

MEETING TITLE AND DATE:

Cabinet 22/01/2020

REPORT OF:

Executive Director - Place

Contact officer and telephone number:

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Agenda – Part 1**Item: 9****Subject: Meridian Water Infrastructure
Compulsory Purchase Order****Wards: Upper Edmonton****Key Decision No: KD 4832****Cabinet Member consulted: Cllr Caliskan****1. EXECUTIVE SUMMARY**

- 1.1. The purpose of this report is to recommend that Cabinet resolve to make the London Borough of Enfield (Meridian Water Strategic Infrastructure Works) Compulsory Purchase Order (CPO) (the Order), to assemble the necessary land to enable the delivery infrastructure for the Meridian Water Regeneration Programme.
- 1.2. On 6th September 2016 Cabinet (KD 4348) agreed in principle to use its compulsory purchase powers for the acquisition of all land for the delivery of the Meridian Water Regeneration Scheme.
- 1.3. The proposed Order is for the acquisition of land and rights required to deliver Strategic Infrastructure Works (SIW) at Meridian Water, not for the entire Meridian Water Regeneration Area. The SIW are required to unlock the development of land at Meridian Water enabling the delivery of up to 10,000 homes across the site. This includes the development of 2,300 homes at development zones 2, 4 and 5 for which a planning application was registered in August 2019.
- 1.4. On 17th August 2019 Central Government announced that, subject to agreement of terms and satisfaction of pre-contract conditions, the Council successfully secured £156 million of Housing Infrastructure Funding (HIF) to deliver the SIW.
- 1.5. The Order is in accordance with adopted and emerging planning policy.
- 1.6. The Council have conducted detailed land referencing into the areas of land required to deliver the SIW and have identified ownership interests in the area.
- 1.7. Government guidance on the use of CPO powers states that acquiring

authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question. In the first instance the Council is aiming to acquire land by private treaty, however, a CPO is necessary to ensure that land required for the SIW can be acquired. Following diligent enquires, contact has been made with affected parties and the Council has informed all the owners of land interests affected by the Order and commenced negotiations with all who have expressed willingness to negotiate.

- 1.8. A draft Statement of Reasons in support of the proposed Order has been prepared and is appended at Appendix 2 of this report. Although the Statement of Reasons is non-statutory, it is an important document and, when the Order is made, it will be served on relevant parties with the required statutory notices of making of the Order. The draft Statement of Reasons has been prepared in accordance with Government Guidance on Compulsory Purchase. The draft Statement of Reasons will be updated and finalised as necessary to reflect matters as at the time the Order is made. This is reflected in the delegation sought for the Meridian Water Programme Director (see Recommendations at 2.4).
- 1.9. This Report describes the factors which are relevant to any decision on compulsory purchase. These include the applicable planning policy framework, matters relevant to deliverability of the SIW within a reasonable timeframe, its impact on affected land owners/occupiers and whether the proposals could be achieved by other means. It includes matters for Cabinet's consideration in relation to the Council's statutory powers, the 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.

2. RECOMMENDATIONS

That the Cabinet:

- 2.1. authorises a Compulsory Purchase Order pursuant to sections 226(1)(a) and 226(3) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of land, interests and new rights within the area identified and shown edged red (the Order Land) in the attached Order map at Appendix 1 (the Order Map) for the delivery of infrastructure at Meridian Water.
- 2.2. authorises, in accordance with section 122 of the Local Government Act 1972 the appropriation of land owned by the Council within the Order Land, to planning purposes pursuant to section 203 of the Housing and Planning Act 2016, so development may proceed without obstruction in respect of any claimed third-party rights.

- 2.3. Notes (i) funding is in place for the land assembly and CPO costs (see Section 6.1), and (ii) funding for the SIW is contingent on release of HIF funding as set out in the body of the report.
- 2.4. Delegates to the Programme Director of Meridian Water in consultation with the Acting Executive Director of Resources and Director of Law and Governance, the authority to make the CPO.
- 2.5. Delegates to the Executive Director – Place, in consultation with the Director of Law and Governance, the power to effect all subsequent steps for the CPO including: confirming and implementation of the Order and to take all necessary steps to give effect to the Order in respect of the land shown on the plan at Appendix 1 including, but not limited to, the following procedural steps:
 - 2.5.1. make any amendments and additions to the draft Statement of Reasons as deemed necessary to ensure that it is up to date prior to the making of the Order;
 - 2.5.2. take all necessary steps to ensure the making, confirmation and implementation of the Order including the publication and service of any press, site and individual notices and other correspondence for such making;
 - 2.5.3. make minor amendments to the Order Map, if required, to reduce the boundary of the Order area to align with works and land requirement and (once the boundary is finalised) update the Order Map to reflect on a plot by plot basis the extent of acquisition and rights required;
 - 2.5.4. continue to negotiate with all landowners and occupiers within the Order boundary with the aim of acquiring interests by agreement, or relocation;
 - 2.5.5. negotiate with any landowners or occupiers who object to the Order to secure terms for the withdrawal of objections;
 - 2.5.6. seek confirmation of the Order by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981), including the preparation and presentation of the Council's case at any Public Local Inquiry as may be necessary including instruction of professionals to support the process;
 - 2.5.7. publish and serve notices of confirmation of the Order and thereafter execute and serve any General Vesting Declarations and/or Notices to Treat and Notices of Entry, and any other notices or correspondence to acquire those interests within the Order Land and to obtain and issue a warrant in the event of possession being refused or hindered;
 - 2.5.8. refer and conduct disputes relating to compulsory purchase compensation, to the Upper Tribunal (Lands Chamber) if necessary;

