

## London Borough of Enfield

### Operational Report

**Report of** **Programme Director of Meridian Water in consultation with the Acting Executive Director of Resources and Director of Law and Governance**

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**Subject:** **Making the Compulsory Purchase Order for Meridian Water Strategic Infrastructure Works**

**Ward:** **Upper Edmonton**

**Executive Director:** **Sarah Cary**

**Key Decision:** **4832**

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### Purpose of Report

1. Make the CPO under delegation of Cabinet as of 22nd January 2020 (KD 4832).

### Proposal(s)

2. To note that Executive Director – Place has approved the Statement of Reasons and the Order Map.
3. For the Programme Director of Meridian Water, in consultation with the Acting Executive Director of Resources, Financial Management Services and Director of Law and Governance to make the CPO under delegation of Cabinet as of 22nd January 2020 (KD 4832).
4. To note that in line with delegations outlined at paragraphs 2.5.6 – 2.5.8 of the Cabinet Report dated 22nd January 2020 (KD 4832), procedural steps subsequent to the making of the CPO are to be approved by Executive Director - Place in a further authority report.
5. To note that government guidance as regards current constraints and restrictions caused by COVID-19 does not prevent the Council from making the CPO and that modifications and mitigation measures comply with publicity and service arrangements relating to the CPO.

### Reason for Proposal(s)

6. In line with the Cabinet decision as of 22nd January 2020 (KD 4832), reasons to make the CPO at this time are to:

- Enable the Council to exercise control over the land required to implement development of the SIW of the Meridian Water regeneration area;
- Avoid delays to delivering the infrastructure which could put at risk the £156 million HIF funding that has been conditionally awarded by central government and thereby the delivery of the SIW;
- Avoid delay and potentially putting at risk the Meridian Water regeneration and the related economic, social and environmental benefits for the Borough and the local area
- Demonstrate to MHCLG that every effort was made to meet the deadline even if the CPO case is delayed by other factors or bodies outside the Council's control;
- Maximise the chance that the CPO is processed in a timely manner considering the possibility of excess case load from other local authorities. Earlier application would increase likelihood of earlier consideration by NPCU, PINS and Secretary of State;
- Minimise risk of further delays to the programme as the social distancing measures around Covid-19 are not fully lifted and remain under periodical review.

Progress made to date provides confidence that despite planning and HIF funding contract uncertainties, these will be resolved in advance of a potential inquiry. Queen's Counsel has reviewed the case and his comments were addressed as to mitigate possible objections. See Confidential Appendix for details.

### **Relevance to the Council's Corporate Plan**

7. This proposal will contribute to the Council's priorities: Good homes in well-connected neighbourhoods; safe, healthy and confident communities; and an economy that works for everyone.

### **Background**

#### *General Background*

8. On 22nd January 2020 Cabinet (KD 4832) authorised a CPO for the delivery of Strategic Infrastructure Works (**SIW**) at Meridian Water, subject to delegations, as were outlined at paragraphs 2.4, 2.5 and 2.7 of the Report.
9. The Meridian Water programme budget for the rest of 2019/20, as well as 2020/21 and 2021/22, was authorised as part of the Cabinet Report of 16th October 2019 and Full Council Report of 20th November 2019 (KD4469). This includes £11.3 million for infrastructure related land acquisition.
10. The CPO is for the acquisition of land and rights required to deliver the 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 (part), 4 and 5 (see the plan in Appendix 3 to the Statement of Reasons) for which the

Council resolved to grant planning permission for 24th March, subject to finalising conditions and a legal agreement.

11. The final form of Statement of Reasons in support of the proposed Order has been approved by the Executive Director of Place and is appended at Appendix 3 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 Statement of Reasons has been prepared in accordance with Government Guidance on Compulsory Purchase, “Guidance on Compulsory purchase process and The Cichel Down Rules” (MHCLG CPO Guidance July 2019) (“the Guidance”) and the “Coronavirus (COVID-19): compulsory purchase guidance” (MHCLG May 2020).

