

REPORT TO:	CABINET – 11 June 2018
SUBJECT:	Delivering the Whitgift Redevelopment – Proposed revisions to the CPO Indemnity and Land Transfer Agreement & Pre-conditions to Drawdown of Land
LEAD OFFICER:	Shifa Mustafa Executive Director of Place
CABINET MEMBER:	Councillor Tony Newman, The Leader of the Council
WARDS:	All Wards

CORPORATE PRIORITY/POLICY CONTEXT/AMBITIOUS FOR CROYDON:

Croydon's Sustainable Community Strategy 2013 – 2018

- Developing and maintaining Croydon as an attractive place in which to live, work, visit, socialise and invest
- Improving Croydon's town centre by development of the retail realm, encouraging a stronger retail offer and a mixed economy, including a night time economy
- Ensuring a choice of housing
- Increasing opportunities for skills training and jobs
- Protecting vulnerable people

FINANCIAL IMPACT:

Under the CPO Indemnity and Land Transfer Agreement ("**ILTA**") the Council is indemnified against liabilities for costs and compensation associated with the compulsory purchase order for the Whitgift Centre and surrounding land.

In accordance with section 233 of the Town and Country Planning Act 1990, the Council is to receive best consideration reasonably obtainable for the disposal of land within the proposed redevelopment site.

Implementation of the scheme would contribute to the promotion of the economic, social and environmental well-being of the Council's area and would be likely to bring indirect financial benefits in terms of business rates, council tax and New Homes Bonus. It will also trigger implementation of the Growth Zone in Croydon, based on retention by the Council of the uplift in business rates in the designated Growth Zone area.

KEY DECISION REFERENCE NO. 0718CAB:

This report contains Key Decisions as defined in the Council's Constitution and encompassed under Key Decision Reference No: 0718CAB "Delivering Westfield".

The decision may be implemented from 1300 hours on the 6th working day after the decision is made, unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below:

1. RECOMMENDATIONS

1.1 Subject to consideration of representations made by third party landowners and other matters set out in Parts 1 and 3 of this report, Cabinet is recommended to resolve that the Executive Director of Place, acting in consultation with the Director of Law & Monitoring Officer, be authorised on behalf of the Council to enter into a further supplementary agreement to the CPO Indemnity and Land Transfer Agreement ("**ILTA**") with Croydon Limited Partnership, Westfield Corporation Limited, Hammerson UK Properties Plc and Whitgift Limited Partnership to give effect to the amendments to the ILTA referred to in section 5 of this report.

If Cabinet approves the recommendation in paragraph 1.1, Cabinet is asked to consider the evidence supplied by the Developer and the advice in relation to satisfaction of the pre-conditions to drawdown of third party land pursuant to the ILTA (as proposed to be amended) contained in Part 2 of this report and in the exempt report in Part B of the agenda for this meeting, together with the matters set out in Part 3 of this report AND

1.2 Subject to:

- i. Members being satisfied that the necessary pre-conditions to drawdown have been met;
- ii. completion of the further supplemental agreement to amend the ILTA; and
- iii. Drawdown Notice and RFD Notice having been served on the Council on behalf of the Developer in full compliance with the terms of the ILTA (as amended);

Cabinet is recommended to resolve that the Executive Director of Place, acting in consultation with the Director of Law & Monitoring Officer be authorised to:

- a. take all necessary steps to implement the The London Borough of Croydon (Whitgift Centre and Surrounding Land bounded by and including parts of Poplar Walk, Wellesley Road, George Street and North End) Compulsory Purchase Order 2014 ("**the CPO**") including the execution of one or more General Vesting Declarations and the service of Notices to Treat and Notices of Entry in respect of interests and rights within the Order Land specified in the the Drawdown Notice;
- b. take all necessary steps in relation to the acquisition of land and new rights and settlement of compensation and any other claims or disputes including legal proceedings relating to the implementation of the CPO, defending or settling claims made to the Lands Chamber of the Upper Tribunal and/or any applications made to the Courts and any appeals;
- c. in the event that a valid Call Option Notice is served on the Council on behalf of the Developer in accordance with the terms of the ILTA (as

amended):

- 1) to appropriate the Council's land interests referred to in paragraph 10.1 for planning purposes pursuant to section 122 of the Local Government Act 1972; and
 - 2) to arrange for the transfer to the Developer of the Council owned land within the redevelopment site identified in paragraphs 10.1 and 10.13; and
- d. take all other necessary steps in relation to the implementation of the CPO and in relation to the Council's obligations under the ILTA.

