

MAYOR & CABINET		
Report Title	Deptford Wharves – Proposed Compulsory Purchase Order	
Key Decision	Yes	Item No.
Ward	Evelyn	
Contributors	Executive Director for Resources and Regeneration and Head of Law	
Class	Part 1	Date: 21 June 2017

1. Purpose of Report

- 1.1 The purpose of this Report is to inform the Mayor as to the progress of the Deptford Wharves regeneration scheme by the developer, Lend Lease Deptford Limited, and the current land assembly position, and to seek approval for the making of a compulsory purchase order to complete the acquisition of the land required to deliver the scheme as set out below. For the purposes of this Report, the developer is referred to throughout as “Lendlease”. The site (**Site**) is shown edged red on the plan at **Appendix 1** to this Report.
- 1.2 Whilst Lendlease owns the majority of the Site, despite the making of reasonable endeavours over a lengthy period it has not thus far been possible to reach agreement with the remaining landowners for the acquisition of the land required for comprehensive re-development of the Site. Officers now 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 to enable the acquisition of the remaining land required to facilitate the comprehensive re-development of the Site (**Scheme**) 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 policies.
- 1.3 The land proposed to be acquired is described in Section 6 of this Report. This Report also seeks delegated authority for the Executive Director for Resources and Regeneration (in consultation with the Head of Law) to enter into a compulsory purchase indemnity agreement and related parent company guarantee, and to take certain other steps in connection with assembly of the land required for the Scheme and the compulsory purchase process.
- 1.4 A draft Statement of Reasons (**draft SoR**) for making the proposed compulsory purchase order (**CPO**) is attached to this Report at **Appendix 2**. 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**). 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 too is covered by 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 the decision whether or not to make a compulsory purchase order, including the current planning policy framework for the Scheme, matters relevant to delivery of the Scheme within a reasonable timeframe, its impact on affected land owners and occupiers, and whether the purposes for which the CPO would be made 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 party landowners. 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 should read the whole of the SoR and take it into account alongside this Report.

2. Policy Overview

- 2.1 The Council's Local Development Framework sets the vision, objectives, strategy and policies that will guide development and regeneration in the Borough up to 2025. The Lewisham Core Strategy (**Core Strategy**), the Lewisham Development Management Local Plan, the Lewisham Site Allocations Local Plan and the Lewisham Town Centre Local Plan, together with the London Plan, form the statutory development plan for the Borough.
- 2.2 The Site also lies within the Deptford Creek/Greenwich Riverside Opportunity Area identified in the London Plan. Opportunity Areas are London's major source of brownfield land which have significant capacity for development – such as housing or commercial use - and existing or potentially improved public transport access. In Opportunity Areas, development proposals should seek to optimise residential and non-residential output and densities, provide necessary social and other infrastructure to sustain growth, and where appropriate contain a mix of uses.
- 2.3 The Core Strategy contains a number of Strategic Site Allocations which are central to the achievement of the Lewisham Spatial Strategy. There are five such strategic sites, four of which are within the Deptford/new Cross area, including the Oxestalls Road site which comprises Strategic Site Allocation 4 within the Core Strategy. The strategic sites are intended to act as a catalyst for regeneration of the wider area. Redevelopment of this Site is thus a key regeneration and strategic priority for the Council.
- 2.4 The Site comprises the majority of the land within SSA4. SSA4 also includes Scott House (formerly known as Diploma Works) which adjoins the Site at its north-east corner. Scott House has recently been converted to live/work units and does not form part of the Scheme.

- 2.5 The general policy at Strategic Site Allocation 1 within the Core Strategy requires a comprehensive phased approach to redevelopment of the strategic sites in accordance with an approved Masterplan. SSA4 also set out the urban design features identified as key features for the Masterplan in respect of the Oxestalls Road strategic site.
- 2.6 Further details regarding the applicable planning framework and where the redevelopment fits within it are set out in Section 6 of this Report.
- 2.7 '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 to achieve regeneration of the Borough, including the Mayor of London's London Plan Consolidated with Alterations Since 2011(March 2016) (**London Plan**).
- 2.8 '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'.
- 2.9 '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'.
- 2.10 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'.
- 2.11 The Council's Strategic 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.

3. Recommendations

- 3.1 The Mayor is recommended to:
- a) resolve to make a Compulsory Purchase Order pursuant to powers under Sections 226(1)(a) of the Town and Country Planning Act 1990 (in accordance with the procedures in the Acquisition of Land Act 1981) for the

acquisition of the land shown coloured pink on the plan attached to this Report at **Appendix 3**, save for the interests of the Council and Lendlease;

- b) grant delegated authority to the Executive Director for Resources and Regeneration in consultation with the Head of Law:
- (i). to negotiate the terms of and enter into a Compulsory Purchase Indemnity Agreement with Lendlease, together with a Parent Company Guarantee (or other satisfactory agreement providing appropriate security for performance by Lendlease of its obligations under the Compulsory Purchase Indemnity Agreement), such terms to include disposal by the Council of the land acquired to Lendlease pursuant to Section 233 of the Town and Country Planning Act 1990;
 - (ii). to carry out any further or additional land referencing as may be considered appropriate, including service of 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). subject to the Compulsory Purchase Indemnity Agreement and Parent Company Guarantee (or other satisfactory agreement providing appropriate security as referred to in recommendation i) being entered into), 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;
 - (iv). 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 required to facilitate the carrying out of the Scheme;
 - (v). to make such changes as may be considered necessary or appropriate to the draft Statement of Reasons prior to publication;
 - (vi). to acquire interests in the Order Land either by agreement or compulsorily (including pursuant to any blight or purchase notices) and dispose of the same to Lendlease;
 - (vii). to negotiate, agree terms and enter into agreements 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 from the CPO;
 - (viii). 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 for Resources and Regeneration is satisfied that it is appropriate to do so;

- (ix). 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;
- (x). 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;
- (xi). 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;
- (xii). to take all such other steps as may be considered necessary or appropriate to acquire all land interests required for the Scheme (whether by agreement or CPO) and to dispose of the same to Lendlease.
- (xiii). to agree the final terms for disposal to Lendlease of the Council's interest in the plots numbered 4, 10, 11, 13, 14, 15, 16, 17 and 18 on the draft CPO Map attached to this Report at Appendix 3 and, subject to the consideration being duly certified as best consideration, to dispose of the same to Lendlease under Section 123 of the Local Government Act 1972.

4. Background

The Site

- 4.1 The Site extends to 4.7 hectares and is situated in the Deptford and New Cross area in the north of the Borough, located approximately 350m south west of the River Thames (see **Appendix 2**). The Site is bounded by Oxestalls Road to the north (an elevated road bridge, built in the late 1960's to cross the former Grand Surrey Canal); Grove Street in the east with Pepys Park beyond; Dragoon Road to the south which is closed at its junction with Evelyn Street; and Evelyn Street (the A200) to the west which forms part of the Borough Principal Road Network. Deptford Park lies just beyond Evelyn Street to the west.
- 4.2 Historically, the Site was made up of five wharves – Crown Wharf, New Baltic Wharf, Victoria Wharf, Park Wharf and Bridge Wharf - along with a petrol filling station, The Victoria (a public house), a car wash, a single residential dwelling and some small scale retail buildings. Until recently, it has been dominated by commercial and industrial buildings extending to a total of approximately 19,633m² (GEA) comprising sui generis uses and uses falling with Use Classes A1, A3, B1, B2, B8 and C3. It is currently under-utilised and the majority of the remaining buildings are vacant. Given their age and deteriorating condition, these are considered to have little, if any, potential for re-use, except for the vacant public house (**The Victoria**). Works of demolition and remediation have been carried out

on some parts of the Site pursuant to planning permission granted in March 2016 (Ref: DC/15/92295).

