alignment of the Bolina Road; new streets and other means of access and circulation, including pedestrian/cycle paths, carriageways and servicing areas; areas for parking for emergency services vehicles and outside broadcast units; external areas of land and soft landscaping and publicly accessible open space; car and coach parking areas and accesses to them; cycle storage; and, supporting infrastructure works and facilities including sub-stations, energy centre(s), District Heating Network (DHN) connections to and between each plot, the proposed energy centre and the adjoining South East London Combined Heat and Power (SELCHP) plant (to the extent to which they lie within the Planning Application Boundary) and an ENVAC waste storage and handling system (including DNH and

ENVAC connections to plots south of Surrey Canal Road under the carriageway of Surrey Canal Road, as altered). Further details of the March 2012 outline consent are contained within Section 4 of the draft SoR.

4.5 The Outline Planning Permission was also subject to a Section 106 Agreement entered into on the same date and making provision as follows:

- The ability to increase the crowd capacity of The Den to increase from 20,148 to 26,500 should Millwall Football Club secure promotion to the Premier League and require a larger stadium.
- Re-cladding of the MFC stadium
- Provision of car parking spaces to be used by MFC both on event and non-event days
- Relocation of Millwall FC memorial garden and grounds keeps store
- Relocation of Millwall Community Scheme to a replacement facility
- Re-provision of coach parking spaces to be used by MFC on event days
- An increase sustainable accessibility to the Stadium by providing the proposed pedestrian link to South Bermondsey Station,
- Facilitation of the provision of a new Surrey Canal Road Station
- Improved connectivity with the surrounding area for pedestrians and cyclists
- Provision of new bus terminus
- Delivery of new sports facilities
- Delivery of a multi faith centre
- Provision of not less than 12% affordable housing (by habitable room)
- Entering into of a CPO Indemnity Agreement with the Council
- Contribution towards the provision of additional school places in the area
- Contribution to improvements to Bridge House Meadows
- Provision of a creative industries hub
- Installation of ENVAC waste system

4.6 In October 2013, Renewal submitted an application pursuant to Section 73 of the Town and Country Planning Act 1990 to vary conditions on the Outline Planning Permission to reconfigure some of the uses within the Scheme, but the overall quantum of floorspace across the Site as a whole remained the same and the Section 73 application did not fundamentally change the nature or scale of the previously consented development. The revised proposals include providing the bulk of the sports facilities in a single building on Timber Wharf (Phase 2).

- 4.7 On the 18 December 2015, the Council granted permission pursuant to the Section 73 application (**S73 Permission**). The S73 Permission is subject to a Section 106 Agreement which was completed on the same date and which includes (with appropriate variations) similar obligations to those contained in the S106 Agreement of 2012 and applies those obligations to the development under the S73 Permission.
- 4.8 On 20 December 2013, the Council entered into a conditional land sale agreement with Renewal relating to the disposal of the Council's freehold interest in the land leased to Millwall Football Club (**MFC**) (excluding the stadium itself) and in the Lion's Centre, the latter being leased to Millwall Community Scheme (**MCS**). Further details of the agreement are provided below. On the same date, the Council entered into a CPO Indemnity Agreement which addresses the land assembly required for the Scheme and provides for Renewal to cover the costs of the process (including by way of CPO, should the Council decide to exercise its powers – it is under no obligation to do so).
- 4.9 Within the boundary of the land encompassed by the Outline Planning Permission and the S73 Permission is a property known as Rollins House. 'Rollins House' includes Rollins House itself and Unit 12 Excelsior Works. Both planning permissions refer to Rollins House being retained unaltered. In July 2014, Renewal submitted an application to redevelop the Rollins House site as part of the wider Scheme. A decision on that application was deferred by Strategic Planning Committee (**SPC**) in November 2014 and July 2015. At its meeting in September 2015, SPC resolved that the application again be deferred for the applicant to look at a revisions which ensure that Rollins House is retained and preserved within a redesigned mixed use scheme and for the applicant (Renewal) to hold further discussions with the current occupiers of Rollins House and secure the re-provision of creative uses within the redesigned scheme. The application remains in abeyance and the land forming the Rollins House site does not form part of this Report.

#### **Scheme progress since March 2012**

- 4.10 Following the grant of the Outline Planning Permission, in addition to continuing its efforts to assemble the Site, Renewal has focused on securing occupiers for the commercial spaces in the first three phases of development - Phases 1A, 2 and 1B.
- (a) Phase 1A: Hillsong church is currently in detailed discussions with Renewal over the terms for delivery and occupation of the permanent faith building within this phase. As part of their commitment to being in the Scheme, in 2013 Hillsong created a 3,000 sq m temporary home in a warehouse on the Site at Stockholm Road and have established a 2,500-person weekly congregation amongst the local community. Subject to concluding the necessary Development Agreement with Hillsong, detailed planning permission being granted and completion of the necessary land assembly, it is envisaged that



works for the permanent faith building will commence on-site in quarter 4 2017 with a two-year build period. This timetable is contingent on the remaining land being acquired by agreement or CPO.

- (b) Phase 2: The re-development proposals include a 15, 000 sq m sports facility, called Energize, which will be the largest indoor community multi sports complex in London since Crystal Palace was built in the 1960s. The Surrey Canal Sports Foundation Ltd (**SCSF**) was established in 2010 as a charitable trust, independent of the Renewal, to oversee the fund raising of the required £40m for delivery of Energize and to ensure its long-term availability to the community at local authority rates.

So far the SCSF has received a pledge of the land from Renewal, valued at £10 million, along with in principle pledges of £2m from Sport England and £500,000 from the Council. In July 2014, the SCSF formed a partnership with OnSide, a charity which has created a network of youth centres primarily in northwest England at a cost of £5 - £6 million each. OnSide is seeking to open several Youth Zones in London and would like to incorporate a Youth Zone within the fabric of Energize. The SCSF is also in the early stages of similar discussions with Greenhouse Sports who provide sports coaching in deprived areas, with a view to them having a permanent home in Energize. Both of these organisations would make capital contributions to the building and whilst the amount of space they require is still being finalised, their involvement would bring the pledges for Energize up to the region of £23.5m. Once confirmed, this amount would be enough to trigger detailed designs for the building and a reserved matters planning application, which in turn would aid the fundraising of the remaining capital.

In order to facilitate sport in the local community today, in 2013 the SCSF leased 2,200 sq m on-site at Stockholm Road to London Thunder Basketball and Fusion Table Tennis Clubs in which they have created a new home complete with two basketball courts, 16 table tennis tables, changing and classroom space and spectator seating. Renewal advise that this sports facility currently attracts c. 2,800 people a month. it is envisaged that works for Phase 2 will commence on-site in quarter 4 2017 with a two-year build period.

- (c) Phase 1B: As at the date of publication of this Report there are 6 interests to be acquired within this phase (see Section 5 below). With its close proximity to the new Overground station which will allow quick travel times between the creative hubs around Old Street and Shoreditch, Phase 1B is proposed for a mix of creative industries centred around a significant public square. As with the other phases, Renewal is looking for an established occupier to operate this phase and preliminary discussions have

commenced with a number of established creative organisations. Renewal remains confident of securing a significant creative business to this phase once New Bermondsey station is formally announced by Transport for London.

- 4.11 On 20<sup>th</sup> February 2015, the Mayor of London and the Chancellor of the Exchequer announced that the Site had been designated as one of the first of the Mayor of London's Housing Zones. Housing Zone status has been awarded to areas identified as key opportunity sites, to maximise development, fast track homes and deliver much-needed infrastructure to boost development. As one of the first Housing Zones, the Site is recognised as a key development in London and is one of the few regeneration projects that has the capacity to deliver homes for Londoners, faster.
- 4.12 Housing Zone designation will provide £20 million of loan funding towards infrastructure, funded by the GLA and the Treasury. An agreement for the loan facility is due to be completed between Renewal and the GLA shortly. This loan funding will facilitate the delivery of key infrastructure, including the new Overground Station along with two new bus routes and improvements to existing walking and cycling routes. Delivery of these transport links will provide significant benefit for the 40,000 people already living within a 15-minute walk of the Site and will allow development of the first two phases of the Scheme (Phases 1A and 2) to proceed ahead of schedule delivering 532 homes. A programme of regular monitoring meetings will be agreed between the GLA, Renewal and the Council to enable accelerated delivery.