### *Funding*

12. On 17th August 2019 Central Government announced that, subject to agreement of terms and satisfaction of pre-contract conditions, the Council’s bid for £156 million of Housing Infrastructure Funding (HIF) to deliver the SIW was successful. Receipt of grant will be subject to agreement of detailed terms and the satisfaction by the Council of pre-contract and pre-funding conditions set by Ministry of Housing, Communities and Local Government (MHCLG). Stace and CMPS, the project managers for the delivery of the Housing Infrastructure Works (non-rail and rail respectively), have 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. The Council is working towards achieving vacant possession of all the land by Q4 of 2021 in order to achieve the build programme. Furthermore, MHCLG 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 before funding for the infrastructure works is advanced.
13. The HIF is allocated for non-rail works (covering roads, bridges, remediation and flood alleviation) and rail upgrade works (works to increase the train capacity serving Meridian Water station). The procurement of the contractor for non-HIF works is underway, bids have been submitted which are within the budget envelope. While the actual infrastructure costs could vary from the amount of HIF grant due to various factors such as emerging design specification or fluctuating macroeconomic parameters, the Council is actively monitoring and managing these risks to ensure costs stay within budget.
14. With regard rail works, the Council is working closely with key stakeholders including Network Rail to optimise the rail design solution, to unlock benefits for the wider network. The current preferred option has a budget that is an estimated £11-15 million higher than the currently HIF rail allocation. In order to deliver this enhanced solution, the Council is actively working to secure the additional funding, including through central government and other stakeholders. The Meridian Water team is currently working to the time frame of 6 months to secure the additional funding.

15. In the unlikely event where we are unable to secure the extra funding for the enhanced rail solution, at that point we would identify mitigation measures which we would present in an authority report to Cabinet, (with a timeframe sufficiently prior to any CPO inquiry), to address budgetary position.
16. Detailed terms and conditions of grant funding are currently being negotiated between the Council and MHCLG. It is expected that the Grant Agreement will be entered into by August 2020. Conditions precedent to funding are at several levels:
  - a) Pre-commencement conditions – these are conditions that will need to be satisfied before the grant agreement can be entered into. Satisfaction of these conditions does not automatically make funding available. Since the beginning of 2020, all the pre-contract conditions were satisfied as confirmed by MHCLG.
  - b) Conditions precedent to making a claim for £26 million Preliminary Expenditure and Historic Cost – these are administrative in nature; and
  - c) conditions precedent to making any subsequent claim for funding i.e. funding for any works. The wording of the pre-works conditions is being finalised and the Meridian Water team is working closely with MCHLG and DfT to ensure all conditions can be satisfied. Progress to date provides confidence in the Council’s ability to satisfy outstanding conditions by Summer 2021, subject to their final wording which is currently being discussed.

Since January 2020, there has been a significant progress in agreeing the terms of funding conditions. While there is a risk that conditions to funding cannot be satisfied by the Council, the collaborative work undertaken with MHCLG to frame the conditions in a way that is achievable to the Council while ensuring that MHCLG’s funding safeguards are retained, forms a basis for confidence that outstanding conditions can be satisfied and will therefore not impede the delivery of SIW and drawdown of funding.

#### *Land Acquisition*

17. As at the present date, the Council secured ownership of circa 44 acres, that is 72% of the land to be acquired within the CPO area. In terms of the remaining land, 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. The Council has been acquiring land within the CPO area since 2015. In addition, TerraQuest, (the Council’s Land Referencing consultant) has identified registered ownership and rights in the CPO land to establish contact with the remaining qualified parties. 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. The Council is attempting to acquire interests by agreement and has commenced negotiations with all known parties. These negotiations will continue in parallel with the CPO process.

18. Since the 22<sup>nd</sup> January 2020 (KD 4832), the Council has agreed terms and completed the acquisition of land at Anthony Way together with land and buildings adjoining and continues to work towards concluding terms via private treaty on other land within the CPO area, so as to assemble land voluntarily and mitigate the extent of third party interests and risks. Terms have recently been agreed with another party and the Council is in the process of progressing this acquisition. Furthermore, negotiations are continuing with remaining parties, alongside the CPO process.

### *Planning*

19. 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. A 'full' planning application (ref: 19/02717/RE3) for the SIW was granted on 22 July 2020.