2. EXECUTIVE SUMMARY

- 2.1 The London Borough of Croydon (Whitgift Centre and Surrounding Land bounded by and including parts of Poplar Walk, Wellesley Road, George Street and North End) Compulsory Purchase Order 2014 ("**the CPO**") was confirmed by the Secretary of State on 15 September 2015.
- 2.2 Shortly before the CPO was made on 15 April 2014 the Council entered into a "CPO Indemnity and Land Transfer Agreement" ("**ILTA**") with the Developer to make provision for the assembly of land needed to undertake the Whitgift redevelopment and for the Developer to indemnify the Council in respect of CPO and other associated costs.
- 2.3 Planning consents for the redevelopment of the Whitgift Centre and surrounding land were granted by the Council in 2014 (references 12/02542/P, 12/02543CA and 14/02824/P). These three consents are together referred to below as the "**2014 Permission**" and the development authorised by them is referred to as the "**2014 Scheme**".
- 2.4 On 20 October 2016 the Developer applied to the Council for planning permission for an updated redevelopment scheme (reference 16/05418/OUT) ("**2018 Scheme**"). Outline planning permission for the 2018 Scheme was issued by the Council on 20 April 2018 ("**2018 Permission**").
- 2.5 The Developer has informed the Council that it intends to implement the 2018 Permission, rather than the 2014 Permission.
- 2.6 The Whitgift redevelopment provides the opportunity for the long-awaited step change in the town centre, through the provision of new shops, restaurants and leisure that will make a significant contribution towards Croydon being the premier destination in South London for shopping, business and cultural activities. The significant accompanying residential offer will also provide much needed new homes in a variety of tenures to continue the growth of a thriving town centre residential population. The development will deliver:
- Up to 173,684sqm of retail and leisure floorspace including a new John Lewis store and a modern replacement Mark & Spencer store to anchor the scheme in the south and north respectively
 - Up to 1,053sqm of community use

- Up to 3,895sqm of office space
- Up to 100,000sqm of car parking with up to 3,140 car parking spaces in main car park
- 626-967 residential units in a Build to Rent scheme, of which 20% of units would be affordable in the form of Discounted Market Units. Of the affordable units (with an indicative quantum of 125-193 units), 60% of them would be at 80% of market rent and 40% of them at London Living Rent.
- Estimated between 6,720 to 7,048 full time equivalent jobs created in the town centre, once the development is operational.
- During the construction of Phase 1, construction employment fluctuating between an average of 250-2,850 jobs on-site and during Phase 2, between 100-200 jobs on-site.
- Significant investment in targeted training and employment support initiatives during both the construction and retail phases
- Targeted programmes to support and engage local young people
- Significant public realm benefits
- Net increase of up to around £20m per year in business rates (50% of which can be retained locally through the Growth Zone)
- CIL contributions
- £8.9m in New Homes Bonus
- A step-free 24hour East-West pedestrian route and transformation of the northern end of the site including the opening up of Poplar Walk with additional public realm
- Total investment of over £1.4 billion within the town centre

2.7 By the time of the new retail centre's anticipated opening in 2023, Croydon town centre will be a vibrant metropolitan centre. The newly refurbished Fairfield Halls will be a centre of cultural activity showcasing international performance as well as home-grown talent. The currently on-site residential development of 101 George Street consisting of twin 44 and 38 storey towers will have brought 24 hour life to the cultural quarter and the historic town centre park of Queens Gardens will have benefited from major investment arising from the adjacent Taberner House mixed use development. Underpinning all of this development is the Growth Zone, which will be transforming the environment of the town centre through a comprehensive programme of infrastructure improvements to public realm, public art, public transport and social amenities.

2.8 The Developer has made very substantial progress in preparing for implementation of the new development. Since the public inquiry in 2015 it has acquired a number of major land interests in the site from former objectors and has reached agreement for the relocation of 9 occupiers of the Whitgift Centre to Centrale and with the affected statutory undertakers. The Developer has agreed heads of terms with an operator for a multiscreen cinema and has made demonstrable progress in securing both the proposed anchor store tenants (John Lewis and Marks & Spencer), each to be full-line quality stores with an internal area in excess of 100,000 square feet. On the 31 May 2018

John Lewis and Waitrose announced that a new 165,000 square foot John Lewis shop incorporating a Waitrose store on the ground floor would form part of the redevelopment. Appendix 5 includes the Developer's Summary Indicative Programme for implementation of the scheme showing anticipated dates of September 2019 for works to start on site, opening for trade of the new retail centre in Quarter 2 2023 and occupation of the residential accommodation in the first half of 2024.