## **5.0 Land and rights to be included in the Compulsory Purchase Order**

- 5.1 The boundary of the proposed Order Land is shown outlined red on the plan attached to this Report at **Appendix 2 (CPO Resolution Plan)**, with the land to be acquired shaded pink and the land in respect of which new rights are to be acquired shaded blue.
- 5.2 It should be noted that whilst much of the Site is shaded pink on the CPO Resolution Plan, this area includes interests already held/controlled by Renewal and the Council and the CPO would not include those interests. It would also exclude any rights of light which it is proposed should be addressed in the manner set out in Section 7 of this Report.
- 5.3 The land already owned/controlled by Renewal is identified on the plan attached to this Report at **Appendix 5**. The Council owns the freehold interest in the Millwall FC Stadium and the Lion's Centre which is leased to MCS, together with other small surplus areas of land transferred back to the Council by Rail for London following completion of the East London Line extension. The land around the Stadium, MCS's interest and the RfL surplus areas are subject to the conditional Land Sale Agreement entered into between the Council and Renewal

in December 2013 providing for disposal to Renewal of the Council's freehold interest.

5.4 The freehold and leasehold interests proposed to be included in the CPO are listed in the Table attached to this Report at **Appendix 6**. Column 2 within the Table includes a plan reference and the relevant plans are included within **Appendix 6**. Also included within **Appendix 6** is a plan identifying the third party interest to be acquired. As indicated in the Table at **Appendix 6**, as at 4 February 2016 24 freehold and leasehold interests (excluding highways plots) remain to be acquired. In addition, the following are proposed to be included in the Order:

- (a) mines and minerals which have been reserved out of titles where the areas concerned are likely to be impacted by piling/foundations required for the Scheme;
- (b) highways plots (sub-soil interests)
- (c) four substations that are on land to be redeveloped, plus existing rights of statutory undertakers with service connections within the Site which are likely to require removal or relocation to facilitate the Scheme. The existing services are shown on the Utility Services plan attached to this Report at **Appendix 7**;
- (d) existing rights of way in favour of Network Rail providing access to railway embankments etc and which are likely to be interfered with as a result of the Scheme.

5.5 New rights are also required to fulfil certain requirements of the Section 106 Agreement. These affect land owned by Network Rail, London Underground Limited and MFC. The rights include in summary (and subject to detailed drafting):

- (a) The right to construct, use (in common with others) and maintain a pedestrian and cycle access route from the north west corner of the Site to South Bermondsey Railway Station.
- (b) The right to carry out works to upgrade railway arches and underpasses at South Bermondsey Station, Zampa Road, Stockholm Road, Rollins Street, Bolina Road and the route to Surrey Quays and thereafter maintain the works.
- (c) The right to carry out works to landscape and thereafter maintain railway embankments adjoining the Site and to carry out habitat creation works on the said land.
- (d) The right to install and maintain conducting media under the railway arch between the South East London Combined Heat and Power facility and the Site to the extent it is required for the installation of the proposed district heating network that is to provide heat and power to the Scheme.
- (e) The right to carrying out and complete works to replace and improve the existing façade of the MFC Stadium, as required by

the Section 106 Agreement relating to the outline planning permission (and as to be applied to the Section 73 consent).

- 5.6 The position regarding negotiations with landowners is considered in more detail in Section 6 of this Report. Renewal will continue, with the support of the Council, to seek to acquire the outstanding interests by agreement. Council officers have also written a number of times to the remaining landowners encouraging them to engage with Renewal and offering to engage directly with the landowners, should they be unwilling for any reason to deal with Renewal. The most recent letter was sent to landowners by the Council on 11 December 2015, with a further letter being sent on 19 January 2016 notifying owners of the intention to present this Report to Mayor and Cabinet. The Council and Renewal have received 9 responses in total following these letters; 4 from Phase 1B (Excelsior), 3 from Phase 5 (Bolina), 1 from MCS and 1 from MFC. Renewal, the Council or G L Hearn, as appropriate, are following up on each of these responses and further discussions/negotiations are ongoing.
- 5.7 If the CPO is made, it will include a Schedule of the interests, including new rights, to be acquired, as well as those who have interests over the land to be acquired (e.g. rights of way etc) which may be affected by the development works. The Order Map required to accompany the CPO will identify the land and new rights to be acquired. Terraquest, experienced land-referencing agents, have been appointed by Renewal to carry out the necessary referencing and preparation of the CPO Map. Further requisitions for information relating to ownership will be served as necessary before the Order Map and Schedule are finalised. Final versions of the Map and Schedule will be published with the CPO when made.
- 5.8 If the CPO resolution is made, this will be recorded in the Local Land Charges Register and disclosed on searches so that any potential purchasers will be aware that the land is subject to compulsory purchase.

## **6.0 Pre-conditions to CPO Resolution**

- 6.1 As already referred to, on the 7<sup>th</sup> March 2012, the Mayor resolved 'in principle' to use CPO powers to support the land assembly required for the Scheme, subject to the following pre-conditions:
- i) the Mayor being satisfied that Renewal has used its reasonable endeavours to complete the assembly of the Site by agreement/private treaty and that the redevelopment proposals cannot otherwise be delivered;
  - ii) the requirements of Section 122 of the Local Government Act 1972 and Sections 226, and 237 of the Town and Country Planning Act 1990 being met;

- iii) the Mayor being satisfied that there is a compelling case in the public interest to make a Compulsory Purchase Order;
- iv) the Mayor being satisfied that there is a delivery mechanism with Renewal and/or others in place, which ensures that there is a comprehensive redevelopment of the whole Site and that the new development will be built and completed within a reasonable time period;
- v) the Mayor being satisfied that Renewal has a viable business plan and funding strategy to deliver a comprehensive regeneration scheme, together with a full and sufficient indemnity agreement(s) and appropriate financial bond covering the costs of making and confirming any such CPO/appropriation for the purposes of Section 237; and
- vi) consideration of any issues raised by the Equalities Impact Assessment on the potential impact of the Compulsory Purchase Order.

6.2 Officers consider that these pre-conditions have now been met, as discussed below under the relevant headings.

**(i) Negotiations with landowners**

6.3 GL Hearn have been jointly appointed by the Council and Renewal as CPO valuers to advise on property cost estimates for the compulsory acquisition of interests and to negotiate settlements with landowners and others with an interest in the proposed Order Land.

6.4 Renewal owns a significant proportion of the Site required for the Scheme, having actively been acquiring property by private treaty since 2004. There are 24 interests (excluding highways plots) in land outside of Renewal's ownership (or control if not formally conveyed) which are required in order to complete land assembly to bring forward the Scheme in its entirety. These interests comprise mainly freehold or long leasehold interests in the industrial estates within the Site. Additionally, new rights will be required as set out in paragraph 5.5.

6.5 Renewal has provided the Council with details of the extent of and current position on negotiations with landowners, together with copies of material correspondence, undertaken by both Renewal and GL Hearn. Council officers have examined the material provided and are satisfied that Renewal has used reasonable endeavours over a substantial period to acquire the outstanding interests by negotiation. It is continuing and will continue to try and move those negotiations forward. Renewal has also submitted a relocation strategy which has been approved by the Council under the Section 106 requirements setting out its intentions with regard to continued occupation of the Site by tenants until possession is required and steps taken regarding assistance with relocation. A copy of the relocation strategy is included at Appendix J to the draft SoR.