- 2.6 approve the acquisition of any interests in land within the Order Land by agreement in conjunction with the proposed compulsory purchase, including any statutory payments and disturbance compensation; and
- 2.7 delegate authority to the Programme Director of Meridian Water in consultation with the Director of Finance to agree final terms and approve the acquisition of any interests within the Order Land and also to settle any rights needed to facilitate the delivery of the scheme (such as crane oversailing licences), with any legal documents to be approved by Legal Services on behalf of the Director of Law and Governance.

3 BACKGROUND

3.1 Meridian Water

- 3.1.1 The Meridian Water Regeneration Area is located in the South East of the Borough in the ward of Upper Edmonton. It is bounded by the A406 North Circular road to the north, Leaside Road to the South, Lee Valley Regional Park to the East and Kimberley Road to the West.
- 3.1.2 Meridian Water is one of London's most significant regeneration opportunity areas. It comprises approximately 85 hectares (210 acres) and is one of the largest developable areas in London. Located in the Edmonton Leaside growth area and the Mayor of London's wider Upper Lee Valley Opportunity Area, it has significant redevelopment potential.
- 3.1.3 Meridian Water was designated as a housing zone in 2016 by the Mayor of London. Its regeneration has been a longstanding objective of the Council and it is the largest priority area for residential led mixed-use development as adopted in the Council's Core Strategy. Greater detail of the Council's regeneration objectives for the area are set out in the Edmonton Leaside Area Action Plan which has been through an examination in public and is progressing towards formal adoption.
- 3.1.4 On 6th September 2016 Cabinet decided KD 4348 and passed a resolution In-Principle to use its compulsory purchase powers for the acquisition of all land for the delivery of the Meridian Water Regeneration Scheme.
- 3.1.5 On 25th July 2018 Cabinet noted the conclusion of the master developer procurement and authorised the procurement of developers for the first two sites within Meridian Water (KD 4033).
- 3.1.6 The aspiration for Meridian Water is to create a new mixed-use neighbourhood which will provide up to 10,000 new homes, modern business premises suitable for a residential-led mixed use environment along with new schools, transport improvements, community facilities, health services, open spaces and other supporting infrastructure. In addition to the new homes it is

estimated that the regeneration proposals will deliver thousands of full-time jobs and temporary construction jobs.

- 3.1.7 As defined in the Meridian Water Place Vision, the vision is to make Meridian Water (and the wider area) a new district in London where people want to live, work and visit. Within this overarching vision the project has set itself eight principles to guide how it plans for and delivers the project:
1. Meridian Water will prioritise the benefits for local people and reduce inequality in the borough.
 2. Meridian Water will create a thriving new economy at the Lee Valley.
 3. Meridian Water will be a breath of fresh air, providing high quality parks, using clean energy and taking care of the life cycle of materials.
 4. Meridian Water will have a vibrant mix of uses, it will be a safe and inclusive place to live to improve health and wellbeing for all.
 5. Meridian Water will be a new Lea Valley destination, a memorable place bursting with character.
 6. Meridian Water will offer a great choice of homes, designed to suit a range of budgets and aspirations.
 7. Meridian Water will be almost car free, supporting healthy lifestyles and making it easy and attractive to walk and cycle.
 8. Meridian Water will proactively engage and empower communities and continue to grow by responding to the changing needs of local people and society.
- 3.1.8 The regeneration proposals for the whole Meridian Water Regeneration Area are hereafter referred to as the “wider Scheme” or “Meridian Water”. Due to the sheer scale of the Scheme, the area has been divided into eight development zones which will come forward in phases with the total delivery period anticipated to be in the order of 20-30 years.
- 3.1.9 Planning permission has been granted for 725 units in zone 1 and this zone can be brought forward without the need for additional infrastructure improvements covered by this CPO. The Council has undertaken a procurement process for a developer partner for this site and has appointed Galliford Try.
- 3.1.10 Strategic infrastructure is required to unlock Phase 2 development and the longer-term development potential of the later phases, with an objective established in The Core Strategy and Edmonton Leaside Area Action Plan (ELAAP) of 5,000 homes.
- 3.1.11 To address any physical or legal impediments to implementation of the scheme, the Council has taken every step to obtaining planning permission for the SIW and also outline planning consent for Phase 2. These applications were submitted in July 2019, validated by the local planning authority in August 2019 and are anticipated for determination in the first quarter of 2020.