Planning History and Site Assembly

- 4.3 Assembly of the Site began a number of years ago when the previous owners, Law 2380 Limited, acquired the freehold of most of Victoria Wharf and Park Wharf in 2003. Further acquisitions followed, and by 2014 approximately 65% of the Site was under Law 2380 Limited's control. In January 2010, Law 2380 Limited applied for part detailed/part outline consent for comprehensive residential-led mixed use re-development of the Site, providing c. 900 homes. Planning permission for that scheme was granted in March 2012.
- 4.4 In August 2014, Lendlease acquired Law 2380 Limited's interests in the Site. In May 2015 Lendlease submitted a part outline/part detailed planning application for re-development of the Site, being a revision to the March 2012 permission. On 23 March 2016 and following completion of a Section 106 Agreement, the Council granted planning permission for (see **Appendix 4** for Scheme layout):
- Up to 1,132 residential units, including 189 affordable units, in blocks ranging from 3-24 storeys;
 - 10,000 square metres of non-residential floor space, including shops/ offices/ restaurants/ cafes/ drinking establishments/ hot food take-aways/ non-residential institutions and assembly and leisure uses);
 - New open space.
 - Improvements to public realm including a water body along the former route of the Grand Surrey Canal;
 - Improved transport connections including new east-west and north-south pedestrian and cycle links;
 - An energy centre.
- 4.5 In January 2017, the Council received an application from Lendlease under Section 96A of the 1990 Act to make non-material amendments to the 2016 Permission. These relate to Plots 1 and 3 of the development and include removing the second level of a podium, increasing the number of residential units and reducing the number of resident parking spaces in these plots. They also give rise to minor elevational changes to the development which do not affect the overall quantum of floor space or number of residential units to be delivered across the Site as a whole, or the overall number of resident parking spaces within the Scheme.
- 4.6 The Head of Planning has confirmed that the changes are acceptable and can be consented under Section 96A. Once issued, the Section 96A approval will operate as a variation to the 2016 Permission and will not constitute a separate permission. Before the Section 96A decision can be issued, however, a short deed of variation to the existing Section 106 Agreement will be required. This is in the course of

agreement and it is envisaged that it will be completed prior to the Mayor & Cabinet meeting on 21 June 2017. An update will be given at the meeting.

4.7 References in this report to the 2016 Permission should be taken to include the changes encompassed by the Section 96A application.

4.8 The 2016 Permission divides the Site into 6 development plots construction of which will be undertaken on a phased basis (see **Appendix 5** Phasing Plan and Plots Plan):

- Phase 1 comprises Plot 1, Plot 2 and Plot 3;
- Phase 2 comprises Plot 4; and
- Phase 3 comprises Plot 5 and Plot 6.

4.9 The maximum permitted floor space for the non-residential uses, and maximum number of residential units (as amended by the 2017 Section 96A application) within the development, are as follows:

Plot	Use Class	m ² (GIA)*	Residential Units
1	A1/A2/A3/A4/A5/D1/D2/B1	765	210
2	A1/A2/A3/A4/A5/D1/D2/B1	453	
	Energy Centre (Sui Generis)	326	203
3	A1/A2/A3/A4/A5/D1/D2/B1	1,297	149
	B1	2,622	
4, 5 and 6*	A1/A2/A3/A4/A5/D1/D2/B1	1,056	570
	B1	3,437	
Total	A1/A2/A3/A4/A5/D1/D2/B1	3,571	1,132
	B1	6,059	
	Energy Centre	326	

*Floorspace figures/residential units per plot to be approved at reserved matters stage

4.10 It is envisaged that the redevelopment of the Site will take approximately 6 to 7 years to complete. If land assembly is achieved as intended, the works will start in Plot 2 followed shortly after by Plots 1 and 3, with construction of Plots 1 and 3 being dependent on the acquisition of those interests of the Site not owned by Lendlease.

5. Land to be included in the Compulsory Purchase Order

- 5.1 The boundary of the proposed Order Land is shown outlined in red on the draft CPO Map, with the land subject to acquisition shaded pink. The land interests proposed to be included in the CPO are listed in the draft CPO Schedule (**draft CPO Schedule**) attached to this Report at **Appendix 6**. The interests to be acquired are identified in Table 1 of the draft CPO Schedule which includes the address, title number and registered proprietor of each of the relevant plots; each plot is cross-referenced to the plot numbers on the draft CPO Map. The main land interests to be acquired under the proposed CPO comprise those owned by Shell and Safestore. In addition, and for the reasons explained below, it is intended to include all interests (other than those owned by the Council) in certain plots around the Site and all interests (other than those owned by Lendlease) in the land already owned by Lendlease. It is further proposed to include a leasehold interest held by Northern Power Networks Limited in a sub-station within the Site (believed to be redundant).
- 5.2 As explained above, the Site is divided into 6 development plots which will be implemented in a series of phases. A brief explanation of why the Order Land is needed in order to deliver the Scheme is set out below. References to Plots are to Plots in the draft CPO Schedule and identified on the draft CPO Map.

Plot 3

- 5.3 This plot comprises Units 16 and 17 Dragoon Road. The freehold interest in this plot is owned by Lendlease with leases in favour of Personal Storage Limited and Safestore Limited (these are related companies and are collectively referred to as **Safestore**). Spaces Personal Storage have a head lease and Safestore an under-lease, both expiring in March 2027. The property comprises a self-storage unit. A plan is attached showing the area of the Safestore lease (**Appendix 7**).
- 5.4 The delivery of all 6 residential buildings within Plots 1 and 3 on the Plots Plan (**Appendix 4**) is inextricably linked. Whilst Buildings 1B and 1C do not physically encroach onto the Safestore land, they do rely on the shared landscaped podium and ground level parking serving Plots 1 and 3 which requires land within the Safestore leases. The remaining buildings in Plot 3 cannot physically be delivered with Safestore in situ, and construction of the commercial 'Y' building on Plot 3 would be severely and unacceptably compromised. Land surrounding the 'Y' building, including land within Plot 3, will also provide open space and complementary uses. Without the Safestore land, at grade connections through to Dragoon Road will not be possible from within the Yard and it will not function or 'feel' as envisaged on completion of the Scheme, with pedestrian routes passing through it and ground floor non-residential uses alongside.

Plot 1

- 5.5 Shell UK Limited (Shell) own the freehold interest in this plot which comprises 101 and 111 Evelyn Street. Shell also holds a leasehold interest in this Plot. The plot comprises a petrol filling station with ancillary shop. The plot is required to enable Buildings 5.A, and 5.E on the Plots Plan (**Appendix 4**) to be constructed.