### *Public Interest*

20. Officers are satisfied that there is a compelling case in the public interest to make the compulsory purchase order as described in detail in the Statement of Reasons. The CPO is based on the need for SIW which will contribute to the achievement of objectives specified in Sections 226 (1)(a) and 226(1A) of the 1990 Act: to facilitate the carrying out of development, redevelopment or improvement on or in relation to land in its area, and that such development will contribute to the promotion or improvement of economic, social and environmental well-being of the area.

Officers consider that the compulsory purchase order will satisfy all the tests set out in the Guidance on compulsory purchase orders and the Crichel Down Rules. Statement of Reasons describes in detail the following justification for use of Compulsory Purchase Powers:

- The purpose for which the land is being acquired fits with the adopted planning framework for the area.
  - The SIW will contribute to the social, economic and environmental well being of the area.
  - The design of the SIW proposed is the only viable means to achieve the planning policy objectives.
  - the Scheme is viable and SIW have general indication of funding intentions.
21. Since 22<sup>nd</sup> January 2020 (KD 4832), the Council has commissioned extensive review of Equalities Impact Assessment by Ottaway Strategic Management Limited and an action plan has been put in place for mitigation measures. This provides greater understanding of equality duty

consideration under Section 149 of the Equality Act 2010 and puts the Council in a more prepared position in regard to further progress on the CPO. Please see section 9 for details.

#### *Progress since January 2020*

22. The Council has undertaken all necessary preparations to make the CPO. The final Order Map (CPO Plan) and schedule are attached. Important programme milestones have been achieved since Cabinet authorised the CPO in January 2020, strengthening its case from planning policy and development management perspectives. Officers are satisfied that there is a compelling case in the public interest for acquiring the land compulsorily as set out in the Statement of Reasons (see Appendix 3). On 29<sup>th</sup> January 2020, the Council adopted Edmonton Leaside Area Action Plan (ELAAP), and on 22<sup>th</sup> July planning application for the SIW was granted permission.

#### *Updated programme*

23. On 11th March 2020, World Health Organization (WHO) recognised pandemic coronavirus SARS-CoV-2. Later that month, the United Kingdom government passed the Coronavirus Act 2020 and introduced measures to restrict non-essential travel, social contact, close large number public venues' categories and reduce public transport service. The measures are disrupting and delaying a range of services across public and private sector, potentially including CPO notice service and other procedures required by the Acquisition of Land Act 1981. It is therefore important to consider the current coronavirus outbreak and its impact on operations in deciding on timing of making the CPO. There is no certainty over when public and private sector could revert back to a normal regime of operations.

On 13th May 2020, the government published 'Coronavirus (COVID-19): compulsory purchase guidance' and updated this on 27 May 2020. This covered several practical considerations such as Royal Mail delivery recording and correspondence with NPCU. The guidance does recommend increasing time periods for people to respond to a CPO notice as some may not be able to reach a post box or there may be a delay in response due to illness or postal system. The guidance does not prevent local authorities from making CPOs. It also confirms that local authorities may publish the order and map online to comply with requirements to make documents available for inspection in a 'place'. These recommendations were incorporated into the Mitigation Plan (see 'Main Considerations for the Council'). In addition, the Council has consulted on its CPO COVID-19 mitigation measures with MHCLG, receiving feedback on the proposed steps as being reasonable.

24. There have been delays to the making of the CPO, principally as a result of the Covid-19 pandemic. Fortunately, the HIF delivery programme has contingencies built in to it to allow for unforeseen delays. Whilst part of this contingency has been used up, there is still an element of contingency remaining and we are confident that the current programme is robust and the Council will be able to meet the HIF delivery programme if the Council proceeds with the making of the CPO in accordance with the timeframe currently proposed. See Confidential Appendix for details.