- 6.6 In negotiations with the landowners, Renewal has also provided contact details for Council officers and encouraged landowners to contact the Council if they would prefer to deal with the Council, rather than Renewal. The Council has also written to the outstanding owners encouraging them to negotiate with Renewal and offering to treat with them and to provide formal valuations if they are unable or unwilling to reach agreement with Renewal. The most recent letters were sent to remaining owners on 11 December 2015 and also on 19 January 2016 notifying them of the intention to present this Report to Mayor and Cabinet. Notwithstanding the efforts made, however, attempts hitherto to acquire all the outstanding interests by agreement have not been successful.
- 6.7 Good progress has been made with negotiations with some of the remaining landowners. In relation to Network Rail, agreement has been reached in principle and Renewal is confident a formal agreement will be concluded in due course. In respect of Bridge House, terms have been agreed for a disposal to Renewal, subject to contract. In a number of cases, however, negotiations have stalled with landowners unwilling to negotiate until the Council has made a decision regarding compulsory acquisition.
- 6.8 The largest remaining interests by area yet to be acquired are those vested in MFC and MCS. With regard to MFC, discussions have taken place over a number of years in relation to the acquisition of MFC's leasehold interest in the land around the Stadium. Renewal has also submitted a formal offer to MFC for that interest, but MFC remain unwilling to negotiate any agreement for the surrender of their leasehold interest. MFC maintain (a position confirmed in MFC's recent response to the Council's letter of 19 January 2016 and subsequent meetings) that they wish to redevelop the land around the Stadium themselves in a manner consistent with Renewal's proposals. Despite being given ample opportunity to do so, however, they have not submitted any planning application, nor otherwise produced any detailed proposals. Nor (despite being advised to do so) have they provided a business case and funding strategy which demonstrates how any such proposals can be carried out in a manner which fits in with and does not prejudice the wider Scheme, including from a viability perspective.
- 6.9 MFC have provided information regarding the rights they will require over the land around the Stadium in the event the land is acquired by CPO and discussions have taken place over the grant of those rights. Continued attempts will be made to negotiate with MFC to reach agreement in respect of the rights required and also the disposal of MFC's leasehold interest in the land around the Stadium to Renewal or the Council.
- 6.10 With regard to MCS's interest, the Council and Renewal have engaged in detailed negotiations with MCS regarding the Heads of Terms for the surrender of their leasehold interest in the Lion's Centre and

subsequent relocation to the new sports facilities (Energize) within Phase 2 of the Scheme. This engagement has taken the form of a series of meetings between the Council, Renewal and a representative from the MCS Board of Trustees to discuss surrender of lease by the MCS and their relocation to Energize. The Council has also agreed to fund legal advice to enable MCS to conclude negotiations. Agreement was reached on Heads of Terms, subject to agreement on the compensation sum and the final terms of the new lease and relocation of the Lion's Centre. In June 2015, however, MCS rejected the terms of the proposed transaction and the compensation sum offered by Renewal and negotiations stalled. Following the Council's letter of 19 January 2016, however, discussions have resumed with MCS.

- 6.11 Making a CPO will not mean that attempts to acquire by agreement will cease. The CPO Guidance makes clear that compulsory purchase is intended as a last resort in the event that efforts to acquire by agreement fail. However, the CPO Guidance also recognises that valuable time might be lost if an authority waits until negotiations do fail before making a CPO. Authorities are advised that it may often be sensible to plan a compulsory purchase timetable as a contingency measure and initiate formal procedures. The CPO Guidance notes that this will also help to make the seriousness of the authority's intentions clear which might in turn encourage those affected to enter more readily into meaningful negotiations. Any interests acquired by private treaty will not be included in the CPO or (where acquisition is achieved after the CPO is made) a request made that the CPO be not confirmed in respect of such interest, as appropriate.
- 6.12 The Site is allocated as a strategic site within the Council's Core Strategy. A key requirement of the Core Strategy is that the Site is brought forward for comprehensive development in accordance with a Masterplan. The purpose for which land and rights are proposed to be acquired is to enable comprehensive redevelopment of the Order Land in accordance with the adopted planning policy framework. The Outline Planning Permission and the S73 Permissions envisage comprehensive redevelopment in accordance with those policies.
- 6.13 Officers have considered whether redevelopment in accordance with the planning policy objectives might be achieved by individual landowners without the need for compulsory purchase, including whether that could be achieved within a reasonable timeframe. Given that they own or control the majority of the interests in the Site, Renewal is the obvious partner to bring forward the Scheme. It is considered that separate development of other parcels would be likely to result in piecemeal development, risk the non-achievement of comprehensive development of the Site and risk substantial delays in the Scheme coming forward. Not only would it require a significant degree of co-operation between current owners which to date there has not been, but also there are no alternative, credible development proposals currently proposed or likely to be capable of coming forward and implemented within a reasonable timescale.

- 6.14 The Site is unique in terms of size, scale and location of development. The Site is almost assembled, ready for implementation. Officers consider the planning objectives cannot be achieved from pursuing any alternative site for this scale of major regeneration. There is no comparable area available for this scale of development, even if the Council had the resources to assemble a similar site in a reasonable timescale.
- 6.15 Given the anticipated development programme, officers consider that formal CPO procedures should now commence to ensure delivery of the necessary land assembly. Negotiations will continue in parallel with the CPO process and every effort will be made to try and conclude the remaining acquisitions by agreement ahead of confirmation of the CPO.

**Officers consider pre-condition (i) has been met.**

**(ii) Statutory powers, CPO Guidance**

- 6.16 Section 226(1)(a) of the Town and Country Planning Act 1990 (**1990 Act**) empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council must not, however, use this power unless it also thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:

- (a) the promotion or improvement of the economic well-being of the Council's area;
- (b) the promotion or improvement of the social well-being of the Council's area;
- (c) the promotion or improvement of the environmental well-being of the Council's area.

(Section 226(1A) of the 1990 Act).

- 6.17 The Mayor is directed to Section 3 of the draft SoR which sets out how the proposed compulsory acquisition is considered to fall within the provisions of Section 226 and delivers the well-being objectives required by Section 226(1A).
- 6.18 In some circumstances, only new rights over land might be required, such as a new right of access etc. This being the case, it is usually not necessary to acquire the freehold or leasehold interest. Instead, section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council, subject to authorisation by the Secretary of State, to create and acquire new rights over land. That is proposed here where only a right is required and not the entire land interest, the new rights proposed being referred to in paragraph 5.5 of this Report.



- 6.19 Section 227 of the 1990 Act provides an equivalent power for the Council to acquire land (including rights over land) by agreement (as opposed to compulsorily) for the purposes described in paragraph 6.16. As set out in this Report and as is reflected in the CPO Guidance, it is intended that efforts to acquire the necessary land and rights by agreement will continue in tandem with the CPO process.
- 6.20 As indicated above, the Council and Renewal has entered into a CPO indemnity Agreement which governs the process of land assembly. The Council has power under Section 233 of the 1990 Act, subject to the requirements of that Section, to dispose of any land acquired for planning purposes. It is intended that land acquired pursuant to the terms of the CPO Indemnity Agreement will be disposed of to Renewal pursuant to Section 233.
- 6.21 Upon completion of any compulsory acquisition, Section 236 of the 1990 Act provides for any rights of way or rights to apparatus are automatically extinguished (save those of statutory undertakers etc which are subject to separate procedures). In addition, where land is acquired or appropriated by a local authority for planning purposes (whether by CPO or private treaty). Section 237 of the 1990 Act makes provision for certain third party rights to be overridden when the land is developed in accordance with planning permission. Development and use of such land in accordance with planning permission, either by the local authority or by a person deriving title under the authority, will be authorised, even though it interferes with a third party right, such as an easement, or it breaches a restrictive covenant on the use of the land. Any third party whose rights are overridden in consequence of Section 237 is entitled to statutory compensation, assessed in accordance with provisions in Section 237 regarding compensation.
- 6.22 In terms of the Stadium land, it is proposed that the CPO includes the acquisition of MFC's leasehold interest in the land surrounding the Stadium and also new rights over the Stadium land to enable the carrying out of the works to the Stadium façade. The Council will retain the freehold interest in the Stadium itself. The freehold interest in the land around the Stadium is subject to the Land Sale Agreement entered into with Renewal in December 2013.