- 2.9 Following a summary of the background to the scheme and progress in assembling land and rights by agreement since confirmation of the CPO, Part 1 of this report deals with the need to amend the ILTA to take account of the 2018 Scheme. In the event that Members approve the recommendation to amend the ILTA, Part 2 of this report addresses the pre-conditions to drawdown of land under the ILTA (as amended) leading to implementation of the CPO and matters relating to the proposed transfer of Council owned land within the redevelopment site. Part 3 contains information relevant to both Parts 1 and 2.
- 2.10 Part 1 of this report which concerns the proposed amendments to the ILTA:
- a. describes the nature of the revisions to the redevelopment proposed under the 2018 Scheme;
 - b. explains the need for revisions to the ILTA to take account of the 2018 Scheme;
 - c. includes a description of the purpose and effects of the proposed revisions to the ILTA;
 - d. describes the potential implications of development of the extended site area for the 2018 Scheme (in particular, to include the site of Green Park House) for neighbouring third party landowners and occupiers and the effects of sections 203 -205 of the Housing and Planning Act 2016; and
 - e. refers to representations made by third parties whose rights could potentially be affected by the 2018 Scheme and other matters for consideration by Cabinet before a decision on the recommendation in paragraph 1.1 is reached.
- 2.11 Part 2 of this report which concerns the pre-conditions to drawdown of land under the ILTA:
- a. describes the contractual arrangements under the ILTA for assembling land to enable the redevelopment of the Whitgift Centre and surrounding land;
 - b. describes the "Reasonable Prospect of Delivery Pre-condition" ("RPD Pre-condition") and its significance;
 - c. summarises the conclusion of officers and the Council's external advisers, based on the evidence the Developer has provided in support of satisfaction of the RPD Pre-condition, that it would be reasonable for Members to determine that the Pre-condition is satisfied (to be considered in association with the exempt report in Part B);

- d. describes the steps which would follow the service on the Council by the Developer of a Drawdown Notice ("**DD Notice**") specifying the third party interests in respect of which the Developer requests the Council to exercise compulsory purchase powers;
 - e. identifies Council owned land within the redevelopment site which may be the subject of a Call Option Notice served on the Council by the Developer leading to the transfer of that land to the Developer and identifies part of that land which officers recommend should be appropriated for planning purposes prior to transfer to the Developer;
 - f. leads to the recommendation in paragraph 1.2 that authority be delegated to officers to take all necessary steps to complete the land assembly arrangements under the ILTA, including the exercise of CPO powers, the appropriation of Council land and the transfer of land to the Developer.
- 2.12 Part 3 of this report includes further information and advice relevant to both Parts 1 and 2, including the human rights, equalities and financial implications.
- 2.13 In this report Croydon Limited Partnership ("**CLP**") and its participant and associated entities are referred to as "the Developer" unless otherwise stated.

3. BACKGROUND

Background to the CPO

- 3.1 In 2011 a company in the Westfield Group entered into exclusive arrangements with the Whitgift Foundation, the freehold owner of the Whitgift Centre and much of the surrounding land, in respect of a potential redevelopment scheme for the Whitgift Centre. In January 2013 Westfield Shoppingtowns Limited (as it was then called) and Hammerson UK Properties Plc formed CLP and related entities as a joint venture to take forward proposals for the redevelopment of the Whitgift Centre and surrounding land.
- 3.2 On the 5 February 2014 the Council granted outline planning permission and conservation area consent to the Developer for the redevelopment of the Whitgift Centre and surrounding land with a retail-led mixed use scheme including housing, leisure, community, office and car parking uses (references 12/02542/P and 12/02543CA) and on 24 December 2014 further permission was granted for the demolition of buildings at Chapel Walk and the creation of a new entrance (reference 14/02824/P) i.e. together, the "2014 Permission" for the "2014 Scheme".
- 3.3 At its meeting on 7 April 2014, Cabinet resolved to make the CPO to enable comprehensive redevelopment of the Whitgift Centre and surrounding land. The ILTA was entered into and the CPO was made by the Council on 15 April 2014.
- 3.4 A public inquiry in respect of the CPO was held in February and March of 2015 and on 15 September 2015 the Secretary of State notified the Council of his decision to confirm the CPO. Notice of confirmation was first published on

25 September 2015. The powers to acquire land and new rights under the CPO may be exercised at any time up to 25 September 2018.

- 3.5 The purposes of the CPO are expressed in broad terms, namely:
- a. facilitating the carrying out of development, redevelopment or improvement on or in relation to the land comprising the demolition of existing buildings the erection of new buildings and structures to provide a comprehensive retail led mixed use scheme comprising a mix of town centre uses including retail, leisure, residential, community facilities and other complementary uses, new and improved publicly accessible access routes, public realm, car parking and associated servicing and infrastructure which is likely to contribute to the achievement of the promotion or improvement of the economic social or environmental well-being of the acquiring authority's area; and
 - b. executing works to facilitate the development or use of the land.
- 3.6 At the time of the public inquiry it was envisaged that it might be necessary to make amendments to the 2014 Scheme, for example to permit a new store for Marks & Spencer rather than the refurbishment of their existing store. The Inspector did not consider that this would create any impediment to delivery of the scheme.
- 3.7 In confirming the CPO the Secretary of State agreed with his Inspector's conclusions that the purpose for which the land was being acquired not only fitted with the adopted planning framework for the area but that the proposed purpose of the CPO would significantly contribute to the achievement of promotion or improvement of the economic, social and environmental well-being of the area. The Secretary of State was satisfied that there was a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected.
- 3.8 As noted, the purposes of the CPO are expressed in wide terms. It is considered that the 2018 Scheme referred to below is entirely consistent with the purposes for which the CPO was made and that the overall effect of the scheme changes would be to achieve an equally good if not better result within the same purposes as those for which the CPO was made and confirmed (see further section 4).