## Main Considerations for the Council

25. The Council is pro-active in addressing any future factors of uncertainty as regards the CPO. Whilst it is acknowledged that the detailed terms of the grant agreement are currently being negotiated and the full amount of funding will not be advanced until a number of conditions have been satisfied, there is sufficient confidence in resolving these by the period of CPO inquiry given the progress to date described above.
26. It is acknowledged that the Council will need to have the resources to implement the scheme irrespective of how actual costs will vary from the HIF grant amount due to various factors such as emerging specification of design options or changing macroeconomic conditions. However, there are diminishing merits to postponing the decision to make the CPO until there is full clarity over these parameters, as the Council is actively and continuously monitoring these risks, discussing a range of scenarios with key stakeholders and preparing mitigation strategies. Programme budget approved in October 2019 includes contingency; moreover, CPO budget includes contingency costs for the CPO process delay (see Confidential Appendix for details). Finally, further delay to making the CPO could exacerbate the risk of not securing HIF grant due to failure of complying with MHCLG deadlines.
27. In light of COVID-19 social distancing measures, the Council developed a mitigation plan with its consultants to ensure compliance with the CPO requirements:

	<b>Requirement</b>	<b>Issues</b>	<b>Mitigation</b>
M1	Objection Period: statutory minimum objection period is 21 days.	Due to current 'lockdown' recipients of notices may receive their notices later, or these may be sent to business addresses whose employees are working from home so not received. Therefore it is possible that interested parties may miss the opportunity to submit an objection in time. Royal Mail are currently holding the undelivered post for an extended period of 30 days before returning to sender.	Provide an extended 42 day objection period. TerraQuest to monitor the status of recorded deliveries via the Royal Mail website, deal with undelivered post on a case-by-case basis, seek alternative address via establishing a contact with the served party.
M2	Publicity: statutory requirement is site notice; press notice and service of notice to qualifying persons	The current lockdown restrictions have relaxed, however, some social distancing measures are still in place, with some households shielding themselves until at least 31 <sup>st</sup> July 2020. As a result, there are fewer opportunities for people to see a site notice when passing by a public venue. Similarly, readership of newspapers may be reduced due to limited opportunities for people to purchase a copy. Royal Mail and other delivery services are providing a less frequent/reliable service and are scaling back the	Contact all parties by email/phone/letter before making the CPO to give them additional warning and ask if there are additional modes of service and addresses that can be used. Where no contact is possible, TerraQuest will search additional addresses on general web research or old copies of title information (or similar documentation). TerraQuest are regularly monitoring the advice of Royal Mail. The website will also be available for the public to inspect the Order.

services offered. Served parties may be hesitating or unable to travel to collect the notice due to the lockdown measures.

<p>M3 Publicity: the CPO and Map is required to be deposited for inspection within the locality.</p>	<p>The intention was to deposit a copy of the CPO in the Council Civic Centre and at a Fore Street library (close to Meridian Water). As at the date of this report, only two libraries in Enfield have re-opened to the public, but they are not in a normal mode of operation. Edmonton Green Library re-opened on 13<sup>th</sup> July and is intended to be used as the inspection venue, as it is close to Meridian Water. However, it is acknowledged that this could be subject to change, if there was a further lockdown and also there are restrictions in place due to COVID-19, including a cap on the number of people who can be at the library.</p> <p>The Civic Centre, whilst open for essential staff, is closed to the general public and only the Order and accompanying map will be displayed on the noticeboard outside the main entrance. The Order schedule will not be available to view at this location.</p> <p>Therefore, there are some restrictions to placing the CPO in a physical location for inspection by the public.</p> <p>However, redacted copies of the documents will be available on the Council's website and electronic or hard copies can be provided to parties on request.</p>	<p>The Council intends to publish the CPO, Maps, Schedule and Statement of Reasons on its website. This will be noted on the notices which will state the website address. Government's COVID-19 CPO guidance was followed in preparing publication measures plan and states that a website will be considered a place for inspection in compliance with the legal requirements. While MHCLG is not able to confirm as satisfactory any local authority's action plan, the Council's mitigation plan was shared with MHCLG who raised no concerns.</p>
<p>M4 Make the CPO in time under MHCLG deadlines.</p>	<p>Central government may introduce further isolating measures with a potential of higher uncertainty over or disruption of supply chain, making it harder or impossible for the Council to satisfy statutory CPO requirements and serve notices.</p>	<p>The reason for making the CPO at this time is that the HIF grant needs to be drawdown and spent by March 2024 making it essential that vacant possession of all the land is achieved in 2021. To mitigate the risk of missing the deadline, it is recommended to proceed with the CPO following the outlined mitigation plan.</p>