**Officers consider pre-condition (ii) has been met.**

**(iii) Compelling case in the public interest**

- 6.23 The relevant considerations for the purposes of any resolution to use compulsory purchase powers are set out in this Report and the attached draft SoR. The CPO Guidance also sets out the considerations to be applied when making a resolution to exercise such powers and the factors which will weigh with the Secretary of State when deciding whether to confirm a CPO. These factors include what might be described as the overarching consideration as follows:

*“A compulsory purchase Order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”*

6.24 Human Rights considerations are addressed in Section 11 of the draft SoR and in Section 11 of this Report.

6.25 In addition, the following considerations are material by virtue of the CPO Guidance. These aspects are discussed elsewhere in this Report and the draft SoR:

- whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area. In addition to this specific requirement, the general requirements of the CPO Guidance states that any programme of land assembly must be set within a clear strategic framework and that such framework will need to be founded on an appropriate evidence base and to have been subject to consultation processes including those whose property is directly affected (see Section 10 of this Report and Section 4 of the draft SoR);
- the extent to which the proposed purpose of acquisition would contribute to the achievement of the promotion and/or improvement of the economic, social or environmental well-being of the Council's area (see Section 3 of the draft SoR);
- that the necessary resources, including funding, are likely to be available to achieve the purpose of the Order within a reasonable timescale (see paragraphs 6.41 to 6.49 of this Report and Section 6 of the draft SoR);
- that the scheme is unlikely to be blocked by physical or legal impediments (see Sections 6 and 7 of this Report and Section 6 of the draft SoR);
- whether the purposes for which the proposed Order Land is to be acquired could be achieved by any other means. This can include considering the appropriateness of any alternative proposals put forward by the owners of the land or others, or examining the suitability of alternative locations for the purpose for which the land is being acquired (see paragraphs 6.13 and 6.14 of this Report and Section 6 of the draft SoR).

6.26 Mayor and Cabinet are referred to Section 9 of the draft SoR which brings together the various aspects of the CPO case. Social benefits will be provided from the delivery of sustainably constructed new homes

that will make a significant contribution to meeting private and affordable housing need in the Borough, as well as new community and leisure facilities. The concentration of development will be better able to access new and existing public transport. By land assembly, rationalising, improving and providing new uses and infrastructure on the Site, there will be significant environmental benefits. The Scheme will give rise to economic benefits in terms of major investment in the Borough, with jobs created from construction, new commercial, community and leisure uses. The new resident and business population will contribute to the local economy. Further details of the compelling case in the public interest are set out in the draft SoR. Officers are satisfied that there is a compelling case in the public interest for the use of CPO powers.

**6.27 Officers consider pre-condition (iii) has been met.**

**(iv) Viability/delivery mechanism**

6.28 The CPO Guidance makes clear that if a CPO is to be confirmed, there must be a compelling case in the public interest and the purpose for which the CPO is made must justify interfering with the human rights of those affected. If the acquiring authority is unable to show how the CPO land is to be used and that the necessary resources are likely to be available to achieve the purpose of acquisition within a reasonable timescale, it is unlikely to be able to show the acquisition is justified in the public interest. When preparing its justification, the acquiring authority further needs to show the scheme is unlikely to be blocked by any physical or legal impediments to implementation. The acquiring authority is also required to provide substantive information regarding sources of funding, including as to how potential shortfalls may be met if funding has not yet been finalised.

6.29 The Site is one of five strategic sites identified within, and considered key to, the delivery of the Council's Core Strategy. The Core Strategy sets out the ambition to transform the physical environment and achieve place-making objectives by delivering a comprehensive range of regeneration outcomes in the Borough. In conjunction with the Council, Renewal has spent more than 10 years shaping and facilitating the comprehensive regeneration of the Site. During this time Renewal has acquired by private treaty the vast majority of property interests required to assemble the Site and has secured the Outline Planning Permission and S73 Permission for the scheme which will deliver significant and comprehensive regeneration to this deprived area. In doing so, Renewal has incurred significant capital expenditure in acquisition, design, planning and consultants'/advisors' costs. There can be little doubt that Renewal has made a significant financial commitment and has demonstrated a long term outlook and how serious it is about ensuring that this comprehensive scheme is brought forward.

6.30 That of itself this is not enough, however, and the Council needs to be satisfied that if it proceeds with a CPO to assemble the remaining interests, the necessary resources are likely to be in place to achieve

the purpose of the acquisition within a reasonable timescale. As such, it needs to be satisfied the scheme is viable, deliverable and fundable.

- 6.31 To that end, the Council has asked Renewal to provide detailed information regarding deliverability of the Scheme, including as to viability and the funding strategy. Renewal appointed GL Hearn (a leading property consultant) to bring this detail together in a single report. The Council in turn appointed PriceWaterhouseCoopers LLP (PwC) to provide financial and real estate due diligence and to review the GL Hearn report and additional information provided by Renewal/GL Hearn. PwC's key conclusions/consideration, which Officers accept, are set out below.
- 6.32 GL Hearn have developed detailed, bottom up, appraisals using industry standard software to assess the viability and deliverability of Renewal's intended delivery strategy using current planning permission and market cost and revenue assumptions. PwC consider those cost and revenue inputs to be reasonable and supported by market benchmarks. Furthermore, following a review of the outputs and funding assumptions made PwC conclude that Renewal's intended delivery strategy is appropriate and that the development would be viable and therefore have a reasonable chance of being delivered in line with Renewal's proposals.
- 6.33 Renewal has established that the most appropriate strategy for delivering the comprehensive redevelopment is a Master Developer Strategy (MDS). Under the MDS, Renewal will dispose of (by way of development agreements with house builders) individual development plots/phases in an ordered manner over the development period. From this Renewal will retain the residual land value from the sale and, wherever possible, retain the commercial interests in any sub-development to drive long-term revenue to the organisation. There is strong developer demand for residential development opportunities in this part of London, particularly of the size of development that each phase represents and the price point of the residential units.
- 6.34 Under the proposed strategy, Renewal will maintain responsibility for the delivery of the Community Sports Facility (Energize) in Phase 2, the new Overground station, transport interchange and the urban/public realm. In addition, Renewal will retain design control across the whole development and retain the commercial property in each phase.
- 6.35 The MDS approach will allow Renewal to offset much of the delivery risk but at the same time retain overall control to ensure that a comprehensive scheme and quality shared places/public realm can be delivered. All are important public benefits that underpin the case for the CPO and facilitate the much-needed housing and policy ambition for comprehensive redevelopment in the area.
- 6.36 PwC have confirmed that a MDS approach is a recognised commercial approach for large, complex, multifaceted schemes. There are a number of examples of this delivery route being employed elsewhere,

including the Olympic Park in Stratford. PWC also note that the transfer of construction and residential market risk to a specialist sub-developer helps to dissipate the risk of delivery for large regeneration schemes.

6.37 As noted above, the GL Hearn appraisal model uses current market assumptions about a range of variable factors. These include the cost of finance and the attractiveness of the MDS approach and potential returns. Within their appraisal, GL Hearn set out their assumptions regarding the absorption rate of residential sales into the market place, build costs and sales receipts. Renewal/GL Hearn have appointed DBK (a recognised project management, cost management and building consultancy with experience of large scale developments) to provide the build cost advice whilst sales values are based on GL Hearn's own research.

6.38 PWC have reviewed the modelling developed by GL Hearn and have advised:

- Profit on costs for adopting an MDS approach for Renewal demonstrate acceptable returns to a commercial developer for taking the MD role and initiating a complex development such as the Scheme.
- The costs and returns to a sub-developer as modelled are in line with expectations and acceptable to commercial house builders for serviced plots with the benefit of outline planning consent and in light of the demand for additional housing in this area.
- The build cost estimates are supported by benchmarks. with savings against these costs potentially achievable by specialist housebuilders.
- Sales values (as at a June 2015 base) on a unit basis are considered reasonable.

6.39 Officers consider that the information provided and the review supports the premise that the Scheme is viable and that there is an appropriate delivery mechanism in place. This conclusion is augmented by a number of legal agreements which Officers consider combine to further support the delivery mechanism for the Scheme in support of the potential CPO, these are;

- The Conditional Land Sale Agreement between the Council and Renewal dated 20<sup>th</sup> December 2013 relating to the Council's freehold interest in the land around the Stadium and the Lions Centre. The sale is conditional upon Renewal entering into agreements with MFC and MCS or the interests being acquired by CPO if a private treaty agreement cannot be reached. The Agreement also includes provision for the transfer of the land back to the Council if the comprehensive scheme has not been commenced within 4 years of the transfer of the Council's

interest to Renewal. There is therefore an incentive on Renewal to commence the Scheme as soon as is reasonably practicable within the 4 year period.