3.2 Housing Infrastructure Fund

- 3.2.1 On 3rd December 2018, The Greater London Authority (GLA) submitted a bid on behalf of the Council to the Ministry of Housing, Communities and Local Government seeking to secure £156 million from the Housing Infrastructure Fund (HIF).
- 3.2.2 On 17th August 2019 Central Government announced that the Council has been successful in its bid for £156 million of HIF funding to deliver rail works, road infrastructure, land remediation, flood alleviation and utilities to unlock up to 10,000 homes.
- 3.2.3 Receipt of grant will be subject to agreement of detailed terms and the satisfaction by the Council and the GLA of pre-contract conditions. A report will be brought to an appropriate future Cabinet meeting to accept the HIF funds from Central Government and authorise entering into the funding agreement.
- 3.2.4 See Part 2

3.3 Infrastructure

- 3.3.1 The Meridian Water team has been working with ARUP and KCA to develop the design for the Strategic Infrastructure Works (SIW) to unlock the delivery of homes at Meridian Water.
- 3.3.2 The SIW include remediation, flood alleviation, roads, bridges and rail improvements. Details of the SIW are outlined in the Statement of Reasons (see Appendix 2).

3.4 Land Acquisition

- 3.4.1 The Council has to date acquired circa 35.5 hectares of land in Meridian Water which comprises 73% of the developable area within Meridian Water.
- 3.4.2 Meridian Water is comprised of a patchwork of land ownership. The Council is acquiring land to enable the delivery of key infrastructure, and to create contiguous parcels that can either be developed directly by the Council or disposed of to developers.
- 3.4.3 In the first instance, the Council is aiming to acquire land by private agreement, however, a CPO is necessary to ensure that all the land required for the SIW can be acquired in the event that acquisition by private treaty cannot be agreed. The Order is also needed as a measure to cover unknown interests or unregistered land.
- 3.4.4 The Meridian Water team has achieved a number of acquisitions by agreement and is progressing negotiations with parties to acquire the remaining interests required for the SIW.

3.5 Efforts to Acquire by Agreement

- 3.5.1 The Government's "Guidance on Compulsory purchase process and The Crichel Down Rules" (Ministry for Housing Communities and Local Government CPO Guidance July 2019) (the "CPO Guidance") at paragraph 17 states that acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question.
- 3.5.2 The Council embarked upon a land acquisition strategy for the wider Meridian Water scheme in 2014. JLL, the Council's commercial property agent was instructed to approach landowners to acquire land by agreement on commercial terms where it was practicable to do so. This has resulted in a number of significant strategic land acquisitions in the period between 2015 to present day.
- 3.5.3 At an early stage of the acquisition process it became apparent that a CPO strategy would be required in order to ensure that all of the land required for the Scheme could be acquired as it would be impracticable to acquire all land by agreement. In 2016 Matthew Bodley Consulting, a special compulsory purchase practice, was instructed to advise on the land assembly strategy and ensure co-ordination between ongoing private treaty negotiations and the formal CPO process.
- 3.5.4 Owners of interests within the Order Land were identified from title searches. Matthew Bodley wrote to all identified owners in September 2016 providing brief details of the Scheme and the Council's desire to acquire properties, preferably by agreement. The letter referred to the possible use of CPO powers in the event that private treaty agreements could not be achieved and invited landowners to enter into negotiations for the acquisition of their properties.
- 3.5.5 The intensity in which negotiations have been pursued was scaled back for a period in 2017 following the termination of the agreement with Barratt, although any active negotiations were continued. At the end of 2017 there was a change of approach to focus on the land interests required for the SIW.
- 3.5.6 All known owners of an interest in the land required for the SIW have been contacted in writing with a view to progressing negotiations to acquire interests by agreement. All parties have been provided with information about the Scheme and the SIW, the likely timescales for acquisition and the intention to use CPO powers. All parties have been informed that private treaty negotiations will be based on the compensation which would be payable if their interests were compulsorily acquired. The Council has offered to pay the reasonable fees for the appointment of CPO advisors.
- 3.5.7 Negotiations are progressing with all known parties who have expressed a willingness to negotiate through a combination of letter and email

correspondence, meetings and phone calls. Negotiations will continue in parallel with the CPO process with the intention of acquiring as many interests as reasonably practicable by negotiation. CPO powers will only be implemented as a last resort where negotiated agreements cannot be achieved.

3.6 Statutory Undertakers

3.6.1 The Council has identified and engaged with statutory undertakers whose operation might be affected by SIW, such as relating to gas infrastructure, electric networks and substations, flood alleviation, canal, and heating. Furthermore, ARUP is in ongoing engagement with statutory consultees as part of the planning application process.

3.7 Governance

3.7.1 The Meridian Water Team has assembled an expert team to advise on land acquisition and CPO for Meridian Water. This land acquisition team meets fortnightly to monitor progress and risk. The land acquisition team is comprised of:

- The Council's Meridian Water Project Team;
- The Council's Internal Legal team;
- Trowers & Hamlins LLP – Legal;
- Matthew Bodley Consulting – Specialist Compulsory Purchase Surveyor;
- TerraQuest – Land Referencing;
- Karakusevic Carson Architects – Architecture;
- ARUP – Planning and Engineering; and
- Stace – Project Management.

3.7.2 The land acquisition team provides updates and raises risks that feed into the Meridian Water Programme Board which feeds into the Executive Board.