M5	Make the CPO in time under MHCLG deadlines.	Risk of criticism for an authority pursuing a CPO under current circumstances.	The Council or its agents are in contact with the majority of impacted parties. The website and newspaper notices exist to ensure wide publicity of the Order and avoid prejudice. The mitigation measures outlined above will also ensure that consultation is undertaken as fairly as possible.
M6	Make the CPO in time under MHCLG deadlines.	Even if the Council makes the CPO now, the CPO timetable may be impacted if Planning Inspectorate (PINS) postpone inquiries. Applications may be put on hold on any live objection periods.	Make the CPO at this time to increase the chance of earlier consideration of the application by NPCU, PINS and Secretary of State even in such a scenario that applications and objection periods will be put on hold or delayed by decision-makers outside the Council's control, assuming that consideration will resume on the 'first come first served' basis.

### **Safeguarding Implications**

28. Not applicable.

### **Public Health Implications**

29. See Cabinet Report KD 4832. An online copy of the Order will be published due to Coronavirus social distancing measures.

### **Equalities Impact of the Proposal**

30. The initial Equalities Impact Assessment was conducted in December 2019 internally by the Council, with a subsequent extensive review by external consultant Ottaway Strategic Management in February-March 2020. Both assessments identified no direct negative impact that would impede the CPO. The EQIA is attached at Appendix 2.

See Cabinet Report KD 4832 for equalities legislation framework relevant to a CPO.

### **Environmental and Climate Change Considerations**

31. Not applicable. Note that a separate report will be brought to Cabinet to appoint HIF main contractor for delivery of infrastructure.

### **Risks that may arise if the proposed decision and related work is not taken**

32. **Timetable for SIW delivery will not be met.** SIW land include parcels that are currently not owned by the Council. In the event that the CPO is not made the Council will continue to seek to acquire the necessary land by private agreement. However, there is no certainty that the Council will be

able to negotiate the acquisition of all the necessary land required to deliver the SIW.

33. **HIF grant will become unavailable.** It is a condition of HIF funding that the Council has assembled all the land in the infrastructure site to deliver the HIF works (SIW). Furthermore, it will be a requirement of the HIF grant that all £156m funding is claimed by the Council by March 2024. MHCLG has indicated that they are not prepared to extend their deadlines. Failure to make the CPO in time would highly likely result in HIF funding becoming unavailable.
34. **The wider Scheme delivery is jeopardised.** Failure to make the CPO and to comply with HIF grant requirements would result in significantly higher pressure on the Council to acquire all required land via private treaty and deliver needed infrastructure at its own risk, impacting both financing and timescales of the Scheme. Under resource constraint, the Council may need the scope of the Scheme to be reconsidered.

## Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

35. Risks of making the CPO are explained in the table below:

	<b>Risk</b>	<b>Likelihood<sup>1</sup></b>	<b>Impact<sup>2</sup></b>	<b>Risk Score<sup>3</sup></b>	<b>Mitigation</b>
	<i>Relevant risks and the potential impact / consequence of each.</i>				<i>What existing processes / mitigations are in place to manage the risk?</i>
R1	NPCU may refuse to consider a CPO where the Council is unable to certify the requirements of the Acquisition of Land Act 1981 have been complied with.	1	5	5	See mitigation plan M2, M3. With known contacts of most parties affected and alternative publicity resources such as its website in accordance with the government-issued guidance, the Council has arranged alternative measures to certify its compliance with the Act's procedural requirements in accordance with the Government's COVID-19 CPO guidance. Moreover, the CPO Order, map and Schedule will be placed at Edmonton Green Library, which is proposed to serve as the physical inspection venue. However, it is acknowledged that this could be subject to change, if there was a further lockdown and also there are restrictions in place due to COVID-19, including a cap on the number of people who can be at the library.
R2	It is possible that parties may cite the Coronavirus pandemic as a grounds for objection.	2	2	4	See mitigation plan M5. The Council has already sought to mitigate risk of objections being successful by building a robust evidence base for the CPO and additional measures for serving the CPO and extending the time to object. If the Council becomes aware of particular difficulties that are being suffered due to the Coronavirus by those affected by the CPO, it could consider whether any additional help or assurances (such as a undertaking not to implement the CPO before certain date) could be provided. This would need to be considered on a case by case basis.