Other Plots

- 5.6 The draft CPO Map also identifies other land within the Site which is required for the Scheme. This is either because parts of buildings will be constructed upon those areas as identified on the plots plan at **Appendix 4** or the land is required for landscaping/public access. Plots 4, 10, 11, 13, 14, 15 (leased to London Power Networks), 16, 17 and 18 are owned by the Council. Plots 9, 12 and 19 remain unregistered. Plot 9 comprises former highway land and will likely be owned by Shell on the presumption that on a stopping up, the half width of a highway reverts to the adjoining owner. For similar reasons, Plots 12 and 19 will likely be owned by Lendlease. Given the uncertainties regarding ownership, however, it is proposed to include these plots within the CPO (but expressly excluding any interest already owned by the Council or Lendlease).
- 5.7 Various rights and covenants also affect the Order Land, as identified in Table 2 of the draft CPO Schedule in Appendix 6. Lendlease have confirmed that it does not consider any of the rights/covenants affecting the land it already owns will impede the construction or operation of the Scheme. Lendlease has further confirmed that it and its advisers have undertaken title investigations to identify registered land interests, conducted physical inspections of the land where possible and have engaged with any known interest holders. On this basis, and on the basis that Lendlease and its contractors have been occupying various parts of the Site since acquisition in August 2014, Lendlease considers that the CPO Schedule covers all reasonably discoverable interests in the Site. As is often the case with large comprehensive schemes, however, whilst all due diligence may have been employed to review the title and ascertain the nature and extent of the interests in the land, there remains a residual concern that some new interest might subsequently come to light that no one could have been aware of. As is common practice in such cases, therefore, and to guard against this eventuality which could impede the Scheme, it is proposed to include in the CPO the plots already owned by Lendlease but to exclude from any acquisition any interest already owned by Lendlease.
- 5.8 The position regarding negotiations with landowners is considered in more detail below in Section 6. Lendlease will continue, with the support of the Council, to seek to acquire the outstanding interests by agreement. Officers have also written to the landowners encouraging them to engage with Lendlease and offering to engage directly with the landowners, should they be unwilling for any reason to deal with Lendlease. As a result of this, various forms of engagement have taken place between the Council, Safestore and Lendlease, as detailed below and in the draft SoR. In addition, Safestore and the remaining landowners were advised by the Executive Director for Resources and Regeneration in a letter dated 26 May 2017 that this report would be considered by Mayor and Cabinet on 21 June 2017. An update on any responses received will be given at the meeting of Mayor and Cabinet on 21 June 2017.
- 5.9 If the CPO is made, further requisitions for information relating to ownership will be served as necessary before the Order Map and CPO Schedule are finalised. Final versions of the Map and Schedule will be published with the CPO when made. In addition, negotiations to try and secure acquisition by agreement of all relevant interests will continue.

5.10 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. Statutory powers and CPO Guidance

Statutory powers

6.1 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. By virtue of section 226(1A), however, the Council must not 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.

The benefits to be derived are not restricted to the area subject to CPO, as the concept is applied to the well-being of the whole (or any part) of the authority's area.

6.2 The Mayor and Cabinet are 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 of the 1990 Act and deliver the well-being objectives required by Section 226(1A). In summary, the overall benefits of the comprehensive scheme are:

- 1,132 new homes including 189 affordable units;
- The creation of new pedestrian and cycle links including a north-south route utilising the route of the former Grand Surrey Canal and east-west links between Evelyn St and Grove St, linking the Scheme with other nearby developments as well as providing important links between existing parks and open spaces;
- The creation of significant public open space throughout the proposed development.
- The provision of 9,630 sq m of new non-residential floorspace accommodating new shops, workspace, offices, leisure and community uses;

- Retention and refurbishment of the Victoria to provide interim accommodation for community uses/incubation and start-ups for small business and longer term use as a pub;
 - Delivery of retail and catering uses to support local residents and provide employment opportunities;
 - Non-residential floorspace capable of accommodating 460-630 new FTE jobs, with a further 370 FTE job opportunities during construction;
 - The introduction of new green space and provision of ecological enhancements including green and brown roofs and potential re-introduction of birds, bats and insect species previously seen in Deptford.
- 6.3 Significant **social benefits** will be secured through the delivery of sustainably constructed new homes that will make a significant contribution to meeting private and affordable housing need in the Borough. The planning permission also includes space for new community and leisure facilities to serve new residents and enhance the range of facilities available to existing residents in the wider area. The development is served by existing public transport services and infrastructure that will be improved as a consequence of the development.
- 6.4 Through land assembly, which will enable the rationalisation, improvement and provision of new uses and infrastructure on the Site, there will be significant **environmental benefits**. Of fundamental importance to the delivery of the comprehensive masterplan are new east-west and north-south pedestrian and cycle routes through the Site. The north-south route utilises the route of the former Grand Surrey Canal and is a defining landscape feature of the approved scheme. The Scheme will provide much needed links between existing parks and open spaces, including Pepys and Deptford Parks, as well as links to other developments in the area, forthcoming and existing, building on the Council's objective of introducing better and safer pedestrian and cycle links throughout the wider area.
- 6.5 The Scheme will secure very significant **economic benefits** in terms of major investment in the Borough, with job opportunities during construction and in the new commercial, community and leisure uses. The new resident and business population will further contribute to the health of the local economy.

CPO Guidance

- 6.6 The CPO Guidance sets out the considerations to be applied when making a resolution to exercise compulsory 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."

- 6.7 The Human Rights implications of the prospective compulsory acquisition are addressed in Section 11 of this Report.
- 6.8 The CPO Guidance sets out a number of other matters which are required to be considered/satisfied when making and confirming a CPO, both generally and specifically in relation to Orders made under Section 226 of the 1990 Act:
- Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area (see this Section 6 below and Section 4 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 6.23 to 6.27 of this Report and paragraphs 6.27 to 6.32 of the draft SoR).
 - The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area (see paragraphs 6.3 to 6.5 of this Report and paragraphs 3.28 and 3.2.10 of the draft SoR);
 - That reasonable steps have been taken to acquire the land included in the Order by agreement (see paragraphs 6.28 to 6.43 of this Report and Section 8 of the draft SoR). The CPO Guidance notes, however, that if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost and it may often be sensible, given the amount of time required to complete the CPO process, to plan a CPO timetable and initiate the formal procedures.
 - That the necessary resources are likely to be available to achieve the purpose of acquisition within a reasonable timescale. If this cannot be demonstrated, the authority is unlikely to be able to show the acquisition is justified in the public interest at this time. These aspects are discussed in paragraphs 6.44 to 6.71 of this Report and Section 6 of the draft SoR.
 - That the scheme is unlikely to be blocked by physical or legal impediments (see elsewhere in Section 6 of this Report and Section 6 of the draft SoR).

Does the purpose for which the land is being acquired fit in with the Local Plan?

- 6.9 The CPO Guidance requires consideration of whether the purpose for which the land is being acquired fits in with the adopted Local Plan. In addition to this specific requirement, 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. The

CPO Guidance points out that the National Planning Policy Framework also needs to be taken into account.