3.7.3 The Meridian Water Team holds fortnightly meetings with Strategic Property Services to discuss all property related progress, issues and risks. This includes amongst other things, progress on land acquisition and CPO.

3.8 CPO area

3.8.1 The land subject to the Order (the Order Land) is shown in Appendix 1. The Order Land represents an area that will be required to deliver the SIW. The Council will not be seeking to acquire all the Order Land, some of it will only be required for access and other rights (shaded in blue on the plan), e.g. crane oversailing.

3.8.2 An ongoing process of detailed review is being undertaken to determine on a plot by plot basis, referring to design, construction and maintenance requirements, the extent of the Order Land to be acquired outright and plots where permanent rights are needed, e.g. access or crane oversailing.

3.8.3 Land for the rail portion of the SIW is not included in the Order Land as these works will be undertaken on rail corridor owned by Network Rail, who will be undertaking these works in partnership with the Council.

3.8.4 The Order Land defined in the Order Map currently shows the total land area that may be required for the Order. After the Cabinet resolution for a CPO, the redline may be reduced, but not increased.

3.9 Appropriation

3.9.1 Construction of the SIW will potentially interfere with various rights benefitting owners adjoining or in close proximity to the Order Land. Section 203 of the Housing and Planning Act 2016 provides the powers that will enable the Council to override any claim for an injunction in respect of rights and covenants adversely interfered with as a result of the construction of the SIW and the wider Scheme. On this basis the Council intends to appropriate all those parts of the Order Land which are currently owned by the Council for planning purposes in order to allow the SIW and the Scheme to come forward, without the risk of an injunction from third party landowners. In effect, these are converted into a right of compensation. The acquisition of land pursuant to the CPO will be for planning purposes, thereby similarly overriding any infringed rights.

3.10 Statutory Powers

3.10.1 The Statutory Powers for the CPO are outlined in the draft Statement of Reasons

3.11 Justification

3.11.1 The justification for the CPO is outlined in the draft Statement of Reasons

3.12 Planning status

3.12.1 Paragraph 39 of the National Planning Policy Framework states: 'Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community'.

3.12.2 In preparing the SIW planning application significant pre-application engagement was undertaken with the local business and residents, the Local Planning Authority, statutory and non-statutory consultees. Community consultation exercises were held in April and May 2019 including two engagement days, one on 23 April and one on 18 May. A Statement of Community Involvement was also submitted with the planning application and provides further details of the community consultation and engagement undertaken to date.

- 3.12.3 During the pre-application period, the project team engaged extensively with the Local Planning Authority (LPA) and other consultees to inform the design of the scheme in conjunction with the parallel Meridian Water Phase 2 Outline Planning Application.
- 3.12.4 The SW application was registered as valid on 14 August 2019. Subsequently a series of post-application submission meetings have been held with the LPA to review statutory and non-statutory comments. A Planning Committee date for the application to be considered is expected in March 2020.
- 3.12.5 The planning status is further outlined in the draft Statement of Reasons.

3.13 **Timetable**

- 3.13.1 The Council has appointed a programmer from Stace for Meridian Water. Stace has prepared a programme of the activities required to deliver the SIW that meets with the HIF funding requirements, which include spending of HIF funding and delivery of SIW by March 2024. This programme includes CPO activities based on input provided by Trowers & Hamblins and Matthew Bodley Consulting. This programme can only be indicative as the timing of certain key activities such as the date of the CPO inquiry and the issuing of the decision on whether or not to confirm the Order are not within the Council's control.
- 3.13.2 The current intention is to make the Order in February 2020. Subject to confirmation, this would allow the Council to secure vacant possession of the land through implementation of the Order in Summer of 2021, which would meet the timescales required by the HIF delivery programme.
- 3.13.3 The currently anticipated programme of key milestones in the CPO process are summarised below.

Activity	Date
PLANNING	
Inspectors report into ELAAP	Sep-19
ELAAP Adopted	Feb-20
Planning Committee - Resolution to Grant permission	Mar-20
Planning Permission in place	Apr-20
COMPULSORY PURCHASE	
CPO Resolution	Jan-20
Make CPO - sign and seal Submission to Secretary of State and service of statutory notices and advertisements	Feb-20
Period for objections to Secretary of State	Mar-20
If no objections, Council to confirm CPO	Jun-20

If objections, pre-inquiry preparations and evidence	Mar – Aug-20
CPO Inquiry	Aug-20
Decision	Feb-21
Services of notice of confirmation	Mar-21
Service of statutory notices relating to implementation of powers	Apr-21
Possession Date	Jul-21

4 **ALTERNATIVE OPTIONS CONSIDERED**

4.1 **Do not pursue a CPO.**

4.1.1 This is not considered a viable option as the Council must ensure that it can acquire all land needed to deliver the SIW and can satisfy HIF funding pre-contract conditions. Cabinet could choose not to pursue this Order at this time, but this would significantly risk securing HIF funding as well as the deliverability of the SIW and the wider Scheme. In a best case scenario, it would delay the delivery until private treaty agreements could be agreed, however private treaty agreements may not be feasible which at worst would render the SIW undeliverable and consequently could jeopardise the wider Scheme.