- The Section 106 Agreements entered into in March 2012 and December 2015. The requirements of the Agreements are summarised elsewhere in this Report, but it is noteworthy that financial commitments early on in the Scheme incentivise the development of later phases if returns are to be realised. Given the upfront costs of the development, including major Section 106 contributions, the returns on the Scheme do not start to be realised until Phase 3 of the development which also supports the comprehensive development.
- The CPO Indemnity Agreement entered into on 20th December 2013 which provides for Renewal to fund the cost of the land acquisition process (including by CPO) and for the subsequent transfer to Renewal of the land to complete the land assembly.
- The agreement to be entered into with the GLA in connection with the Housing Zone status of the Site which will provide Renewal with £20 million of repayable loan funding. The Agreement will bind Renewal to completing the Scheme and accelerates delivery of the new station on the East London Line, two new bus routes and improvements to existing walking and cycling routes and enables development of the first two phases of development (1A and 2) to proceed ahead of schedule delivering 532 homes earlier. A Memorandum of Understanding (**MoU**) will also be entered into between the Council and the GLA. The MoU will set out the overarching principles upon which Zone Loan Funding may be made available to Renewal and the Borough's role in supporting delivery of the Zone Outputs. A separate report on this aspect will be presented to Mayor and Cabinet.

6.40 Although the Council does not have a directly enforceable obligation from Renewal to deliver the whole of the scheme, any such obligation would not in any event guarantee delivery. Officers remain of the opinion that the necessary resources will be available and that the Scheme will provide a sufficient return to Renewal (or another developer/developers), such that the Council can be confident that if the CPO is confirmed, Renewal will wish to proceed with the Scheme, and the Scheme will be delivered.

6.41 **in all the circumstances, Officers consider that the scheme has been independently verified as viable with appropriate delivery mechanisms in place and that pre-condition IV has been met**

#### **(v) Business Plan / Funding Strategy**

6.42 Renewal's intended MDS approach will significantly reduce the level of funding which would otherwise be required. With an overall programme

of just over 10 years, the majority of costs and risks for the development of individual plots/phases will be passed to sub-developers who are likely to be national house builders.

- 6.43 GL Hearn have modelled the programme cash flows and these indicate that, if sunk costs are ignored, a peak debt funding requirement is reached in year 3 with the scheme almost at break even in year 4 and in surplus from year 5 onwards. If sunk costs are included the peak debt is reached in year 3 and a surplus is reached from year 7 onwards.
- 6.44 PWC have confirmed that they consider that the appraisals presented by GL Hearn have been properly considered and reflect Renewal's development intentions.
- 6.45 The other more immediate funding need and of direct focus to the Council is the ability for Renewal to fund the remaining acquisitions and support any CPO costs and expenses that arise. In the event the Council resolves to proceed with a CPO, the CPO Indemnity Agreement provides for a cash deposit or satisfactory alternative security to be in place before the Council proceeds to make a CPO. Renewal have offered a performance bond from RBS to cover the liabilities under the CPO Indemnity to the value of 175% of the estimate total costs, thereby providing a significant surplus. This is an 'on-demand' bond enabling the Council to require payment from RBS if Renewal fail to pay under the CPO Indemnity Agreement. Officers consider this is an acceptable form of security for the Council. It is noteworthy that the performance bond is to be given by RBS which is still in majority Government ownership. RBS will have independently assessed Renewal's ability to cover these costs prior to it agreeing to provide such bond, which further confirms the security. The bond is further referred to in Section 8 of this Report.
- 6.46 Renewal has set up a project company/special purpose vehicle as the delivery vehicle for the Scheme – this is a widely recognised approach to large scale project/programme delivery. The project company is not established with sufficient resources to deliver the scheme utilising its own funds. It has always been represented that the funding for the project would be provided by the shareholders of Renewal who are Incorporated Holdings Ltd and Independent Advisors Incorporated. The Renewal Group Ltd (registered in the Isle of Man) is a 100% subsidiary of Renewal Holdings Ltd (registered in the Isle of Man) which in turn is owned on a 50/50 basis by Incorporated Holdings Ltd (IHL) (registered in the Isle of Man) and Independent Advisors Incorporated (registered in the British Virgin Isles).
- 6.47 PWC have confirmed that the delivery structure and funding mechanism adopted is not unusual and is common place in the delivery of large and complex developments. PWC have also reviewed the audited accounts of Renewal as at 31 December 2014 and whilst there are no audited accounts for the parent shareholders (by reason of them not being based in the UK) the financial information provided by the shareholders which indicates significant net assets. On the basis of this information

PWC suggest that the shareholders have the potential to utilise or leverage its balance sheet to cover both the initial funding and the peak debt (excluding sunk costs) finance required by the project. However, if for any reason the shareholders failed to do this then there are alternative funding strategies for the project to proceed as set out in paragraphs 6.8-6.50 below.

6.48 There is perhaps natural caution about reliance on offshore funding but it is considered that a number of factors should be taken into consideration in this regard, as follows:

- Funding for the project to date has been provided almost entirely by shareholders, with only circa 13% funded by bank debt provided by RBS. The debt provided by the shareholders is unsecured with no fixed repayment date and has 10% annual interest charges applied to the debt – the interest charges are included in the appraisal modelling. The implication therefore is that the shareholders will only see their principal investment and interest returned as the scheme is delivered.
- Therefore, PWC note that whilst there is no absolute binding commitment on behalf of the shareholders to further fund the project they have significant investment in the project already which suggest that commercially further investment is highly likely.
- PWC also note that, as is the norm at this stage of a project of this nature, Renewal has supplied a Development Agreement between themselves and its shareholders which covenants the shareholders to provide future cash flow requirements for the project. Whilst this is subject to the appraisal at the time being able to demonstrate a 10% development profit the sensitivity analysis carried out by GL Hearn identifies that property prices would need to fall by 13 % across the scheme as a whole for this level of profit not to be delivered. PWC note that such a fall in house prices is not unprecedented but would represent a significant and unusual market adjustment stating that they are not aware of any credible property commentators forecasting a downturn in excess of 13%.
- PWC also note that a collapse in the housing market would not occur in isolation and that the impact on any appraisal would be mitigated by other market adjustments such as a fall in build costs which they would anticipate during a property recession. Renewal, in common with other master developers, would have the option to pause the development until such time as house prices recovered.
- The GLA has designated the whole Scheme as one of the first Housing Zones and has agreed in principle (subject to contract with Renewal and entering into a Memorandum of



Understanding with the Council) to provide a £20m public loan facility to Renewal.

6.49 There are a number of other factors which also need to be taken into consideration when assessing the business plan/funding strategy and the justification for the use of CPO powers. With

- an assembled site;
- Outline Planning Permission/S73 Permission for the comprehensive scheme, and
- the MDS delivery approach

the scheme is generally considered bankable/fundable. That is, if Renewal's shareholders decide not to fund the scheme, it would be expected that traditional debt funding would be available to Renewal to satisfy the maximum deficit arising during the course of the project. Given the residual value of the Site post completion of the land assembly exercise, such debt funding could be secured at favourable rates (on the basis of Renewal's shareholders fully subordinating their equity investment to date). Therefore assessing the scheme on a non-developer specific basis, it would be expected that the maximum deficit could be funded by any developer notwithstanding its financial standing or covenant strength.

6.50 PWC have also commented that if Renewal were not to proceed with the intended development the opportunity would exist for an alternative commercial developer, who should be attracted to the site and be capable of achieving returns that would be commercially acceptable. This of course pre-supposes that the Site assembly was complete and that Renewal wished to dispose or needed to dispose of the assembled Site. PWC have also noted that alternative developers would be able to achieve improved funding rates.

6.51 It is Officers opinion that, if the Council wishes to see the comprehensive redevelopment come forward, this is only likely to occur if the Site (against which the Outline Planning Permission/S73 Permission has been granted) is assembled and that the regeneration scheme will only be achieved in a reasonable time period if the Council assist the land assembly by the exercise of its CPO powers.

6.52 The Indemnity aspects are covered in the financial implications at Section 8 below.

6.53 In all the circumstances, Officers' are of the view that the Scheme is viable and deliverable, and has a reasonable prospect of coming forward in a reasonable timescale in the event the Council secures compulsory purchase powers to complete the land assembly exercise.

6.54 **Based on the above considerations, Officers believe that a suitable business plan and funding strategy exists to ensure that the**

**Scheme can be brought forward in a reasonable timescale and that pre-condition V has been met.**

**(vi) Equalities Impact**

6.55 The Council's statutory duty pursuant to the Equality Act is summarised in Section 11 of this Report. A Regeneration and Equalities Statement has been completed in respect of the proposed Compulsory Purchase Order.