- 6.10 Planning policy at national, regional and local level promotes sustainable development through the plan-led system and a proactive approach to supporting the delivery of homes and business space to create thriving local places. Detailed analysis of the relevant policies at national, regional and local level, and how they relate to the Site and the compelling case that it is in the public interest for the land remaining outside of Lendlease ownership to be acquired compulsorily, is set out in the Statement of Reasons and a summary is given below.
- 6.11 At the national level the NPPF sets out the guiding principles for development at the plan-making and decision-taking stages. A key part of this is a clear strategy that allocates sufficient land suitable for development and creating a high quality built environment with a good standard of amenity for all existing and future occupants. At the regional level the London Plan sets the overall development strategy for the City including identifying Opportunity Areas and Intensification Areas for more intensive development and change. Deptford and New Cross is designated as an Opportunity Area, part of London's reservoir of brownfield land with significant capacity to accommodate new housing, commercial and other development linked to existing or potential improvements to public transport accessibility. In Opportunity Areas development proposals should seek to optimise residential and non-residential output and densities, provide necessary social and other infrastructure to sustain growth, and, where appropriate, contain a mix of uses.
- 6.12 At the local level the Core Strategy translates the strategic direction into borough-wide and site specific policies. This includes the identification of Strategic Sites where the scale and nature of change will act as a catalyst for the regeneration of the wider area. 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. The Core Strategy identifies four strategic sites in the Deptford and New Cross area, one of which is the Oxestalls Road site, Strategic Site Allocation 4 (SSA4).
- 6.13 Redevelopment of the Site is a key regeneration and strategic priority for the Council and Policy SSA4 requires a comprehensive approach to the redevelopment of the Site, in line with an approved masterplan that delivers a range of land use and development priorities and which demonstrates a number of urban design principles. Comprehensive redevelopment of the Site will deliver improvements to the environmental quality of the site and the surrounding area as well as improvements to accessibility, connectivity and legibility. This includes creating better links to other parks and public spaces particularly Deptford Park, Pepys Park, Evelyn Street and the River Thames frontage in support of the North Lewisham Links project. A key element of the comprehensive masterplan therefore is the new east-west and north-south pedestrian and cycle routes through the Site.

- 6.14 The Core Strategy (at paragraph 9.24) also makes clear that the Council wishes to encourage landowners to bring forward land for development in line with the Core Strategy, but that where landowners are reluctant or unwilling, the Council may consider using CPO powers to achieve the Core Strategy's wider regeneration objectives. This applies particularly to the strategic sites.
- 6.15 It is of particular importance that, in accordance with Strategic Site Allocation 1, the 2016 Permission is for the comprehensive development of the Site. As part of the planning application and Masterplan process consideration was given to the delivery of the Scheme, as required by the Core Strategy. The 2016 Permission is part detailed for Phase 1 and part outline for the remainder of the development, and is subject to conditions and a Section 106 Agreement which together control the implementation of the Scheme to ensure the comprehensive development of the Site and in a manner that delivers the land use, access and environmental improvement objectives set out in the Core Strategy. To ensure the comprehensive development of the Site, the Section 106 Agreement includes a series of triggers to prevent piecemeal development and/or the selective development of the Site, as well as ensuring the delivery of a mixed-use and mixed-tenure development. Further details regarding the Section 106 triggers are set out below in this Report.
- 6.16 Policy SSA4 identifies the provision of employment space as a land use priority in the mixed use development the Site with 20% of the floorspace to be for B class use. This is not achieved by the permitted Scheme. However, taking account viability considerations and the fact that the Scheme will secure the delivery of comprehensive mixed use development, the permitted Scheme was considered acceptable, assessed against Development Plan policy. The absence of B2 and B8 uses is appropriate because of the potential impact of such uses on adjoining residential properties. The absence of B2 and B8 uses also enables B1 floorspace to be maximised on the Site, delivering a higher number of employment opportunities given the higher density of jobs associated with B1 compared with B2 and B8 uses. The B1 space has been conceived to target the needs of small businesses. This is considered appropriate in light of the likely demand for B1 uses and the need to secure a deliverable development.
- 6.17 The essential purpose of acquiring the Order Land is to secure the comprehensive regeneration of this allocated Site. Not only does this fit well with the adopted planning framework for the area, but the delivery of the comprehensive development of the Site is also central to the achievement of the spatial strategy contained within the Core Strategy.
- 6.18 The Scheme's compliance with planning policy was considered by the Council, applying section 38(6) of the Planning and Compulsory Purchase Act 2004, prior to the grant of planning permission in March 2016. This exercise concluded that the Scheme accords with a number of the land use priorities and urban design principles contained within SSA4, including the provision of new housing with a proportion of affordable homes and provision of business space as part of a mixed use development of the site. It noted the position in relation to the quantum of employment space and affordable housing, but concluded that these had been optimised in the context of the overall scheme viability.

6.19 Having regard to the development plan as a whole and the totality of the policy compliance, Officers conclude that the Scheme accords with the Development Plan and is consistent with national planning policies. It was on this basis that permission for the Scheme was granted.

Scheme delivery

6.20 As is explained further below under the heading 'Deliverability, including viability and funding', Lendlease have stated that they will not commence the Scheme until they have full control of the entire Site. The Safestore land straddles Plots 1 and 3 and the Shell land occupies part of Plot 5. Plot 1 provides 218 dwellings and 765m² of commercial space and Plot 3 provides 153 dwellings and 3,959m² of commercial space. Together these Plots will deliver 33% of the total residential units in the Scheme including 47% of the affordable homes. Plots 1 and 3 also provide 49% of the total commercial floorspace within the Scheme. Plot 5 provides around 30,500 square metres of residential floorspace and up to around 635 square metres of flexible commercial floorspace. This represents around 27% of the residential floorspace and 7% of the commercial space in the development.

6.21 Until Lendlease have full control of the whole Site, the Scheme will not proceed. Thus, unless the Shell interests are acquired, the comprehensive Scheme cannot be delivered. In respect of the Safestore land, the leasehold interests expire in October 2027 at which date (assuming successful opposition to the grant of new leases) the land would revert to Lendlease. Accordingly Lendlease would, eventually, be able to secure control of this land. If, however, the Shell land is acquired but not the Safestore land, for the reasons outlined above commencement of the development would be delayed by 9-10 years, i.e. until Safestore's lease expires. Even assuming that comprehensive development remains deliverable in 10 years' time, there would be a 12+ year delay in completing such development and in achieving the economic, social and housing benefits that the Scheme delivers.

6.22 Accordingly all of the land not currently under Lendlease's control is required if delivery of the comprehensive Scheme is to be secured. This will enable:

- the comprehensive development of the Site;
- the timely development of the Site;
- the delivery of the land use requirements for the Site;
- the delivery of the masterplan vision for the Site.

Could the Order purpose be achieved by other means?

6.23 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. Planning Permission has been granted for comprehensive redevelopment in accordance with those policies.

- 6.24 The CPO Guidance advises that, in deciding whether to confirm an order made under Section 226(1) (a) of the 1990 Act, as is proposed here, one of the factors which the Secretary of State can be expected to consider is whether the purpose for which the order is being made could be achieved by any other means. This may include the appropriateness of alternative proposals put forward by owners of the land, or any other persons, for its reuse, as well as examining the suitability of any alternative locations for the purpose for which the land is being acquired.
- 6.25 Given that it owns or controls the majority of the interests in the Site, Lendlease is the obvious party to bring forward the Scheme. The Scheme already has the benefit of planning permission. It will secure the comprehensive redevelopment of the Site, and compulsory acquisition of the outstanding land interests is required in order to secure its delivery.
- 6.26 The Scheme will be implemented on a phased basis and the planning permission sets out the tended phasing of the Scheme, with Phase 1 benefits from full planning permission and comprises Plots 1, 2 and 3, commencing with Plot 2. Phase 2 comprises Plot 4 and Phase 3 Plots 5 and 6, with permission granted in outline for the Plots. The Section 106 Agreement that forms part of the planning permission includes an alternative phasing option whereby Plot 6 could be developed ahead of Plot 3. However this is scenario is still dependent on Lendlease having full control of the Site.
- 6.27 There are no alternative proposals for the regeneration of the Site and no other parties who have demonstrated that they are in a position to deliver the Scheme other than Lendlease. Lendlease have made clear that they will not commence development until they have full control of the Site. Unless the Order is confirmed, therefore, there is a very significant risk that development of the Site would not proceed at all, and thus the regeneration objectives for the Site and surrounding area would not be realised.