4.2 **Await until there is certainty over funding and planning before Making the CPO**

4.2.1 The timetable above demonstrates that the Making of the CPO will run in parallel with confirmation of planning. It is also noted at Section 3.16 that a Cabinet Report will be brought forward early in 2020 to seek authorisation to accept HIF subject to agreed Heads of Terms and a draft Funding Agreement. The reason for Making the CPO in February 2020 is that the HIF grant needs to be drawdown and spent by March 2024. In order to achieve the build programme, it is essential that vacant possession of all the land is achieved by July 2021. Furthermore, Homes England have indicated that they want assurance that the Council will have the means to be in control of all the land required for HIF works. Passing this resolution and committing to Making this CPO in February 2020 provides such assurance thereby facilitating the progression of the Funding Agreement.

4.3 **Undertake a CPO for the whole area.**

4.3.1 A key consideration for the land assembly strategy is the number of CPOs to be promoted. More specifically should there be a single CPO for the wider Scheme or multiple CPOs.

4.3.2 This issue is relevant due to the scale and likely delivery timeframe of the Scheme. The Scheme is very large, complex and covers an area of approximately 85 hectares. Current estimates for the duration of the development period for the Scheme are in the range of 20-30 years.

- 4.3.3 A CPO only has a lifetime of three years following confirmation within which it must be implemented, or it will expire. Therefore, there is a significant disparity between the lifetime of the CPO and the intended delivery period of the Scheme. If the Council were to proceed under a single CPO, it would have to implement the CPO and acquire all the land for the Scheme within three years even though large parts of the Scheme land will not be needed for several years.
- 4.3.4 Undertaking a CPO for the whole Scheme area would be a significant change to the baseline position in the financial model and would increase the Council's peak debt position. A single CPO approach would also be challenging in terms of being able to justify the compulsory acquisition of land several years in advance of when it is required for development.
- 4.3.5 Apart from issues with cashflow, debt and viability, it is very unlikely that the Council would be able to justify acquiring parts of the Scheme land which are not required for several years and for which the proposed uses are currently uncertain. The CPO would be likely to fail on grounds of prematurity and lack of certainty. If a single CPO was undertaken across the whole Scheme land, there would be significant risk of failure, not only for the plots which are not required for several years, but of the whole CPO. The basis of the CPO is confirmed by the planning case and policy status embedded in the adopted Core Strategy and soon to be adopted ELAAP. At this time there is no confirmed planning basis east of the River Lee Navigation to compulsorily acquire the land for residential use. However, the ELAAP does support infrastructure east of the Lee Navigation, which is what is being promoted under this Order.
- 4.3.6 The Council has received formal advice from Matthew Bodley Consulting recommending undertaking a number of CPOs to enable land acquisitions to come forward on a phased basis in line with the development programme.
- 4.3.7 Therefore, it is recommended to undertake this CPO with the scope to deliver the SIW in a deliverable timescale. The Council may bring further CPOs in the future in order to acquire land to deliver other aspects of Meridian Water.

5 REASONS FOR RECOMMENDATIONS

- 5.1 Acquisition of the Order Land, shown in Appendix 1 will enable the Council to exercise control over the land required to implement development of the SIW of the Meridian Water regeneration area.
- 5.2 Any delays to delivering the infrastructure could put at risk the £156 million HIF funding that has been conditionally awarded by central government and thereby the delivery of the SIW.
- 5.3 The proactive approach that the Council has taken with regard to preparing to deliver the SIW to be funded by HIF has been welcomed by central government. The Order will deliver a package of measures that the Council is

pursuing in order to enable the delivery of the SIW in line with the HIF timescales. The Council is proactively securing planning permission for the works and is also in the process of procuring a contractor to deliver the works, which is proceeding from shortlisting to competitive dialogue stage.

- 5.4 Failing to acquire land in order to deliver the SIW will delay and potentially put at risk the Meridian Water regeneration and the related economic, social and environmental benefits for the Borough and the local area.

6 COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 See Part 2. In October 2019, Cabinet has noted an indicative 10 years budget to be approved as part of the capital programme, which includes expenditure budget specifically for HIF. The budget was also authorised until April 2022, which covers the costs related to land acquisition and the CPO. Delivery of the SIW is contingent on obtaining HIF funding.

6.2 Legal Implications

MD and EP: 4 December 2019

- 6.2.1 The Council has sought advice on CPO matters from its internal Legal Services team, Trowers & Hamlins LLP and Guy Roots QC.
- 6.2.2 The Council proposes to use its compulsory purchase powers to help implement the strategic infrastructure which will form part of the Meridian Water Regeneration scheme. Under s226(1)(a) of the Town and Country Planning Act 1990 (as amended) (the **Act**) a local authority has a general power to make a compulsory acquisition of any land in their area to facilitate the carrying out of development, redevelopment or improvement in relation to the land. In order to exercise the s226 powers, the local authority must demonstrate that the proposed development/improvement is likely to contribute towards the promotion or improvement of the economic, social or environmental wellbeing of their area. Section 226(3) of the Act confirms the Council's CPO powers extend to lands adjoining land which is required for the purpose of executing works for facilitating the development or use of the primary land. Furthermore, the Council has the power under section 120 of the Local Government Act 1972 to buy land by agreement for the purposes of any of its functions or for the benefit, improvement or development of its area.
- 6.2.3 The making of a CPO should be a last resort and should be preceded by meaningful attempts to buy the land by agreement, save for lands where land ownership is unknown or in question.
- 6.2.4 The making of a CPO is an executive function by virtue of section 9D of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Pursuant to section 9E(2) of the Local Government Act 2000, the Cabinet may arrange for the discharge of an executive function by an officer of the authority.