<sup>1</sup> 1=Remote 2=unlikely 3=possible 4=probable 5=highly probable

<sup>2</sup> 1=Insignificant, 2=minor, 3=moderate 4=major, 5=catastrophic, systemic failure

<sup>3</sup> Likelihood x Impact (Red Amber Green)

R3	Extending the period of objection from 21 days to 42 days would delay the point when the CPO is confirmed and land assembly for the SIW is completed, putting HIF programme deadline at risk.	5	2	10	See mitigation plan M1, M4, M6. While extending objection period may delay vacant possession by several weeks, it provides greater certainty over timeframe of the CPO as compared to delaying its making until the lockdown measures are lifted. It also strengthens robustness of the CPO.
R4	Objection received to the CPO by land interest holders. 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. For a CPO of this size and complexity, it is highly likely that one of the parties will object to protect their position.	5	1	5	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 has prepared a robust Statement of Reasons to support the CPO case and receives ongoing legal advice. The programme and budget have allowed for a public inquiry. The experts that the team are working with will act as expert witnesses in the event of a public inquiry.
R5	The CPO is not confirmed in part or in whole, causing a delay in the delivery of the strategic infrastructure and, if the Council is unable to acquire land required by private treaty, also putting satisfaction of HIF funding agreement conditions at risk.	2	5	10	Potential grounds for this include objections over planning, deliverability and the impact on affected parties. Note that it is anticipated that a public inquiry will not happen for at least 6 months after making the CPO, by which time the factors above will be significantly more certain. The Council has the opportunity to address potential grounds for objection at a public inquiry, minimising the risk of the CPO not being confirmed. If it is not confirmed, there would be an abortive cost in relation to the fees. However, the Council also may fully address the cause of objection and then re-make the CPO or alternatively review infrastructure and development plan subject to land owned at that the time, albeit different from the scheme currently proposed.
R6	Actual HIF costs might vary from the funding allocation, especially since there is less certainty at the moment over the preferred rail solution: there is a possibility to deliver higher train frequency, but this would likely imply	3	3	9	To manage the risks associated with the rail, weekly Rail steering group meetings are taking place as well as design team meetings to resolve issues and monitor project delivery. To manage the strategic risks associated with project delivery, the executive management team hold monthly meetings to monitor the delivery of the HIF and the monthly spend. The

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costs above the allocation.

meetings are chaired by the Chief Executive of the Council. In addition, the Council is discussing emerging rail options with GLA, MHCLG and DfT, to determine potential funding gaps and identify additional funding sources. One scenario is to apply for additional funding from central government. This possibility will be ascertained within 6 months. Alternative scenario is to amend scope of rail work or negotiate rearrangement as to separate HIF rail and non-rail obligations. Costs of non-rail HIF works are continually monitored. Note there is potential to identify cost-saving opportunities through arrangements with HIF main contractor, whose appointment procurement is at its final stage.

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36. Note that risks 4 and 5 relate to strength of the CPO case which depends on fitness to planning framework, deliverability and funding. The Council acknowledges these factors and is pro-active in mitigating the associated risks as explained below:

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Deliverability and funding:

If MHCLG conditions are not satisfied, the Council would not be able to claim historic and preliminary costs, might miss the deadline of 31st March 2024 and ultimately risk the £156m funding.

The Meridian Water team is working closely with MHCLG, DfT, GLA and wider stakeholders to agree the grant documentation so that all parties are comfortable with the risks, obligations, requirements and conditions. All preconditions to contract have been satisfied and approved by MHCLG. The major matter outstanding is approval of rail design option and its funding before the contract can be signed.

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Planning:

Conditions of the Phase 2 planning permission are not satisfied (in time), or the planning application is rejected by the GLA, weakening the case for the CPO.