Negotiations with Landowners

- 6.28 Lendlease has been seeking to acquire third party interests by agreement since it first acquired an interest in the Site in 2014. To date, Lendlease has engaged in substantial correspondence, and sought to engage, with landowners regarding the acquisition of interests, directly and through its former agents GL Hearn and currently appointed agents Montagu Evans. Correspondence has included emails, telephone calls, agents' meetings and, in some instances, meetings between principals.
- 6.29 The Council has appointed GVA to review the negotiations and offers made by Lendlease to acquire the remaining interests and to advise on whether the offers made and steps taken to acquire those interests are fair and reasonable. Their remit also includes acting as the Council's agent to negotiate settlements with landowners and others with an interest in the proposed Order Land.
- 6.30 Since acquiring its interest in the Site, Lendlease has successfully negotiated the acquisition of Crown Wharf, Veolia's lease in New Baltic Wharf, the acquisition of the residential property at 151 Evelyn Street and commercial premises at 121/123 Evelyn Street. Lendlease currently hold a freehold interest in approximately 92%

of the Site, and have secured control of approximately 60% of the leasehold interests in it. The latter will, however, increase substantially in October 2017 when the Veolia lease expires, resulting in Lendlease having approximately 85% of the Site's leasehold under control. There are four principal interests remaining to be acquired. These interests comprise both freehold (Shell UK) and leasehold (Shell UK and Safestore). Certain interests also need to be acquired from the Council as referred to below.

- 6.31 Lendlease has provided the Council with details of the extent of and current position on negotiations with landowners, together with copies of material correspondence.. These negotiations have been undertaken by both Lendlease and their advisers, Montagu Evans. Officers and GVA have reviewed the information provided and are satisfied that Lendlease has used reasonable endeavours over a substantial period to acquire the outstanding interests by negotiation. Lendlease is continuing and will continue to try and move those negotiations forward with the support of Officers.
- 6.32 The Council has also communicated with landowners encouraging them to negotiate with Lendlease, and offering to negotiate with them directly and to provide formal valuations if they are for any reason unable or unwilling to deal with Lendlease. Further correspondence and communications and meetings have also taken place between the Council, Safestore and Lendlease as detailed below and in Section 8 of the Draft Statement of Reasons. To-date, none of the remaining landowners have indicated a preference to negotiate with the Council.
- 6.33 Whilst Lendlease continue to engage and treat with all the remaining landowners and leaseholders, attempts hitherto to acquire all the outstanding interests by agreement have not been successful. The current position is summarised below.

Shell UK and Safestore

- 6.34 The largest remaining interests by area yet to be acquired are those vested in Shell UK and Safestore.

Shell UK

- 6.35 Shell UK Limited (**Shell**) owns the freehold interest in 101 and 111 Evelyn Street. This is identified as Plot 7 on the draft CPO Map at **Appendix 3**. The property is operated as a petrol filling station and ancillary shop. Pursuant to what is understood to be an intercompany arrangement, Shell also holds a leasehold interest in this property which expires in November 2019. As referred to above, it is likely that the adjoining land shown as Plot 9 on the draft CPO Map which is unregistered is also owned by Shell by virtue of the presumption that on a stopping up, the half width in a highway reverts to the landowners on either side.
- 6.36 Discussions between Lendlease and Shell have been ongoing since shortly after Lendlease first acquired an interest in the Site in August 2014. The parties remain in negotiation and it is understood that recent discussions have been productive. However, to date agreement has not been reached and Shell's interests are therefore included in the proposed CPO.

Safestore

6.37 As referred to above, Lendlease has been in discussions with Safestore since they (Lendlease) first acquired an interest in the Site. A number of different options for agreement have been explored ranging from re-accommodation of Safestore within the Scheme in a smaller facility to relocation off-site. Further details regarding negotiations are contained in Section 8 of the draft SoR. To summarise:

- Lendlease have made a number of offers to acquire the leasehold interest, all of which have been rejected by Safestore;
- Safestore wish to retain an operation in Deptford, ideally within the new development, but if not then within close vicinity to their existing facility;
- Lendlease have explored options to incorporate a self-storage facility into the Scheme. However, given the scale and nature of Safestore's operation and their requirement to continue trading without interruption, this does not appear to be feasible;
- Lendlease and Safestore have both explored various options to identify a relocation opportunity off-site, including submitting offers for a particular site. However, as at the date of this Report these have not resulted in a feasible option being progressed;
- Whilst they have verbally indicated typical trading figures for comparable facilities, Safestore have so far refused to provide formal trading details relating to their Deptford facility to enable Lendlease to review its previous offers.

6.38 The Council has also met with Safestore, both individually and with Lendlease to help to facilitate agreement between the parties. At those meetings, and in subsequent correspondence, Officers have raised with Safestore some of the issues and risks associated with seeking to accommodate a self-storage facility into the scheme. These issues concern:

- Use;
- Employment provision;
- Flexible design;
- Floor levels and basement uses;
- Highways and access implications;
- Cost and s106 implications.

6.39 The Council has also given Safestore details of its own landholdings in the immediate area as possible relocation sites, but mainly due to size, none of these were deemed to meet Safestore's requirements.

- 6.40 The CPO Guidance advises that there should be constructive engagement with claimants regarding relocation issues, including offering advice and assistance about the availability of suitable relocation properties where appropriate. Whilst there is no express obligation to explore whether substantive changes could be made to a scheme to accommodate an existing occupier, in the present case officers consider that Lendlease have made reasonable efforts to establish whether a replacement Safestore facility could feasibly be incorporated into the Scheme. Due to the scale and nature of Safestore's operation, and their requirement to continue trading without interruption, this does not appear to be achievable.
- 6.41 Officers are also of the view that reasonable efforts have been made to identify a new site to which Safestore's facility could relocate, and to reach a negotiated compensation settlement. Those efforts have not to date been successful. Safestore's leasehold interests are accordingly included within the proposed CPO.

Other Interests

- 6.42 London Power Networks has a leasehold interest in the site of an electricity substation. This has been decommissioned and is awaiting removal from the Site. Lendlease intends, and expects, to acquire LPN's interest by agreement. Lendlease have held positive discussions with LPN about this but to date no agreement has been concluded and LPN's interest is therefore included in the proposed CPO.

Summary on negotiations

- 6.43 In summary, therefore, GVA have advised and Officers agree that Lendlease have taken reasonable steps to acquire the remaining interests in the Site by negotiation at this stage. Those negotiations will continue, but a decision to proceed with the CPO is now recommended so as to ensure no further time is lost in bringing forward the comprehensive scheme.