- 6.2.5 The Acquisition of Land Act 1981 (the **1981 Act**) governs the procedures which apply to such an acquisition, the Compulsory Purchase Act 1965 (the 1965 Act) governs post-confirmation procedures and the Land Compensation Act 1961 governs the amount and assessment of compensation. A CPO is required to be made in a prescribed form and must describe by reference to a map the land to which it applies. If the Council makes a CPO, it must submit the CPO to the Secretary of State for confirmation. Prior to submission to the Secretary of State, the Council must publish notice of the making of the CPO specifying that the Order has been made, describing the land and the purpose for which it is required, naming a place where the Order and Map may be inspected and specifying a time which (and the manner in which) objections may be made. The Council must also serve a notice in prescribed form on affected owners, lessees, tenants or occupiers (if any exist) of the land allowing them the opportunity to object. The procedure for confirmation is specified in the 1981 Act and may require the conduct of a public inquiry if there are objections. In the event that the CPO is confirmed the Council can then take steps to acquire land either by serving a notice to treat and notice of entry in accordance with the 1981 Act or by serving a general vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1965. Consideration would need to be given to the most appropriate route and the procedure set out by legislation must be followed.
- 6.2.6 The Council will be required to demonstrate that there is a compelling case in the public interest for acquiring the land compulsorily. This will be set out in the Statement of Reasons.
- 6.2.7 As an acquisition under the Act will extinguish third party rights, the Council will need to take care that it does not contravene the rights of individuals under the European Convention on Human Rights (the ECHR). Section 6 of the Human Rights Act 1998 makes it unlawful for the Council to act in any way which is incompatible with a right under the ECHR. Pursuant to Article 1 of the First Protocol to the ECHR, every person is entitled to the peaceful enjoyment of his or her possessions and no one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. In order to avoid contravening individual human rights by making a CPO, it must be demonstrated that the CPO is in the public interest and that it is necessary and proportionate to make the CPO. Provided the requirements of section 226 (1) and (1A) of the Act have been fulfilled (i.e. the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the local authority's area), this will provide a very substantial basis upon which to make the case that the scheme is policy based and is consistent with statutory objectives.
- 6.2.8 The Council holds statutory powers of appropriation under Section 122 of the Local Government Act 1972. Furthermore, Section 203 of the Housing and Planning Act 2016 enables a local authority to override third party rights, where the relevant 'building or maintenance work' is being carried out with

planning permission on land that has been acquired or appropriated by the Council for planning purposes, with a right to compensation arising in favour of the proprietor of the rights overridden. Pursuant to Section 204 of the Housing and Planning Act 2016 the Council is liable to pay compensation, in accordance with the statutory provisions, in respect of 'any interference with a relevant right or interest or breach of a restriction that is authorised by section 203'.

6.2.9 The public sector equality duty under section 149 of the Equality Act 2010 requires the Council to have due regard to: (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; and (ii) the need to advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. Any equality impact assessment prepared in connection with the Compulsory Purchase Order should be revisited throughout the process.

6.2.10 Officers must ensure that any processing of personal data in connection with the Compulsory Purchase Order complies with the provisions of the Data Protection Act 2018.

6.2.11 Any acquisition of land made in connection with the subject matter of this report must comply with the Council's constitution, including but not limited to its Property Procedure Rules.

6.2.12 Pursuant to section 13 of the Compulsory Purchase Act 1965, the Council may issue a warrant to the sheriff or enforcement officer to deliver possession of land for which it is authorised to enter on and take possession of, in the event that 'the owner or occupier of any of that land, or any other person, refuses to give up possession of it, or hinders the acquiring authority from entering or taking possession of it'. Furthermore, the Council may recover costs from the person refusing entry.

6.2.13 All legal documents to be entered into in connection with the subject matter of this report must be approved in advance by Legal Services on behalf of the Director of Law and Governance.

6.3 Property Implications

6.3.1 The Council's Property Procedure Rules (PPR's) set out mandatory procedures regarding the acquisition, leasing, management and disposal of property assets and form part of the Council's Constitution.

6.3.2 Section 5 of the PPR's govern Acquisitions by way of Compulsory Purchase and states:

- A resolution to make a Compulsory Purchase Order must be made by Cabinet, following a recommendation by the appropriate Director and the Responsible Senior Officer.
- Compulsory purchases or purchases by agreement prior to a Compulsory Purchase Order (CPO) being confirmed, are considered as acquisitions and subject to these Rules.

6.3.3 In this instance the appropriate Director is the Meridian Water Programme Director and the Responsible Senior Officer is the Executive Director Place.