Stopping up orders

- 3.9 A public inquiry to consider objections to a stopping up order ("**SUO**") in respect of Dingwall Avenue was held concurrently with the CPO inquiry in 2015. In his report to the Council (17 July 2015) the Inspector concluded that the SUO was necessary to enable planning permission to be carried out in accordance with the outline planning permission for the scheme (reference 12/02542/P), subject to certain amendments to introduce conditions to prevent the stopping up taking effect before certain third party land interests had been acquired and to require the completion of an "Access Management and Maintenance Agreement" ("**AMM Agreement**") between the Council and the Developer to secure continuity of access arrangements for properties around Dingwall Avenue which would not be acquired under the CPO and for the management and maintenance of a new area of public realm on part of the

Dingwall Avenue land after stopping up and transfer of the land to the Developer. The SUO in respect of Dingwall Avenue, incorporating the required conditions, was made by the Council on 16 December 2015.

- 3.10 However, as this SUO relates specifically to development under permission reference 12/02542/P, it has been necessary for the Developer to apply for a fresh SUO in respect of Dingwall Avenue to enable implementation of permission for the 2018 Scheme. In addition, the Developer has applied for a stopping up order in respect of a small area of land in Poplar Walk. These proposed SUOs are referred to further in paragraphs 4.5 and 4.6 below.

Progress since the public inquiry and confirmation of the CPO

- 3.11 Since the CPO Inquiry, the Developer has continued its efforts to acquire land within the CPO site by agreement and to address concerns of affected land owners and occupiers.
- 3.12 Land interests within the CPO site which have been acquired by the Developer by agreement since confirmation of the order include:
- a. a long leasehold interest in the Whitgift Centre formerly held by the Whitgift Trust (the Developer having previously acquired the superior leasehold interest in the Centre);
 - b. long leasehold interests in the Allders and Whitgift car parks formerly held by Bouwfonds European Real Estate Parking Fund Croydon;
 - c. long leasehold interests in Green Park House, Poplar Walk, formerly held by Paintfirst Limited;
 - d. freehold interests in:
 - Link House, 9 Dingwall Avenue; and
 - numbers 20-30, 60, 82-84, 86, 96 – 98, 100 and 106 North End;
 - e. leasehold interests in certain properties in North End and individual units within the Whitgift Centre.
- 3.13 Overall, the Developer has reached settlement with the majority of major land owners with interests in the redevelopment site and with statutory undertakers and telecommunication code operators. It has also made good progress in arranging for the relocation or acquisition of the interests of occupiers.
- 3.14 The Developer is continuing to engage with parties with outstanding interests in the CPO site. These include Minerva (Finance) Limited and Minerva (Stores) Limited (in respect of their land interests in the former Allders store), Legal & General Assurance Limited (in relation to acquisition of its interests and the creation of new rights over properties in North End and certain units within the Whitgift Centre) and a number of occupiers within the Whitgift Centre.
- 3.15 Green Park House was included in the CPO as "blue land" to enable the creation and acquisition of new rights needed to implement the 2014 Permission, but not for outright acquisition. The leasehold interests in Green Park House which the Developer has now acquired by agreement enable this

land to be incorporated in the redevelopment scheme, thereby extending the comprehensive approach to redevelopment of the Retail Core. This allowed the Developer to redesign the Northern section of the scheme so as to include a fifth residential tower and provide a new anchor store, proposed as the new Marks & Spencer's store, repositioned in Poplar Walk, replacing and upgrading their existing store (as contemplated at the time of the CPO public inquiry).

- 3.16 On 18 October 2016 the Developer applied for outline planning permission for an updated scheme with the site boundary extended to include the Green Park House land (i.e. the 2018 Scheme). On 14 November 2017 Planning Committee resolved to grant planning permission subject to completion of a section 106 agreement. On 8 January 2018 the Mayor notified the Council that he did not intend to direct a refusal or take over the determination of the application and on 10 January 2018 the Secretary of State confirmed that he did not intend to call in the planning application for his own determination. The section 106 agreement was completed and the 2018 Permission was issued on 20 April 2018. The changes inherent in the 2018 Scheme are summarised in section 4 below.