Deliverability, including viability and funding

- 6.44 As explained above, if an 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 the acquisition within a reasonable timescale, it is unlikely to be able to show the acquisition is justified in the public interest. An 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, and to address the timing of that funding. The CPO Guidance advises that funding should generally be available now or early in the process. It must also be shown that the scheme is unlikely to be blocked by any physical or legal impediments. These include the programming of any necessary infrastructure works or remedial work; and any need for planning permission or other consent or licence.
- 6.45 Since acquiring the major part of the Site in August 2014, Lendlease has continued to acquire additional interests required for the Scheme. It has also secured planning permission for the Scheme which will deliver significant and

comprehensive regeneration of and investment into this deprived area, and has submitted a Section 96A application for revisions to the 2016 Permission. It has also undertaken demolition and remediation works in preparation for the redevelopment. Lendlease has therefore incurred substantial expenditure on land acquisition, design and planning, and on consultants'/advisors'/ contractors' costs. This demonstrates a strong commitment to the Scheme, and a clear and serious intention to bring it forward.

- 6.46 The Council needs to be satisfied, however, 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. Therefore the Council should be satisfied that the Scheme is likely to be viable, fundable and deliverable.

Viability

- 6.47 GVA have been appointed to advise the Council on matters of viability. In this regard, GVA have reported on the key assumptions on values and costs which form part of Lendlease's own cash flow modelling and projections for the Scheme. The Council has also appointed PriceWaterhouseCoopers LLP (**PwC**) to undertake financial due diligence as to the financial viability of the scheme and whether it is capable of being funded. Both PwC and GVA have been provided with the Lendlease's cash flow model. Given that they contain commercially sensitive information, the modelling information and the GVA and PwC Reports are commercially confidential, but the key points are summarised below.
- 6.48 Having reviewed the cashflow model, PwC have advised the Council that the Scheme nets a positive cashflow and is therefore financially viable. Their report notes that the Scheme is reliant on the sales in Plot 5 towards the end of the development in order to generate a positive cumulative cash flow, and further notes that this is typical for development schemes where there is a timing mismatch between the cash out covering costs and the cash in from sales. This in fact provides a significant incentive for Lendlease to complete the Scheme once started.
- 6.49 GVA have reported that they consider the development to be both viable and deliverable, further commenting that the Scheme sits within an area of residential led development in Deptford where market sentiment is positive. Lendlease are currently reporting sales rates of approximately one unit per week, which although slower than comparable schemes which came forward pre-Brexit compares favourably with nearby schemes coming forward in the same timeframes. In their report, GVA have commented on all of the key assumptions under-pinning the Lendlease cash flow modelling and state that: "Whilst there are some key points of difference underlying the Lendlease assumptions we consider that the Scheme will still be viable and deliverable."
- 6.50 Coupled with PwC's view that the Scheme is financially viable, Officers consider that Lendlease are likely to deliver the Scheme and that, if they do not, it is likely that another developer would wish to do so.

6.51 GVA have also reported that the key development assumptions underlying Lendlease's own cash flows are reasonable and supported by market benchmarks, particularly in respect of nearby comparable developments.

Funding & Delivery

6.52 Lendlease have provided a Funding Statement detailing how they intend to bring the Scheme forward and the structure and funding relationships between the various companies and vehicles involved. A copy of the Funding Statement (redacted to remove references to commercially sensitive information) is attached at **Appendix 8**. The Scheme will be delivered directly by Lendlease, using a Special Purpose Vehicle (Lendlease Deptford Ltd), a subsidiary of Lend Lease Europe Holdings Ltd (**LLEH**). The ultimate parent company is Lendlease Corporation Ltd, but the SPV and therefore Scheme will be funded through LLEH.

6.53 The Lendlease Group is a multinational organisation with a track record of successfully completing regeneration projects across Australia, Asia, Europe and the Americas. The Group is currently delivering regeneration projects in London, including Elephant Park in Southwark – a £1.5bn programme across 28 acres; and The International Quarter in Stratford – a £2.1bn joint venture with London & Continental Railways.

6.54 Under the proposed strategy for delivery of the Scheme, Lendlease will maintain responsibility for the delivery of the entire scheme. The delivery risk will therefore sit with Lendlease as the entity that is acquiring the land interests and progressing the Scheme. At the same time, the structure allows them to retain 100% overall control to ensure that a comprehensive scheme and high quality shared spaces/public realm can be delivered. This mirrors the Lendlease Group's approach to other large regeneration schemes being successfully delivered in London, including Elephant & Castle. LLEH will, however, be providing a parent company guarantee in relation to the costs of the compulsory purchase process, including compensation, and so in this regard LLEH will be sharing the risk regarding delivery.

6.55 PwC have reviewed the audited accounts of Lendlease (that is to say, Lendlease Deptford Limited, the SPV) as at 30 June 2016 and, as is often the case at this stage of development, the SPV does not have sufficient resources to deliver the Scheme utilising its own funds. Lendlease has however confirmed that the funding for the project would be provided by the Group through LLEH, and therefore the Group is ultimately responsible for funding the financial requirements of the Lendlease SPV.

6.56 As the Lendlease SPV is reliant on funding from the Group, PwC undertook a high level review of the accounts from 2014 through to 2016 for both LLEH and the ultimate parent company. The conclusions were that LLEH has access to both Group and external loan facilities, and therefore that adequate funding is likely to be available to the Group's European developments from this entity. PwC further note that, as at 31 December 2016, the Group was in a positive equity position and over 60% of the equity comprised retained earnings, showing the Group's commitment to reinvesting in new and on-going developments.

- 6.57 As has already been explained, planning permission has been granted for the Scheme. The only impediment to its delivery therefore is completion of land assembly.
- 6.58 As has also been explained, the Site is divided into 6 development plots which will be implemented in a series of Phases.
- 6.59 The planned sequencing of the Scheme is as follows (subject to stable market conditions):

Plot	Indicative start on site (piling works)	Indicative PC
2	Qrt 2 2017	Qrt 3 2019
1	Qrt 3 2017	Qrt 2 2020
3	Qrt 4 2017	Qrt 1 2020
4	Qrt 1 2018	Qrt 3 2020
5	Qrt 4 2018	Qrt 1 2022
6	Qrt 1 2019	Qrt 1 2021

- 6.60 The delivery dates provided align to the financial model provided and set out in Lendlease's preferred construction programme. The dates also highlight the length of the construction programme for each Plot. Lendlease is, however, unable to start the Plots 4 to 6 until reserved matters approval has been obtained, but in any event, as is stated elsewhere in this Report, Lendlease is not prepared to start any part of the Scheme until all outstanding interests have been secured.
- 6.61 The Group's European Investment Committee Board Minutes of November 2015 demonstrate commitment of funds to enable progression of site wide activities and completion of Plot 2. The Minutes reference that circa 74% of the required funding has been approved, and PwC note that, as at 31 December 2016, circa 30% of the necessary funds had already been drawn down. The approval for the delivery of future plots and phases will be subject to the same process followed for Plot 2: that is, Regional Investment Committee approval will be granted for the drawdown of funds for each plot as and when required.
- 6.62 PwC note, however, that funding for the Scheme is dependent on a number of factors, including achieving a minimum level of pre-sales and financial return; and that, whilst the Group's resources appear adequate, the Group has many on-going

developments and these could compete for funding with the Scheme. Mitigation of these risks has been provided in part through a letter of support from the Chief Executive Officer (dated 30 November 2016), the Board minutes of 24 February 2014 and 11 November 2015, a revolving Inter-Company Loan Facility dated 1 July 2014, and a strong track record of delivery which evidences that multi-development management is the Lendlease Group's day by day activity. PwC also comment that "hurdle rates are discretionary and can be flexed through board approval", providing flexibility for further funding to be provided to the Scheme regardless of whether all pre-determined hurdles have been achieved.