6.3.4 Section 4 governs Acquisition – General and states:

- The acquisition, by any means, of a freehold interest or a leasehold interest over one year in duration requires the approval of the relevant Director and the Responsible Senior Officer, unless the acquisition is:
 - Covered by the Property Scheme of Delegation;
 - Vested by statutory authority;
 - Owing to the Council acting as trustee; and
 - Made under planning and highways legislation as a condition of a planning permission or a planning obligation.

6.3.5 It is expected that following confirmation of the Order the Council will be making a General Vesting Declaration to acquire properties. Properties related to the Order that are acquired by private treaty will be authorised by the Appropriate Director.

6.3.6 Any acquisition with a market value in excess of £250,000 and lower than £500,000 has to also be approved by the relevant service Cabinet Member and the Cabinet Member with the property portfolio, and any acquisition with a market value exceeding £500,000 has to be approved by Cabinet.

6.3.7 This Cabinet report delegates authority from Cabinet to the Meridian Water Programme Director to approve all acquisitions within the Order Land.

6.3.8 Every acquisition must be accompanied by the service Director's report that states:

- How the acquisition will help deliver the Council's strategy, goals, metrics and initiatives.
- The life-cycle costs whereby the Council is able to demonstrate its ability to fund all costs (including running costs), expenses, impacts and risks and any other costs associated with the acquisition (for example allowed/required by legislation).
- The report is approved by the Responsible Senior Officer and the Director of Finance Resources and Customer Services.
- The Responsible Senior Officer has approved the provisional terms for the acquisition.
- The Responsible Senior Officer has certified that the price and terms and conditions represent value and, in most circumstances, has obtained an independent valuation.

6.3.9 Each acquisition by private treaty in relation to the Order will be accompanied by a report covering the requirements as set out above.

6.3.10 Acquiring land will bring Corporate Landlord implications including management costs such as security. However, it is expected that property acquired by CPO will be passed over to the appointed infrastructure contractor swiftly for works to commence. This will reduce costs and risks

associated with holding the property. Furthermore, the approved 2019-20 budget and the proposed 2019-20 and 2020-21 budget does include a contingency that could cover Corporate Landlord Implications.

6.3.11 Property acquired leading up to and after the Order will be managed in line with the Council's Strategic Asset Management Plan (2019-2024)

6.3.12 Section 24 governs Valuations and states:

- In preparing for the disposal or acquisition of a Council interest in property, the Responsible Senior Officer shall ensure that a formal, written valuation report is provided for the property in question.
- Where a disposal or acquisition has not reached completion within 6 months of the date of the corresponding disposal valuation report, an updated valuation report shall be prepared.

6.3.13 Each acquisition by private treaty in relation to the Order will be accompanied by a valuation report.

6.3.14 Should Cabinet approve a resolution for a CPO future acquisitions will be subject to individual reports and these will contain transaction specific Property Implications.

7 KEY RISKS

7.1 **Cause:** The CPO is not confirmed in part or in whole.

Effect: This would cause a delay in the delivery of the strategic infrastructure if the Council is unable to acquire land required by private treaty, which also puts satisfaction of HIF funding agreement conditions at risk.

Mitigation: The team has assembled a team of experts to advise on CPO matters and is finalising a robust Statement of Reasons to support the case for a CPO. The team is progressing with private treaty negotiations with third party land owners in the area.

The contractor procurement for the SIW is to be undertaken as a series of work packages in order to mitigate the impact of this risk on the procurement and delivery of works. This allows for development to come forward on land that the Council has acquired. However, any works undertaken before entering into the HIF agreement will be at the Council's risk.

7.2 **Cause:** The Edmonton Leaside Area Action Plan is not adopted in time for the inquiry

Effect: Argument for CPO is weakened

- Mitigation:** The land acquisition team is working closely with planning team. Current risk and status of planning is continually monitored. The Scheme is supported by existing adopted planning policy, in particular the Core Strategy. The Inspector's report confirmed that the ELAAP can be adopted and the planning team are working to get the ELAAP adopted early in 2020, ahead of any CPO inquiry.
- 7.3 **Cause:** Objection received to the CPO by land interest holders.
- Effect:** If any party with an interest in the land objects, this will likely result in a public local inquiry into the CPO, requiring time and significant resource.
- Mitigation:** The team expects there to be objections to this Order and has built in adequate time for this in the CPO programme. The team is undertaking negotiations with third parties to seek to agree private treaty agreements, reducing the risk of objections. The team is finalising a robust Statement of Reasons to support the CPO case. The experts that the team are working with will act as expert witnesses in the event of a public inquiry.
- 7.4 **Cause:** Design of the SIW changes.
- Effect:** A design change for the SIW would result in a delay of sealing and making the Order as a precise map and schedule must be sent when making the Order. Therefore, the design must be frozen before the Order is made. Any red line approved by Cabinet can be reduced, but not increased.
- Mitigation:** The design team has been made aware of this and have provided a red line plan accordingly. The team has reviewed the red line to ensure that all land required to deliver the strategic infrastructure is included. The team is working closely with the HIF design team.
- 7.5 **Cause:** The CPO programme is delayed.
- Effect:** A delay in the CPO programme could result in land not being acquired in time to undertake works pursuant with the HIF funding timescales. It is the current understanding that the SIW need to be delivered by the Housing Infrastructure Fund deadline of March 2024 and that the Council will need to draw down all HIF funds by that date.
- Mitigation:** The phasing of the SIW is being planned so that necessary work will commence on Council owned land first to allow time for the Order to acquire other land required.
- 7.6 **Cause:** Agreement of the Funding Conditions for the Housing

Infrastructure Fund bid is delayed, or any of the pre-contract conditions are not satisfied.