6.56 A summary of the Regeneration and Equalities Statement is included within Section 12 of the draft SoR.

**Officers consider pre-condition (vi) has been met.**

**7.0 Acquisition of land currently owned by Renewal**

7.1 As indicated above, Renewal already own a significant proportion of the land required for the development. Renewal has analysed the position regarding third party rights over the land it already owns (and land to be acquired) which may affect its ability to implement the scheme. Renewal has appointed Bilfinger GVA (**GVA**) to provide specialist input on rights of light.

7.2 GVA have been provided with the parameter plans for the permitted Scheme which detail the maximum and minimum heights of the various buildings. Using accepted methods of assessment, including computer modelling, land registry documents and any information that they can source regarding the internal layout of buildings, GVA have undertaken an assessment to identify the level of impact on rights of light of neighbouring properties. In identifying properties that would be 'injured' by the proposed development, an assessment is taken to identify whether the level of light entering through a window will change as a result of the construction of a new development. This is evaluated by assessing the amount of sky visibility (at 0.2%) available on the working plane, which is defined as the top of a table 850mm from the floor, on a 'before development' and 'after development' basis.

7.3 Based on case law, GVA have classified that a property is injured where the extent of a room that is lit at the 0.2% sky visibility level reduces to a level below 50%. Where a room already is lit to a level of below 50% of its area, then any further reduction, regardless of extent, will constitute an injury. The conclusion that a property has had an injury in respect to its right of light does not suggest that a room no longer receives any light (although in extreme cases this may be the case), just that the new development will result in an interference which results in the lit area of the room falling below 50%.

7.4 GVA conclude that an actionable level of interference will be caused to 54 properties as a result of the proposed development. Of these, 21 are held by the Council in a single freehold title, 32 are private residential units and the other interest affected is the MFC Stadium. A plan is

attached to this Report at **Appendix 8**, which shows the residential properties affected and the buildings which will interfere with the rights of light. These comprise flats and maisonettes within the apartment blocks at Bridge Meadows, Chilham House, and Reculver House (which are occupied by a mix of secure tenants and long leaseholders who have exercised the right to buy) and also by the MFC Stadium. The Council owns the freehold interest in Chilham House and Reculver House and the right of light attaching to the Council's interest will also be interfered with. The impact on rights of light vary between minor, moderate, significant or severe.

- 7.5 A further plan is attached at **Appendix 8** which shows the cutbacks in the development which would be required to avoid the interference. Avoiding such interference is, however, unworkable in that it is not a matter of simply moving or re-orientating buildings to avoid an interference with rights of light; a significant number of buildings would have to reduce in size considerably. Four of the towers (one in phase 1A one in phase 1B and two in phase 3) would be reduced to the height of the podiums they sit upon reflecting a cumulative loss of over 60 storeys of residential accommodation alone, 3 other buildings are lost completely (over 20 storeys of development) and 12 other structures, including the sports centre, would need to reduce in height. The accommodation to be provided in these buildings could not be replaced elsewhere on the Site given the design already maximises the potential of other blocks.
- 7.6 To avoid interfering with rights of light would mean the number of units delivered on the Site would have to be significantly reduced. The impact on the level of residential accommodation which could be delivered on the Site would be substantial and would result in the development opportunity not being maximised. A portion of the new sports facility would also be lost. GL Hearn has advised that the loss of the residential accommodation would have a significant impact on the development's viability, likely prejudicing the delivery of other aspects of the Scheme and the public benefits of the wider development being realised.
- 7.7 In terms of assessing whether it is necessary to interfere with the rights in question, this involves both consideration not only as to whether the interference is physically necessary, but also as to whether agreement might be reached with those with the benefit of the right for release of the right. Renewal or the Council has approached those with the benefit of the rights to light with a view to reaching agreement regarding release of the rights, subject to payment of consideration. Those affected have been notified of the potential impact and offered an opportunity to meet to discuss the matter further and undertake a survey of their property in order to accurately assess any impact. To date only one response has been received, with the respondent requesting a survey. This is being taken forward by GL Hearn
- 7.8 Unless the rights of light are released or overridden, those with the benefit of the rights could seek to prevent the re-development scheme

proceeding so far as it interferes with their rights. Section 237 of the 1990 Act authorises interference with third party rights such as easements, restrictive covenants etc in respect of land acquired (by agreement or compulsorily) or appropriated by a local authority for planning purposes, where the interference results from development in accordance with planning permission. Rights of light are considered to be rights encompassed by Section 237 of the 1990 Act. Note that an authority can only appropriate land it already owns, so appropriation is not relevant for present purposes.

- 7.9 Note also that if and to the extent the land affected by the rights of light might be acquired by the Council through CPO, then as that would be an acquisition for planning purposes under Section 226 of the 1990 Act, under Section 237, Section 237 will be engaged through that process. We are therefore only dealing here with land already owned by Renewal or which might be acquired by Renewal by private treaty.
- 7.10 The protection in Section 237 applies not only to the local authority, but also to anyone deriving title from it. Where Section 237 is engaged, any interference with a third party right is converted to an entitlement to compensation based on the reduction in value of the third party's land attributable to the interference with the rights attaching to it.
- 7.11 As indicated above, Section 237 is engaged by an acquisition by a local authority for planning purposes. The power to acquire land for planning purposes is contained in Sections 226 (compulsory acquisition) and 227 (acquisition by agreement) of the 1990 Act. Under Section 227, a local authority can acquire land for the purposes for which they might be authorised to acquire it compulsorily under Section 226. Thus, when acquiring by agreement, the local authority must be satisfied the acquisition fulfils the same tests as apply to power of compulsory acquisition under Section 226. The Section 226 tests are set out in paragraph 6.16 of this report which cross refers to the relevant section of the draft SoR.
- 7.12 Officers consider that the acquisition of Renewal's land for planning purposes, with the consequence that this will engage Section 237 of the 1990 Act, will facilitate the carrying out of the development, re-development or improvement of the Site. It will enable the development to be constructed pursuant to the planning permissions which have been granted notwithstanding it involves interference with third party rights which might otherwise impede the development.
- 7.13 Officers propose that the land owned by Renewal (including land shown on the Acquisition Plan which may subsequently be acquired by Renewal by private treaty) upon which the construction of the consented buildings will interfere with rights should be acquired by the Council and disposed back to Renewal, thus engaging Section 237 of the 1990 Act. It is considered that this will facilitate the development by ensuring the third party rights do not prejudice delivery of the scheme. It will also contribute to delivery of the well-being benefits in the greater public interest, as identified in Section 3 of the SoR.

- 7.14 The arrangement will enable third party rights to be interfered with and in considering whether to proceed, consideration should be given to the protections under Human Rights legislation. Section 11 addresses the application of Article 8 of the Convention (of relevance to residential occupiers) and Article 1 of the First Protocol applies to both individuals and other legal persons and so is also of application to the rights held by corporate entities for example.
- 7.15 In considering the approach, the action must be proportionate and represent a fair balance between public interest and private rights: Is it proportionate? Having regard to the significant regenerative, well-being and other public and economic benefits to be delivered through the re-development proposals, it is considered that the degree of interference is necessary in the interests of the economic well-being of the country (in the terms set out in Article 8), is in the public interest (in the terms set out in Article 1, Protocol 1 rights) and is proportionate in each case. As referred to above, any third party interference with third party rights will carry a right to compensation in respect of any diminution in value caused to the third parties' property as a result of the interference.
- 7.16 Once acquired, Section 233 of the 1990 Act authorises the Council to dispose of any land held for planning purposes, in such manner and subject to such conditions as appear to the local authority to be expedient to secure the best use of that land/buildings or works which have been, or are to be, erected, constructed or carried out on the land or to secure the erection, construction or carrying out of buildings or works appearing to them to be needed for the proper planning of their area. Section 233 requires Secretary of State consent to any disposal which is for a consideration less than that reasonably obtainable and is not a disposal/assignment of a lease of 7 years or less. The Council has been advised by GL Hearn in respect of valuation matters concerning the Section 237 transaction, including certifying that the disposal under such transaction satisfies the requirements of Section 233 of the 1990 Act. The Council has also been advised that the proposed structure gives rise to minimal SDLT liabilities which in any event will be Renewal's responsibility.
- 7.17 Heads of terms for the proposed transaction have been agreed, subject to Mayor and Cabinet approval, between Officers and Renewal. These are attached at **Appendix 4**.
- 7.18 Renewal as developer will be primarily responsible for any compensation payable under Section 237 of the 1990 Act. The Council will, however, retain residual liability in the event Renewal fails to discharge its liability. It is therefore appropriate that Renewal should indemnify the Council in respect of such residual liability. Officers recommend that the CPO Indemnity Agreement should be varied to encompass any such liability, thus ensuring the performance bond to be given by RBS also provides security for this potential additional liability

7.19 Members are asked to approve the acquisition and disposal and the variation to the CPO Indemnity Agreement for the reasons set out in this report.