- 6.63 Officers, PwC and GVA have been provided with the details of the commercial criteria which apply to the funding arrangements and are satisfied they are reasonable and materially in line with those expected in the market. Marketing of Phase 2 was launched earlier this year and is achieving an absorption rate of one unit per week, as explained above.
- 6.64 As a result, Officers are satisfied that funding for the Scheme is likely to be available within a reasonable timescale. Substantial funds are available for the delivery of the Scheme now, with circa 74% of the funding being approved and circa 30% of the funding already drawn down and future draw-down being dependent on conditions that are reasonable and likely to be met. There is in addition a degree of flexibility in relation to the timing of future funding depending on Board approval.
- 6.65 It is accordingly Officer's opinion that the Scheme is viable and fundable, and that financing is likely to be available to Lendlease.
- 6.66 The position regarding delivery is further strengthened by the Section 106 obligations in the Section 106 Agreement. These obligations, together with the conditions on the 2016 Permission, control the implementation of the Scheme in a way that will ensure the comprehensive development of the Site and deliver the land use, access and environmental improvement objectives set out in the Core Strategy.
- 6.67 To ensure the comprehensive development of the Site, the Section 106 Agreement includes a series of triggers to prevent piecemeal development and/or the selective development of the Site, as well as ensuring the delivery of a mixed-use and mixed-tenure development. The combined effect of the provisions in the Section 106 agreement is that:
- in respect of Plots 3, 4, and 5, no works on any part of each Plot can commence until all remaining interests in that Plot have been acquired;
 - in respect of Plot 1, no part of Plot 1 can be occupied until all remaining interests in Plot 3 have been acquired, and 50% of dwellings (including 44 affordable homes) and 50% of the non-residential floorspace in Plot 3 have been provided;
 - in respect of Plot 4, no more than 70% of dwellings in Plot 4 can be occupied until, across the site as a whole, 69 affordable dwellings have been provided and a minimum specified amount of B1 space has been completed;

- in respect of Plot 5, no more than 70% of dwellings in Plot 5 can be occupied until, across the site as a whole, 100 affordable dwellings have been provided and a minimum specified amount of B1 space has been completed.
- 6.68 An alternative option of developing Plot 1 in association with Plot 6 (instead of Plot 3) is allowed for in the Section 106 Agreement. However, this does not:
- remove the obligations in respect of the control of Plots 4 and 5 before development can commence in those Plots; or
 - remove the requirements in respect of the delivery of affordable homes or business space across the Site.
- 6.69 Further, as referred to in paragraph 6.48 above, PwC note that the Scheme only becomes cash positive upon delivery of Plot 5 towards the end of the Scheme, providing a clear commercial incentive to complete the Scheme in its entirety. Lendlease has confirmed that this is the case, noting that the phased nature of the development means there is considerable early investment into the Scheme, which is needed to be offset against the delivery of the future phases. As the Scheme only becomes cashflow positive towards upon delivery of Plot 5, Lendlease therefore relies on the later phases of the Scheme to meet its required returns. Lendlease state that this, taken together with the significant investment into the Scheme already, gives an incentive to deliver the whole of the Scheme.
- 6.70 Officers consider that, in light of the above, the Scheme is fundable and likely to be delivered. Evidence has been presented as to the sources and timing of funds that shows that all the necessary funds are likely to be available to deliver the Scheme within a reasonable timescale if the CPO is confirmed. The viability of the scheme has also been addressed. Officers further consider that these factors, together with the significant investment by Lendlease to-date and the other incentives for delivery of the comprehensive Scheme, are such that, if the CPO is confirmed, the Council can be confident the Scheme will be delivered within a reasonable timescale.
- 6.71 It is Officers' opinion, however, that the comprehensive redevelopment and attendant public benefits are unlikely to be achieved within a reasonable timescale, if at all, unless completion of the land assembly process is secured by the use of CPO powers.

7. Council plots

- 7.1 As indicated above, there are certain plots within the Site currently vested in the Council and required to facilitate the Scheme. These comprise Plots 4, 10, 11, 13, 14, 16, 17 and 18, shown on the draft CPO Map at **Appendix 5**. These mainly comprise former highway plots or have devolved to the Council from the Greater London Authority by way of vesting order.
- 7.2 These plots are required for the Scheme either because parts of buildings will be constructed upon those areas as identified on the plots plan at **Appendix 4**, or the land is required for landscaping/public access.

- 7.3 Officers have been in discussions with Lendlease regarding these plots and heads of terms for their disposal to Lendlease have been provisionally agreed. Under Section 123 of the Local Government Act 1972, the Council may dispose of land held by them in any manner they wish, save that the Council cannot without the Secretary of State's consent dispose of its land (otherwise than by way of a short tenancy) for less than the best consideration reasonably obtainable.
- 7.4 Disposal of the Council's plots will be subject to the consideration being certified as best consideration pursuant to Section 123 of the Local Government Act 1972. This Report seeks authority for the Executive Director for Resources and Regeneration in consultation with the Head of Law to finalise the terms for the disposal of the plots in question to Lendlease and dispose of the same accordingly subject to certification of such disposal being for best consideration as required by Section 123 of the 1972 Act.

8. Financial implications

- 8.1 The proposed CPO Indemnity Agreement will provide for all costs incurred by the Council in connection with the acquisition process are to be met by Lendlease, 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;
 - 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 that fall due (in addition to those arising from land 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 It is proposed that security for the performance of Lendlease's obligations under the CPO Indemnity Agreement will be secured by way of a Parent Company Guarantee (**PCG**) from LLEH.
- 8.3 In terms of project management, the CPO project is being led by the Council's Executive Director for Resources and Regeneration, with support from the Head of Planning and Head of Law. Joint working has taken place with Lendlease and its professional advisors on the preparation and making of the CPO and will continue during its progress through to confirmation and implementation.

- 8.4 In terms of risk management, Lendlease 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.
- 8.5 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, will be rechargeable to Lendlease under the CPO Indemnity Agreement. Any financial exposure of the Council will be minimised as costs will be billed regularly to Lendlease. Any failure to pay entitles the Council to 'down tools' under the CPO Indemnity Agreement, although 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 PCG in place, however, any financial exposure to the Council is mitigated.
- 8.6 Any risk of the PCG being insufficient to cover the costs of the CPO has also been mitigated by the amount guaranteed under the PGC being substantially higher (at 200%) than the amount currently estimated as being required to cover the costs of the CPO and related compensation. Should it transpire at any time that the PCG is considered insufficient to cover the likely costs, then the CPO Indemnity Agreement provides a process for increasing the amount under the PCG, with the Council not being obliged to take further steps until the amount had been increased.
- 8.7 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.
- 8.8 In terms of holding any land acquired under the CPO, the intention is to transfer all interests to Lendlease as soon as practicable.
- 8.9 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.