The SIW planning application was granted permission on 22 July 2020. Phase 2 outline application was granted permission subject to referral of the application to the Greater London Authority and the completion of a Section 106 Agreement. Current risk and status of planning is continually monitored to provide reasonable level of confidence that Phase 2 planning application has no major impediments. As the application is outline, the finer detail of the scheme will be secured through future reserved matters applications. Contributions to mitigate the impact of the development will be secured through a s106 legal agreement. The scheme is supported in strategic planning terms by the

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GLA and the majority of issues that were raised by the GLA have been addressed. It should be noted that waiting to make a CPO until planning permission is granted may not always be necessary and that may prejudice the development timetable (which is linked to and dictated by HIF funding). Proceeding to make the CPO while the planning application is still pending is a reasonable and calculated risk to take provided that there are no significant impediments to the planning application being granted permission.

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***Please note Part 2 report is now confidential appendix.***

## **Financial Implications**

37. See Confidential Appendix.

38. See Confidential Appendix.

## **Legal Implications**

**DRAFT: 20th July 2020 (MD & EP)**The Council has obtained advice on CPO matters from its internal Legal Services team, Trowers & Hamblins LLP and Guy Roots QC.

40. 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.

41. 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.

42. 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. At its meeting on 22nd January 2020 (KD 4832) Cabinet delegated authority to make the CPO to the Programme Director of Meridian Water in consultation with the Acting Executive Director of Resources and Director of Law and Governance.

43. On 13<sup>th</sup> and 27<sup>th</sup> May 2020, the government published its “Coronavirus (COVID-19): compulsory purchase guidance”. The additional protections as set out in paragraph 26 above will assist to demonstrate that the Council has acted carefully and in good faith in accordance with government guidance and mitigates the risk of challenge, giving the Council reasonable grounds to argue that an aggrieved person has not been 'substantially prejudiced' by the making of the CPO.

44. The Council will be required to demonstrate that there is a compelling case in the public interest for acquiring the land compulsorily. This is set out in the Statement of Reasons (see Appendix 3). In particular the Council must demonstrate that:

44.1 it has, or will at least obtain, the resources to pay compensation for the land. Acquisition of any interests in land within the Order Land, including any statutory payments and disturbance compensation,

will be funded by the Council through its own resources. Payment of compensation will be made in accordance with the 'compensation code' which is the law as set out in the Land Compensation Acts 1961 and 1973 and the Compulsory Purchase Act 1965, as amended by subsequent legislation and supplemented by case law. Within the Meridian Water budget there are allocations for acquisition of land;

- 44.2 it has, or will at least obtain, the resources to implement the scheme. It is proposed that funding for the SIW will be secured by way of HIF grant from central government. On 17th August 2019 it was announced that the council's HIF bid for £156 million had been successful. However, the detailed terms of the grant agreement are currently being negotiated and the full amount of funding will not be advanced until a number of conditions have been satisfied by the Council. It is recommended that the CPO is made no earlier than a time when there is confidence, following negotiations with the GLA and MHCLG, that it can satisfy the conditions to funding and will be able to demonstrate this by the time of a CPO inquiry. It will be a requirement of funding that all grant funding must be claimed by March 2024. The advantages of delaying the making of the CPO must therefore be considered against the impact on delivery of the SIW in accordance with the milestone dates in the grant agreement. In the event that the HIF Grant Fund is insufficient to meet the full costs of infrastructure works delivery, the Council will need to demonstrate that it has or will obtain sufficient additional funding, including the timing of such funding; and
- 44.3 the scheme for which the CPO is made will not be prevented from proceeding due to some legal or other impediment, e.g. planning permission / non-supportive policy framework. The Edmonton Leaside area Action Plan ("ELAAP") was formally adopted by the Council on 29<sup>th</sup> January 2020. The scheme accords with the adopted policy framework. Ideally, planning permission should be in place (but CPO Guidance recognises that this is not always possible) and the scheme should accord with the adopted policy framework at the time of making of a CPO. Planning permission for the strategic infrastructure works was granted (subject to conditions) on 22<sup>nd</sup> July 2020. At its meeting on 24th March 2020 the Council's planning committee resolved to grant permission for the Phase 2 planning application subject to various conditions including Stage 2 referral to the GLA. The Mayor of London will have 14 days from the date of submission of the stage 2 referral to make a decision to allow the Local Planning Authority's decision to stand, to direct refusal or to take over the application. Proceeding to make a CPO while the planning application is still pending may be considered a reasonable and calculated risk to take provided that there is a degree of confidence that the planning application will be granted prior to the date of the public inquiry.
45. Once the Council makes a CPO, the timetable is no longer in the Council's control and will be set by the Secretary of State. As such it is important that