Proposals affecting Westfield

- 3.17 In December 2017 Westfield Corporation Limited ("**Westfield**") and Unibail-Rodamco SE ("**Unibail**") agreed terms for the acquisition by Unibail of Westfield Corporation including Westfield's interests in Croydon and its 50% holding in Croydon Limited Partnership (CLP) and related entities. Unibail is the developer and operator of a network of retail centres across Europe. The transaction is expected to be completed in the second quarter of 2018.
- 3.18 So far as the Whitgift scheme is concerned, Westfield has confirmed that it is continuing to progress the scheme towards delivery (including the necessary steps for implementation of the CPO) on a "business as usual" basis and that the proposed Unibail deal does not alter that objective.
- 3.19 Both Westfield and Hammerson have commented that their "business as usual" commitment in respect of the Whitgift scheme is demonstrated by the significant ongoing commercial, planning and land assembly progress being made by CLP.

Need to amend the ILTA – Part 1 of this report

- 3.20 As a result of the updated redevelopment proposals there is a need to revise the contractual arrangements between the Council and the Developer under the ILTA. The ILTA includes provisions governing the Developer's entitlement to call for land to be drawn down, subject to satisfaction of specified pre-conditions. Land drawdown would lead to the exercise by the Council of CPO powers and consideration of appropriation for planning purposes of Council owned land interests within the redevelopment site prior to their transfer to the Developer.
- 3.21 The necessary amendments to the ILTA are explained in section 5 below. The implications for the rights of third parties of including the Green Park House land in the redevelopment site are described in section 6. Part 3 of this report includes the human rights, equalities and financial implications.

Pre-conditions to drawdown of land under the ILTA (as proposed to be amended) – Part 2 of this report

- 3.22 The Developer has confirmed that it intends to proceed with the development, with start on site anticipated in September 2019 and opening of the retail component anticipated in Spring 2023. It has given the Council and its external advisers access to information (including commercially sensitive confidential information) in order to demonstrate that the RPD Pre-condition is satisfied. That confidential information and the related advice of the Council's external advisers, Deloitte, is reported in the exempt report in Part B of the agenda for this meeting and the key conclusions are summarised in section 8 below.
- 3.23 A Summary Indicative Programme for implementation of the Whitgift redevelopment is included in Appendix 5.

Need for regeneration of Croydon town centre and action to address it

- 3.24 Evidence of the longstanding need to regenerate Croydon town, its failure to fulfil its function as Metropolitan Centre and the need for significant investment to address its decline was considered at the public inquiry into the CPO in February and March 2015. The Inspector noted that there had been no substantial dispute as to the pressing need for major regeneration in Croydon town centre, in order to meet long-term policy objectives.
- 3.25 Since the CPO inquiry, vacancy rates in Croydon Metropolitan Centre remain high. For the 2016/2017 monitoring year, 37% of office floor space in the Metropolitan Centre is vacant, which is reflective of a decline in the demand for available offices and an indication that the office market is underperforming. There continues to be a high level of vacancy in the retail core. In November 2017 the vacancy rate for retailing in the centre was 11% of Class A floor space, up from 9% in 2016.
- 3.26 There has been no significant additional investment in the town centre retail offer since the CPO inquiry and the town centre continues to suffer from a poor physical environment, a lack of investment in infrastructure and the image of the town centre remains poor (due to crime or the fear of crime). There is a legacy of outdated buildings that are no longer fit for purpose. There has been little change in the retail offer since the inquiry and the Metropolitan Centre still does not have the range of retailers that are offered by its competing centres and other centres of a similar size. There is a particular lack in more upmarket retailers and the breadth and range found in other Metropolitan Centres. There is also a lack of range of retail units to fulfil the needs of modern retailers. Leisure provision in the town centre remains lacking and there is a need for more family suitable food and beverage provision within the retail core. Although the introduction of Boxpark has increased the range of A3 provision available in Croydon, it is somewhat distant from the retail core. Whilst the Council has been carrying out a programme of public realm improvement works, these are limited in scope. There remains a requirement for significant investment in infrastructure. In short, the town centre continues to fail to fulfil its role as a Metropolitan Centre and there remains a pressing need for its regeneration.

PART 1

(This Part relates to recommendation 1.1)

4. THE UPDATED SCHEME

4.1 The changes inherent in the development authorised by the 2018 Permission in comparison with that authorised by the 2014 Permission include:

- the incorporation of the Green Park House land into the scheme. The increased site area, along with the demolition of the Whitgift Car Park (which was to have been refurbished under the original proposals), is proposed to enable Marks & Spencer to relocate into a new modern store rather than remaining in the outmoded current store which would have been difficult to integrate with the remainder of the scheme. The revised scheme would therefore provide for two new anchor stores;
- an improved interface between the scheme and Poplar Walk as a result of reconfiguration of the northern end of scheme;
- revised mall layout to enable a three level retail scheme;
- separation of the residential towers from the retail superstructure. In the original scheme the residential towers sat above the retail component. In the 2018 Scheme they sit beside the main retail component. This change should improve buildability of the residential element of the scheme;
- an increase in the indicative number of dwellings – from between 400 and 600 residential units under the 2014 Permission to between 626 and 967 residential units in the 2018 Scheme;
- the residential component comprising exclusively build for rent properties including affordable housing, rather than build for sale units plus affordable housing for rent;
- revised access arrangements so that access for the retail car park and servicing access is entirely from Wellesley Road and is no longer taken from Poplar Walk;
- a step-free 24 hour East-West pedestrian route (the route in the 2014 Permission accommodated a level change within this route);
- increase in the number of full time equivalent jobs created in the town centre, estimated to be between 6,720 to 7,048 once the development is operational. This is compared to an estimate 3,320 full time equivalents in connection with the 2014 Permission;
- potential for the inclusion of an element of student accommodation or hotel use (not provided for under the 2014 Permission); and
- increases in the estimated amounts of CIL, New Homes Bonus and Business Rates in comparison with the development authorised by the 2014 Permission.

- 4.2 The revisions to the scheme including the incorporation of the Green Park House land and the potential introduction of an element of student accommodation or a hotel in the 2018 Scheme (which were not provided for under the 2014 Scheme) were considered by Planning Committee to be acceptable in planning terms when resolving to grant the 2018 Permission in November 2017. The possible inclusion of an element of student accommodation or a hotel is considered to be consistent with the broad purposes of the CPO.
- 4.3 Appendix 1 contains two plans showing the red line site boundary for the 2018 Permission and for comparison, the red line boundary of the 2014 Permission.
- 4.4 Although the 2014 Permission is still capable of implementation, the Developer has informed the Council that it is no longer its intention to implement those consents and all discussions with prospective anchor tenants and key occupiers are predicated on implementation of the 2018 Scheme. Formal notice to this effect is to be given to the Council by the Developer.
- 4.5 As noted above, the Developer has applied for a SUO in respect of Dingwall Avenue on equivalent terms to those in the SUO made in December 2015. No objections have been received in respect of the "new" Dingwall Avenue SUO which can be made by the Council now that planning permission for the 2018 Scheme has been granted. The AMM Agreement referred to in paragraph 3.9 above in relation to access, management and maintenance of the new area of public realm to be provided on part of the Dingwall Avenue land is to be entered into concurrently with the relevant land interests being transferred to the Developer pursuant to the ILTA.
- 4.6 In addition, on 21 March 2018, the Developer applied for a SUO in respect of a small area of land in Poplar Walk (shown on the indicative plan in Appendix 7) in order to enable a new area of public realm to be created adjacent to the entrance of the new Marks & Spencer Store. This new area of public realm is intended to be under the management and control of the Developer, but subject to a planning condition which requires the public to have access to it, save in prescribed circumstances.

5. NEED FOR REVISIONS TO THE CPO INDEMNITY AND LAND TRANSFER AGREEMENT ("ILTA")

- 5.1 The ILTA which was entered into by the Council, the Developer and related parties shortly before the CPO was made on 15 April 2014 records the parties' objectives in relation to securing the comprehensive development of the proposed redevelopment site, regulates the manner in which those objectives are to be achieved and provides for the Council to be indemnified for costs and other liabilities associated with the compulsory purchase process.
- 5.2 The ILTA has been previously subject to some revisions on one occasion, through a supplemental and novation agreement completed on 4 February 2015, in order to take account of changes to the Westfield company group structure and to make provision for the AMM Agreement to be entered into between the Developer and the Council in respect of Dingwall Avenue at the appropriate time.

- 5.3 Whilst the ILTA allows for the possibility that there might be subsequent amendments to the development site and the planning permission, at the time it was entered into it was envisaged that the scheme authorised by the 2014 Permission would be implemented and that the related section 106 agreement would apply. Some provisions in the ILTA relate to specific physical features of the 2014 Scheme such as the construction of the residential component on a specially created plinth to be provided *above* the retail component (rather than the residential towers being "ground based" and sitting beside the main retail component as in the 2018 Scheme) and the provision of only one new anchor store (in the south east quadrant of the site) in the 2014 Scheme rather than two new anchor stores in the 2018 Scheme. There is also a change in the tenure of the residential component in the 2018 Scheme which would now be exclusively build for rent properties, including discounted market rent lettings to meet affordable housing requirements. Some of the terms of the original ILTA are linked to provisions of the section 106 agreement related to the 2014 Permission and the ILTA does not provide for that section 106 agreement to be replaced in the event of a new planning permission.
- 5.4 There is therefore a need for a further supplemental agreement to the ILTA to be entered into between the Council and the Developer to accommodate the changes to the scheme and to make various consequential technical amendments, including provisions to ensure that there is clarity as to which of the two planning permissions is to be implemented. A table summarising the main substantive amendments to the ILTA which are proposed appears at Appendix 2.
- 5.5 Minor consequential amendments are also required in respect of the draft AMM Agreement to take account of the 2018 Permission.
- 5.6 The form of the amendments to ILTA have been agreed between the Council and the Developer and the further supplemental agreement to the ILTA can be completed on Tuesday 19 June 2018 if Cabinet agrees the recommendations in paragraph 1.1 of this report.