9. Risk Assessment

- 9.1 A risk register has been prepared for this project and will be monitored by Council Officers. 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. Legal implications

- 10.1 The Mayor is being asked to approve the exercise of the powers under Section 226(1)(a) of the 1990 Act to make a CPO for the acquisition of land. The legal requirements and appropriate cross-references to the draft SoR are covered within this Report and the draft SoR.

- 10.2 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 paragraphs 6.6 of this Report, and the additional factors which the Council must have regard to in making its decision are also set out in paragraphs 6.7 and 6.8 and addressed in this Report.
- 10.3 As indicated above, it is proposed that the Council and Lendlease will enter into a CPO indemnity agreement which governs the process of land assembly.
- 10.4 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 Lendlease pursuant to Section 233.
- 10.5 Upon completion of any compulsory acquisition, Section 236 of the 1990 Act provides that 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 203 of the 2016 Act makes provision for certain third party rights to be overridden when the land is developed in accordance with planning permission. The 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 203 is entitled to statutory compensation, assessed in accordance with provisions in Section 204 of the 2016 Act regarding compensation. Lendlease will be made responsible for any such compensation pursuant to the CPO indemnity agreement.

11. Equality Act 2010 Implications

- 11.1 The Equality Act 2010 (the 2010 Act) consolidated all previous equality legislation in England, Scotland and Wales. The 2010 Act also included 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.
- 11.2 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.

- 11.3 The CPO Guidance re-iterates that acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics.
- 11.4 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.
- 11.5 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/>
- 11.6 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- The essential guide to the public sector equality duty
 - Meeting the equality duty in policy and decision-making
 - Engagement and the equality duty
 - Equality objectives and the equality duty
 - Equality information and the equality duty
- 11.7 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/>.
- 11.8 Displacement of existing occupiers of industrial units and commercial activity on the site through acquisition compulsorily or by agreement may lead to relevant equalities impacts where/if business owners or occupiers have protected characteristics and are required to move off-site. However, a large part of the Site is now vacant. As indicated elsewhere in this Report, those remaining on the Site comprise Shell and Safestore (the latter being a reference to both Spaces Personal Storage Limited and Safestore Personal Storage Limited which are related companies) which provides generic storage services. Shell is a

multinational business and this was a service station location. Veolia (due to vacate the Site in October) is a multinational business providing environmental and waste services.

- 11.9 Lendlease has appointed Quod to appraise those elements of the development where Protected Groups or Protected Characteristics may be affected – or have the potential to be affected – by the Scheme, including both positive and negative effects. Quod report that there is no reason to believe that any of the businesses affected by the proposed CPO are owned by, or provide specific services to, people with ‘protected characteristics’, or that differential impacts might occur. Overall, Quod consider that the Scheme would not have a negative impact on protected groups or characteristics. Officers agree.
- 11.10 The Scheme has been planned and designed to provide an inclusive environment. The delivery of homes, employment space, public realm and neighbourhood facilities will have beneficial effects on the local community of existing and new residents, employees and visitors, including those with protected characteristics and significant benefits are likely to be provided to protected groups through the creation of jobs that meet a range of skill profiles and flexibility needs and new homes including affordable homes.
- 11.11 Lendlease has - and will continue to - engage with both tenants and land owners to inform them of the proposed time frame of development and the likely timescales for the relevant phase that their units fall within to ensure that they can manage their business and property matters. Lendlease has kept Council Officers fully up to date with discussions with tenants and occupiers, including in relation to relocation and Officers continue to liaise with Lendlease and where appropriate occupiers regarding the Scheme.

Human Rights Act 1998 Implications

- 11.12 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.
- 11.13 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.”

- 11.14 The Human Rights Act 1998 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.

- 11.15 Article 6 of the Convention is also relevant regarding process and the entitlement to a fair and public hearing by an independent and impartial tribunal. As regards Article 6 rights the Scheme has been publicised and consultation has taken place with parties potentially affected by the Order. All those parties whose interests are identified and included in the Order will be notified and have the right to make objections or other representations to the Secretary of State for Communities and Local Government and to be heard at a public inquiry or by means of written representations. The statutory process and right for affected parties to pursue remedies in the High Court where appropriate, are compliant with Article 6.
- 11.16 In the present case, there are no longer any residents within the Site. In terms of acquisition, the right that is of particular significance to the Mayor's decision is that contained in Article 1 of Protocol 1 (peaceful enjoyment of possessions). Article 1 provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. The right is qualified to the effect that no one is to be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Further, the right does not in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
- 11.17 In determining the level of permissible interference, 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 statutory compensation to affected persons is relevant in assessing whether a fair balance has been struck. Case law in a CPO context has determined that there is no requirement to set out in any formulaic way the extent to which individual human rights are interfered with, and that the necessary human rights balancing exercise is encompassed by the test of a compelling case in the public interest.
- 11.18 If a CPO is made and confirmed, this will result in the taking of property and the rights of Shell, Safestore and London Power Networks will be interfered with. Compensation will then be payable in accordance with the law, including compensation for property on the basis of the market value of the interest acquired, together with disturbance and statutory loss payments. The nature of the properties/occupations involved is set out elsewhere in this Report. In making the recommendations in this Report, Officers have carefully considered the balance to be struck between individual rights and the wider public interest and have also had regard to whether there are any alternative means of securing the redevelopment of the Order Land and the associated regeneration of the area. Officers have concluded the interference with the rights of Shell, Safestore and London Power Networks is proportionate when weighed against the significant benefits which will be delivered by the Scheme for the Borough and the wider community as set out in this Report and the draft SoR.

12. Environmental Implications

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. Crime and disorder implications

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

14. Conclusion

14.1 As set out in this Report, Officers are of the opinion that:

- The purpose for which the land is being acquired fits in with the adopted planning framework for the area;
- The purposes for which the CPO is proposed to be made could not be achieved by other means;
- Acquisition of the remaining land will facilitate delivery of the Scheme and will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;
- Reasonable steps have been taken to acquire the remaining land by agreement, and efforts will continue to be made to reach agreement with the remaining landowners;
- The necessary resources are likely to be available to achieve the purpose of acquisition within a reasonable timescale;
- The Scheme is unlikely to be blocked by physical or legal impediments;
- The Council's duty under the Equalities Act 2010 is met;
- The inevitable interference with the human rights of those affected by the proposed CPO is justified in the public interest; and
- In all the circumstances there is a compelling case in the public interest for compulsory acquisition of the remaining land required to facilitate delivery of the comprehensive Scheme.

14.2 The Mayor is therefore recommended to resolve to make a CPO and to agree the other recommendations set out in Section 3 of this Report.

15. 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.

<u>Short title of document</u>	Date	File Location	Contact Officer
Strategic Planning Committee – Deptford Wharves Report - Land at Crown, New Baltic,	29.10.15	Laurence House	Helen Milner

Park, Bridge Victoria Wharves, bounded by Grove, Dragoon and Evelyn Streets together with Oxestalls Road, SE8			
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If any person would like further information on this report, please contact Freddie Murray on 0208 314 3914 or Freddie.Murray@lewisham.gov.uk

List of Appendices

- Appendix 1: Site Plan
- Appendix 2: Draft Statement of Reasons
- Appendix 3: Draft CPO Map
- Appendix 4: Scheme Layout
- Appendix 5: Phasing Plan and Plots Plan
- Appendix 6: Draft CPO Schedule
- Appendix 7: Plan of Safestore Lease Area
- Appendix 8: Lendlease Funding Statement