## 8.0 Financial implications

8.1 As provided for in the CPO Indemnity Agreement, all costs incurred by the Council in connection with the acquisition process are to be met by Renewal, including, by way of summary:

- Administrative Costs of the CPO, including time spent by Council staff and fees incurred on consultants in advising on land acquisition/CPO aspects and progressing the CPO and land referencing aspects;
- legal costs (including in respect of time incurred by the Council's legal section and also fees incurred by the external legal advisers and in engaging Counsel);
- other CPO related expenses, including all costs, fees and expenses relating to any public inquiry (if there is one) in respect of the CPO, any costs related to purchase or blight notices etc;

(The above costs are subject to interim invoicing to Renewal under the terms of the CPO Indemnity Agreement).

- Land acquisition and compensation costs (including land value, acquisition costs and disturbance payments to all affected landowners, lessees or tenants which arise from the acquisition of their interest;
- Any compensation payments payable (in addition to those arising from acquisition), including for example, statutory disturbance payments, payments in respect of injurious affection, interference with third party rights etc, in consequence of the Scheme.

8.2 As set out in Section 7 of this Report, it is proposed that the CPO Indemnity Agreement is varied to ensure it covers the compensation and other costs which the Council may incur in consequence of the proposed acquisition of Renewal's freehold interest (both the existing freehold and any freehold interest which may subsequently be acquired by Renewal by private treaty) in land within Phase 1A, 1B, 2 and 3 as identified on the Acquisition Plan, and the lease back of the relevant land on the terms set out in **Appendix 8**. The comments on the CPO Indemnity Agreement apply equally to the agreement as proposed to be varied.

8.3 As explained elsewhere in this Report, the CPO Indemnity Agreement provides for a cash deposit or alternative security to be put in place following a CPO Resolution to cover the costs secured under the CPO Indemnity Agreement. Renewal proposes to provide an on-demand

performance bond from RBS in respect of all costs and expenses payable under the CPO Indemnity Agreement. In the event that Renewal does not provide the bond then the Council is not obliged to proceed with the CPO or to undertake any other steps under the CPO Indemnity Agreement until security for the costs is in place. Officers advise that the Council should not proceed to make the CPO unless a satisfactory Deposit or alternative security is in place.

- 8.4 In terms of project management, the CPO project is being led by the Council's Director of Regeneration and Asset Management, with input from the Head of Planning, Head of Law, and the Executive Director of Resources. Joint working has taken place with Renewal and their professional advisors on the preparation and making of the CPO and will continue in its progress through to confirmation and implementation.
- 8.5 In terms of risk management, Renewal will continue to negotiate with landowners and wherever possible acquire all necessary land and rights by agreement during the preparation and making of the CPO and thereafter, and until such time as the Council considers it reasonable to take over the negotiations and/or acquire the land compulsorily.
- 8.6 The Council's costs which include internal and external costs (e.g. legal input and other consultants) and costs incurred on land acquisition matters, including compensation matters, are rechargeable to Renewal under the CPO Indemnity Agreement. Any financial exposure of the Council is currently minimised as costs are billed regularly to Renewal. Any failure to pay entitles the Council to 'down tools' under the CPO Indemnity Agreement. Once a CPO resolution is made, as explained above, provisions are in place for a cash deposit or alternative security to be provided. Officers consider the proposed RBS on-demand performance bond to provide appropriate security.
- 8.7 Once the CPO process gets underway, the Council may be legally obliged to take steps at certain stages which will result in expense. With the performance bond in place, however, any financial exposure to the Council is mitigated. Any risk of the performance bond being insufficient to cover the costs of the CPO has also been mitigated by the amount of the bond being substantially higher than the amount currently estimated as being required to cover the costs of the CPO, including any rights of light claims. Should it transpire at any time that the bond is considered insufficient to cover the likely costs, then the CPO Indemnity Agreement provides a process for increasing the amount under the security with the Council not being obliged to take further steps until the amount had been increased.
- 8.8 Throughout the process Officers would seek to ensure that the security is adequate to cover the Council's exposure through full monitoring and anticipation of costs and ensuring, should it become necessary, additional sums are secured under the security.
- 8.9 In terms of holding any land acquired under the CPO, the intention is to transfer all interests to Renewal as soon as practicable. In order to

minimise this risk the transfer will be made as soon as possible after the land has been acquired, and mechanisms such as holding irrevocable deeds of transfer to Renewal will be explored so that the risk (if any) only lasts for the minimum possible time.

- 8.10 Officers are satisfied that the arrangements outlined above mean that any financial exposure to the Council in relation to the CPO process can be mitigated to avoid material exposure. The CPO Indemnity Agreement has been drafted to minimise the risk to the Council, and Renewal has a strong and proven track record of meeting the Council's costs to date.
- 8.11 In relation to the acquisition under Section 227 and disposal to Renewal, the Council has been advised by GL Hearn that in terms of compliance with s 233 Town and Country Planning Act 1990 there are no issues and following the CPO order the Council has been advised that the initial acquisition by the Council of a third party land interest will be SDLT exempt and only Renewal will incur SDLT on the transfer to them (which will be its responsibility).

#### **Financial due diligence (linked to pre-conditions (iv & v))**

- 8.12 In September 2013, at the point of recommending to the Mayor that the Council enter into the Conditional Land Sale Agreement, Officers noted that the recommendation for the CPO resolution would not be brought forward until such time as "full financial due diligence has been undertaken and officers are satisfied that Renewal Group Limited has a viable business plan and funding strategy to deliver the scheme."
- 8.13 To this end the Council commissioned independent advice from PWC to undertake a due diligence review of Renewal's overall ability to deliver the New Bermondsey development scheme and its financial standing. PWC's review is based in large part on their assessment of the GL Hearn report commissioned by Renewal and which included a review of the viability of the Scheme. The key conclusions of both the PWC report and GL Hearn report are as set out in Section 6 of this Report.
- 8.14 Overall the conclusions are that the scheme is viable, that the costs of the CPO will be covered by the on-demand performance bond (once signed) and that the Scheme can either be financed by Renewal's shareholder companies (though it should be noted that financial information provided by the shareholders is unaudited as the shareholders are based offshore) or potentially through debt finance or on the basis the assembled scheme would be attractive to another developer.
- 8.15 Renewal Group Limited (registered in the Isle of Man) is a 100% subsidiary of Renewal Holdings Limited (also registered in the Isle of Man) which in turn is owned on a 50/50 basis by Incorporated Holdings Ltd (**IHL**) (registered in the Isle of Man) and Independent Advisors Incorporated (**IAA**) (registered in the British Virgin Isles). Renewal has confirmed that IAI is ultimately controlled by a family trust and that IHL is ultimately controlled by a charitable trust. The Council should note



that the nature of the unaudited information provided including ownership means that it has not been independently verified.

- 8.16 In relation to the RBS performance bond, paragraphs 8.1 – 8.8 above set out the Council's rights under the CPO Indemnity Agreement and this is considered to mitigate material financial exposure to the Council. The bond must be in place before the Council proceeds with any CPO.

## **9.0 Risk Assessment**

- 9.1 A risk register has been prepared for this project and a Project Implementation Document (PID) has been prepared and will be monitored by the Council's SCT Proposed CPO Board. The CPO Indemnity Agreement of December 2013 is considered to provide the Council with a robust mitigation mechanism for all the protection it needs to avoid almost all financial risks, and Section 8 discusses any financial risk to the Council.