6. IMPLICATIONS OF THE INCLUSION OF THE GREEN PARK HOUSE LAND IN THE LAND ASSEMBLY PROVISIONS OF THE ILTA – THIRD PARTY RIGHTS

The land assembly arrangements under the ILTA

- 6.1 The structure of the land transactions to assemble the land interests in the development site which are provided for in the ILTA is illustrated in the chart which appears as Appendix 3.
- 6.2 In broad outline, subject to the satisfaction of specified pre-conditions and requirements, and following the exercise of the CPO powers by the Council, all the land acquired by the Council from third parties pursuant to the CPO and the Council owned land identified in section 10 below, is to be transferred to the Developer. The Developer may only acquire third party land and Council land within the site with the intention of enabling the development to proceed. In the case of the Council land, generally, its transfer to the Developer is not to

take place until immediately before the grant of the New Headlease by the Whitgift Foundation referred to below.

6.3 Immediately before the New Headlease is granted, the Developer is to transfer (or surrender) all the land within the site which has been acquired from:

- a. third parties under the CPO;
- b. third parties by agreement; and
- c. the Council

to the Whitgift Foundation, the freehold owner of the major part of the site. This enables the Foundation to grant a single unified lease of the entire site to the Developer (the "**New Headlease**").

6.4 The Developer is then required to grant a lease of the land to the Council (the "**Council Lease**"), which the Council is to acquire under the planning powers in section 227 of the 1990 Act. The Council then grants the development lease to the Developer under the power in section 233 of the 1990 Act to dispose of land held for planning purposes ("**Developer Leaseback**").

6.5 The various land transactions, starting with the transfer of land to the Whitgift Foundation, are to take place sequentially, immediately after one another. The land assembly process is referred to further in Part 2 of this report.

Implications for third party rights – sections 203 and 204 Housing and Planning Act 2016

6.6 One effect of the land assembly arrangements under the ILTA is to enable certain statutory provisions to apply which authorise building works and subsequent use of the proposed development site for the scheme even if it would involve interference with private third party rights and interests, but subject to the payment of statutory compensation to any affected third parties who suffer loss in terms of a reduction in the value of their land. In effect, the development is rendered immune from private law proceedings, for example a claim for damages or an injunction, but an injured third party whose rights are overridden is instead entitled to receive statutory compensation. The third party rights are not extinguished, but they are rendered unenforceable against the development, so that neither an injunction nor damages can be obtained.

6.7 It is fairly common practice, where land is being assembled for a major redevelopment scheme, for these statutory provisions to be relied on to ensure that a scheme which is desirable in the public interest is not inhibited or prevented from coming forward by the existence of private third party rights and that any third party who suffers a relevant loss is entitled to claim statutory compensation.

6.8 At the time the CPO was made, the relevant statutory provisions on overriding third party rights and the payment of statutory compensation were contained in section 237 of the 1990 Act. The relevant provisions are now contained in sections 203 – 205 of the Housing and Planning Act 2016 ("**2016 Act**").

Type of right and interests which may be overridden under section 203

- 6.9 The type of third party rights and interests that may be overridden under section 203 of the 2016 Act include easements such as rights to light or private rights of way, natural rights to support and a range of other rights annexed to land, as well as contractual restrictions on the use of land including restrictive covenants (e.g. prohibiting the sale of certain goods or particular uses of the land). Certain protected rights of statutory undertakers and electronic communications code operators and the National Trust cannot be overridden under section 203.
- 6.10 In the context of this scheme, any relevant third party rights and interests would mainly benefit land surrounding the development site, rather than land within the site. The main potential for such interference relates to rights to light and possibly ancient restrictive covenants on parts of the land. However, with a site of this complexity it is conceivable that there may be other third party rights which might otherwise inhibit development and the application of section 203 is considered to be important to provide certainty that any such rights would not prevent the development proceeding.

Application of section 203

- 6.11 Section 203 applies, among other cases, where a local authority acquires land or appropriates land it already owns "for planning purposes". There are four basic requirements in section 203, all of which must be satisfied if the overriding provisions are to apply to a development:
- a. There must be planning permission for the development (i.e. the building or maintenance works and/or the use) that causes the interference with or breach of third party rights.
 - b. The development must be undertaken on land that has either been:
 - appropriated by the local authority "for planning purposes"; or
 - acquired by the local authority for planning or certain other purposes.
 - c. The local authority could (at least in principle, see below) acquire the land compulsorily for the purposes of the development.
 - d. The development must be related to the purposes for which the local authority acquired or appropriated the land.
- 6.12 Provided the four criteria in section 203 are met, it is irrelevant who carries out the development. The overriding provisions in section 203 would therefore apply to development undertaken by a purchaser or transferee of land from the local authority.