at the time of making a CPO the Council has met the Guidance criteria, or at least has sufficient confidence it will be able to meet the Guidance criteria by the time of a public inquiry (approximately six months later). Whilst a CPO can be withdrawn after it is made, this may expose the Council to risk of objectors being awarded their costs.

46. 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.
47. 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. The Equalities Impact Assessment prepared in connection with the Compulsory Purchase Order contains an Action Plan (see Appendix 2) which should be monitored throughout the process.
48. 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.
49. 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.

### **Workforce Implications**

50. Not applicable.

### **Property Implications**

51. There are no property implications arising directly from this report however it is anticipated that there will be future Property Implications as each individual property deal is negotiated as a result of the proposal set out herein.

52. Any future reports arising as a result of these proposals will need to be further reviewed and when property transactions are concluded Strategic Property Services will comment on the individual deals.
53. It may also be appropriate to add CPO property acquisitions monitoring to the risk register as well as delivery timetable is critical. And a delay on an acquisition of a property could have material effect.

### **Other Implications**

54. Not applicable.

### **Options Considered**

55. **Do not pursue a CPO.** This is not considered a viable option. The Council must ensure that it can acquire all land needed to deliver the SIW in accordance with the timetable set by MHCLG. It will be a requirement of the HIF grant that all £156m funding is drawn down by the Council and all SIW are delivered by March 2024. If the Order is not pursued at this time, there is significant risk that this timetable for delivery will not be met, jeopardising the availability of the full amount of HIF grant as well as the deliverability of the SIW and the wider Scheme. In the event that the CPO is not made the Council will continue to seek to acquire the necessary land by private agreement. However, there is no certainty that the Council will be able to negotiate the acquisition of all the necessary land required to deliver the SIW in time to meet the HIF deadlines.
56. **Delay making the CPO until there is greater certainty.** Ideally, relevant planning permissions and funding agreement with all conditions discharged would be in place and secure prior to making the CPO. There is also some uncertainty in relation to the Coronavirus pandemic, although the package of mitigation measures for making the CPO during the current Coronavirus pandemic and associated “lockdown” strictly follow (and in some cases exceed) the requirements set out in government guidance on making a CPO during the pandemic. However, as stated above, the HIF grant needs to be drawn down and spent by March 2024 and in order to achieve a build programme which meets this deadline, vacant possession of all the land needs to be achieved in Q4 2021. Furthermore, it is a condition of HIF funding that the Council has assembled all the land in the infrastructure site to deliver the HIF works. Making the CPO is necessary to ensure that this condition is satisfied in time to meet MHCLG’s contractual deadlines. Having reviewed the case, Queen’s Counsel agreed it would be reasonable to proceed to make the CPO at this time since delay in the hope of gaining more certainty would be counter-productive.

### **Conclusions**

57. Since the Cabinet’s decision to authorise making the CPO in January 2020, the Council has made significant progress in preparing the CPO case including a set of measures to comply with publicity requirements considering COVID-19 social distancing. Given its significance to the overall

HIF programme, timescales and funding agreement, it is recommended to make the CPO at this time.

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## **Appendices**

1. Order Map
2. Equalities Impacts Assessment
3. Statement of Reasons

## **Background Papers**

The following documents have been relied on in the preparation of this report:

- 16/10/2019 – KD 4469 - Cabinet Meridian Water Financial Model and 10 Year Budget;
- 22/01/2020 – KD 4832 - Cabinet Meridian Water Infrastructure Compulsory Purchase Order;
- 12/02/2020 – KD 5085 - Cabinet Housing Infrastructure Fund grant agreement to deliver strategic infrastructure works at Meridian Water.