## **10.0 Comments from the Head of Planning**

- 10.1 The Core Strategy Development Plan Document (DPD) sets out the vision, objectives, strategy and policies to manage development in the Borough over the next 15 years (2011 to 2026). The Core Strategy is the Council's key planning policy document and together with Development Management Local Plan and the London Plan forms the development plan for the Borough. The Core Strategy allocates five sites in the north of the Borough as 'strategic sites' one of which is New Bermondsey under its former name of the Surrey Canal Triangle (Core Strategy Strategic Site Allocation 3, SSA3).
- 10.2 The strategic sites are considered central to the achievement of the Core Strategy as redevelopment can collectively transform the physical environment and achieve place making objectives by delivering a comprehensive range of regeneration outcomes in the Borough's most deprived areas. This includes significant numbers of new homes, a range of economic, employment and training opportunities, accessibility improvements (public transport, pedestrian and cycle), and infrastructure provision and public realm improvements.
- 10.3 The Scheme represents an opportunity to transform the environment and infrastructure and create a new destination around the Borough's premier sporting destination (Millwall Stadium) which currently is not enhanced or improved by the surrounding industrial estates.
- 10.4 The Core Strategy policy (SSA3) allocates the Site for mixed use development and requires a comprehensive phase approach to redevelopment in line with an approved Masterplan. For the purposes of this Site, the outline planning application and supporting documentation which the Council resolved to approve on 13<sup>th</sup> October 2011, also carried through to the Section 73 application, represents the Site's masterplan. The policy seeks to create a 'destination' that could act to focus and attract other regeneration opportunities. It ensures

development facilitates and takes advantage of the proposed new station on the London Overground network and the existing sporting and leisure facilities at Millwall Stadium to create a new high quality destination in an area which is relatively devoid of local facilities. Specifically the policy:

- ensures the continued operations of Millwall Stadium and supports its potential redevelopment;
- seeks a range of uses including employment, retail, housing (up to 2,400 new homes), leisure and community;
- makes provision for a range of infrastructure including the London Overground Station at Surrey Canal Road and substantial improvements to walking and cycling routes, including on-site amenity space;
- ensures high quality design of all new buildings and spaces.

10.5 The Core Strategy is intended to encourage third party landowners and developers to bring forward their land and buildings for re/development where appropriate. The Council has been working with landowners and their agents to assist the process of bringing forward development within the earliest possible period. This particularly applies to the strategic site allocations. However, it is accepted that there may be instances where landowners may be reluctant or unwilling to bring forward their land for development. In such circumstances the Council may choose to use its compulsory purchase powers to achieve the Core Strategy's wider regeneration objectives (paragraph 9.24, Core Strategy).

## **11.0 Legal implications**

11.1 The Mayor is being asked to consider the exercise of the powers under Section 226(1)(a) of the 1990 Act and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to make a CPO for the acquisition of land and new rights. The legal requirements and appropriate cross-references to the draft SoR are covered within this Report and the draft SoR.

11.2 In exercising the powers, the Council must also have regard to the CPO Guidance. The overarching requirement to demonstrate a compelling case in the public interest is set out in paragraph 6.24 – 6.27 of this Report, together with the additional factors which the Council must have regard to in making its decision.

11.3 The Mayor is also being asked to authorise the acquisition for planning purposes under Section 227 of the 1990 Act of Renewal's current and future freehold interests in land at 1A, 1B, 2, 3 and 4 and the lease back of that land to Renewal (with an option for Renewal to repurchase

the freehold interest). The circumstances and implications of this arrangement are set out in Section 7 of this Report.

### **Section 237**

- 11.3 Land acquired by the Council for the Scheme whether by private treaty or pursuant to CPO will be acquired for planning purposes under Section 226 or 227 of the 1990 Act. The land will be acquired subject to any existing interests and rights belonging to third parties, including rights of light, and the land will be sold subject to any such interests and rights on disposal. However, under Section 237 of the 1990 Act, the development of land which has been acquired or appropriated for planning purposes in accordance with planning permission is authorised, notwithstanding that it would interfere with any interests or rights affecting the land. The benefit of Section 237 passes to persons deriving title from the local authority, provided the interference is caused by development with planning permission and there remains sufficient connection between the development and the original purpose of acquisition. The ability to rely upon Section 237 removes the potential for excessive compensation claims and the ability for owners to obtain injunctions preventing the redevelopment or claim damages.
- 11.4 Where rights are interfered with, the owners of any such interests are entitled to compensation as provided for in Section 237 of the 1990 Act. The primary responsibility for payment of compensation rests with the developer, but the local authority retains residual liability in the event the developer defaults. The CPO Indemnity Agreement requires Renewal to pay any Section 237 compensation. This is considered to be in respect of third party land, however, and not any Section 237 compensation which would arise from the acquisition and lease back of Renewal's land as set out in Section 7 of this Report. It is therefore proposed that the CPO Indemnity Agreement is varied to ensure Renewal is responsible for the compensation and costs arising in respect of any interference with rights in respect of the land the subject of that proposed transaction.

### **Equality Act 2010 Implications**

- 11.6 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. The duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 11.7 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

11.8 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

11.9 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

11.10 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

11.11 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>.

11.12 Paragraph 6.55 of this Report refers to the Equalities Analysis Assessment which has been carried out in this case and cross-refers to the summary of that assessment in Section 12 of the draft S of R.

### **Human Rights Act 1998 Implications**

11.13 The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making decisions Members therefore need to have regard to the Convention. The rights that are of particular significance to the Mayor's decision are those contained in Articles 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).

11.14 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic well-being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.

11.15 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.

11.16 It is acknowledged that a CPO is made and confirmed will result in the taking of property. However, this will be in accordance with a statutory process which was held to be compliant with Article 6 of the Convention which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Compensation will be payable in accordance with law including compensation for property on the basis of the market value of the interest acquired, together with disturbance, statutory loss payment and where appropriate home loss payments.

11.17 In making the recommendations in this Report, Officers have carefully considered the balance to be struck between individual rights and the wider public interest. In this instance it is considered that there is a compelling case in the public interest for compulsory acquisition and this is consistent with the ECHR and 1998 Act in that the public purpose of securing the Site for the redevelopment described herein and concomitant economic, social and environmental benefits are of sufficient weight to override the interference with human rights that a

CPO necessarily involves; and that compulsory acquisition is necessary to achieve that purpose.

11.18 It is also considered that the Order is proportionate having regard to the alternative means of securing the redevelopment of the Order Land and the associated regeneration of the area.

## **12.0 Environmental Implications**

12.1 There are no immediate environmental implications associated with the recommendations of this report. The planning report referred to in the background papers has the environmental implications concerning the scheme.

## **13.0 Crime and disorder implications**

13.1 There are no immediate implications associated with the recommendations of this report. The planning report referred to in the background papers has the implications concerning the scheme.

## **14.0 Conclusion**

14.1 Each of the Pre-Conditions to making a CPO set out in the 7th March 2012 Report, have been considered by Officers, and have now been addressed by Renewal.

14.4 On balance, the Mayor is recommended to resolve to make a CPO and to agree the other recommendations set out in paragraph 3 of this Report.

## **Background Papers**

Copies of all background papers have been made available in the members' room prior to the meeting at which this report is due for consideration. The papers are listed in the table below.

<b><u>Short title of document</u></b>	<b>Date</b>	<b>File Location</b>	<b>Contact Officer</b>
Strategic Planning Committee Report Land to the North and South of Surrey Canal Road	13.10.11	Laurence House	Michael Forrester
Strategic Planning Committee Report Land to the North and South of Surrey Canal Road	12.12.13	Laurence House	Michael Forrester
SCT "in principle" CPO and land appropriation report	7.3.12	Laurence House	Rob Holmans
Surrey Canal Triangle Regeneration – Update on Land Assembly and	13.9.13	Laurence House	Rob Holmans

Conditional Land Sale Agreement between LBL and Renewal.			
Surrey Canal Regeneration Benefits and Equalities Report		Laurence House	Rob Holmans

### List of Appendices

Appendix 1: Draft Statement of Reasons

Appendix 2: CPO Resolution Plan

Appendix 3: Section 227 Acquisition Plan

Appendix 4: Section 227 Acquisition Heads of Terms

Appendix 5: Plan of Renewal's Existing Ownership

Appendix 6: Table of Freehold and Leasehold Interests to be Acquired, plans of freehold, head leasehold and under leasehold interests, plan showing third party interests to be acquired.

Appendix 7: Utilities Plan

Appendix 8: Rights of Light Plans

**NB these appendices have been circulated separately to members. They can be viewed on the Council website at:**

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3866>