Effect: Any delays to the agreement of the Funding Terms, pre-contract and pre-draw down conditions could delay the delivery of the SIW putting at risk the £156 million HIF funding that is secured from central government. It could also undermine the successful promotion of the CPO at a public inquiry as the Council will need to demonstrate that it has, or at least will obtain, the resources necessary to implement the SIW.

Mitigation: The Meridian Water team will work closely with Central Government and the GLA to agree the Funding Conditions and the current working timetable is for a draft funding agreement to be presented to Cabinet for approval in February 2020. This Cabinet report delegates authority to the Programme Director of Meridian Water in consultation with the Acting Executive Director of Resources, and Director of Law and Governance to make the CPO, who will take into account the exact status of the HIF funding agreement when making the decision to Make the CPO.

8 IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

Making a CPO to acquire land identified is a vital mechanism to ensure delivery of the strategic infrastructure. The strategic infrastructure will provide key infrastructure enabling the development of approximately 5,000 homes (with the potential for an additional approximate 5,000) and the regeneration of Meridian Water. The infrastructure will ensure that the development is well connected.

8.2 Sustain strong and healthy communities

Making a CPO to acquire land identified is a vital mechanism to ensure delivery of the strategic infrastructure. The strategic infrastructure works will deliver two new parks to provide green space vital to a healthy community. The works will also provide cycle routes to encourage cycling, which is beneficial to health.

8.3 Build our local economy to create a thriving place

Making a CPO to acquire land identified is a vital mechanism to ensure delivery of the SIW. The SIW enables the delivery of Meridian Water. As well as delivering homes, Meridian Water will deliver non-residential space including retail, workspace and community space. This will enable animated streets with mixed uses, developing a local economy and thriving place.

9 EQUALITIES IMPACT AND HUMAN RIGHTS IMPLICATIONS

- 9.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 9.2 Officers have taken this into account in the assessment of the CPO and the Cabinet must be mindful of this duty when considering the recommendations in the Report.
- 9.3 The Order by assisting with implementation of the Scheme will have a positive impact on equalities in general. To ensure that this is the case an Equalities Impact Assessment has been prepared by the Strategic Planning team to support the AAP submission, which did not uncover any negative equalities impacts.
- 9.4 Furthermore, a separate Equalities Impact Assessment has been prepared specifically with regards to making the Order. The assessment has been appended to this report at Appendix 3. No potential equalities impacts have been identified at this stage, but monitoring will be required.
- 9.5 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the ECHR. Articles 6 and 8 and Article 1 of the First Protocol are potentially relevant to the compulsory purchase of land:-
- 9.5.1 Article 6 provides that everyone is entitled to a fair and public hearing in the determination of his civil rights and obligations. The statutory procedures applicable to compulsory purchase, which include the right to object and provide for Judicial Review, are sufficient to satisfy the requirements of this Article.
 - 9.5.2 Article 8 provides that everyone has the right to respect for his private and family life and that there shall be no interference by a public authority with the exercise of this right except in accordance with the law, where there is a legitimate aim and where it is fair and proportionate in the public interest.
 - 9.5.3 Article 1 of the First Protocol provides for the peaceful enjoyment of possessions (including property) and that no one shall be deprived of possessions except in the public interest and subject to the conditions provided for by law.

9.6 If the Order is confirmed, and if any person can show that they hold an interest in any of the Order Land, that person will be entitled to compensation which will be assessed in accordance with the relevant statutory provisions sometimes referred to for short as the Compulsory Purchase Compensation Code.

9.7 The reference in Article 1 of the First Protocol to “the public interest” means that, in deciding whether to make and confirm a compulsory purchase order, a fair balance must be struck between the public benefit sought and the interference with the rights in question.

9.8 In making this Order, the Council considers that there is a compelling case in the public interest.

10 PERFORMANCE AND DATA IMPLICATIONS

10.1 The performance of the consultant team and progress of the CPO will be constantly monitored by the Meridian Water Team to ensure key milestones are met.

11 PUBLIC HEALTH IMPLICATIONS

11.1 Housing is a basic human right without which it is extremely difficult to adopt or maintain a healthy lifestyle. The life-expectancy of the homeless is approximately half that of the general population. Enabling the delivery of Strategic Infrastructure that will unlock the construction of new homes in the borough therefore will be instrumental in improving health.

11.2 The principles laid out in the Meridian Water Place Charter show how ‘place’ might be developed. Providing that these principles are adhered to throughout, Meridian Water is likely to become an attractive and healthy place to live and work.

Appendices

Appendix 1 – Order Map (two sheets)

Appendix 2 – Statement of Reasons

Appendix 3 – Equalities Impact Assessment