"Planning purposes" in relation to Section 203

- 6.13 "Planning purposes" are defined (in section 246(1) of the 1990 Act) to include land which is acquired compulsorily under section 226 of the 1990 Act or by agreement under section 227 of that Act, or has been appropriated for purposes for which land could be acquired under those sections. ("Appropriation" of Council land is referred to in section 10 of this report.) The

criteria for the application of the powers to acquire land under section 226 and section 227 are contained in section 226. First, under s226(1):

- (a) that the authority thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or
- (b) that the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

6.14 In the present case 226(1)(a) would apply. (This is the power under which the CPO was made.) Section 226(1A) stipulates that a local authority must not exercise the power under section 226(1)(a) unless it also thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:

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

6.15 In the present case it is relatively straight forward to see that criteria in subparagraphs 6.11 a., b. and d. above for the application of section 203 would be met:

- a. there is planning permission for 2018 Scheme;
- b. the relevant land will have been acquired by the Council under planning powers (initially section 226 in relation to the CPO land and section 227 in relation to all the land comprised in the Council Lease);
- d. the purposes for which the Council is to acquire the land are to enable the Whitgift development to be carried out. The purposes of the works and uses which have the potential to interfere with third party rights will be to carry out that development. The purpose of the works/uses and the purposes of acquisition of the land are clearly related.

6.16 Criterion c. in paragraph 6.11, which stipulates that the Council "could acquire the land compulsorily" for the purposes of the development, would also be satisfied in the present circumstances.

6.17 The Council has a power to acquire land compulsorily for planning purposes under section 226(1)(a) of the 1990 Act and the exercise of that power in respect of the CPO land has been confirmed in the CPO. In relation to the Green Park House land (which was not included in the land to be acquired under the CPO), it is considered that the requirements for the application of section 226(1)(a) (described in paragraphs 6.13 and 6.14) would also be met. This land is to be acquired by the Council under the Council Lease in order to facilitate comprehensive redevelopment of the Whitgift Centre and surrounding land. It is considered that there are clear grounds for the Council to conclude that the inclusion of the Green Park House land in the 2018

Scheme would contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of its area in the light of the widely acknowledged, longstanding need to secure the regeneration of Croydon town centre (summarised in the background section of this report) and as part of the comprehensive regeneration of the town centre.

Third parties compensation

- 6.18 Section 204 of the 2016 Act provides for compensation to be paid for any interference with a relevant right or interest or breach of a restrictive covenant which is authorised by section 203. That compensation is calculated on the same basis as compensation under sections 7 and 10 of the Compulsory Purchase Act 1965, namely, based on the reduction in the value of the owner's land.
- 6.19 In the present case, the Developer would be liable to pay the compensation, but if it fails to do so, the Council must make the payment. The ILTA includes provisions under which the Developer indemnifies the Council in respect of any compensation the Council is required to pay as a result any infringement of a third party right.

Implications of the inclusion of the Green Park House land and other revisions to the redevelopment proposals implicit in the 2018 Scheme

- 6.20 As noted above, the site of Green Park House was included in the CPO as "blue land" for the acquisition of new rights such as access and oversailing with cranes, but not for outright acquisition of the land. The Developer has however acquired sufficient land interests in the Green Park House land to enable it to be incorporated in the site and redeveloped. This provided the basis for the improved layout of the 2018 Scheme for which planning permission has been granted.
- 6.21 When the CPO was made it was known that the owners (including lessees and tenants) of certain properties surrounding the proposed redevelopment site could potentially be affected by interference with their rights or interests, for example rights to light or the benefit of restrictive covenants on use of the proposed redevelopment site.
- 6.22 As a consequence of the land assembly arrangements under the ILTA, sections 203 and 204 of the 2016 Act would generally apply without further decisions on the part of the Council, as all the requirements of section 203 would be met as summarised above. In respect of the (comparatively limited) land interests within the site which are currently in Council ownership, the ILTA provides for these land interests to be appropriated by the Council for planning purposes prior to their transfer to the Developer, which would in itself have the effect of engaging sections 203 and 204 of the 2016 Act to override any affected third party rights and interests, subject to payment of compensation (see further section 10 below regarding the appropriation of Council land interests within the site).
- 6.23 The 2014 Permission and the 2018 Permission are outline permissions based on maximum and minimum parameters. The extent of any properties which may be affected by interference with rights to light as a result of the redevelopment under either scheme is largely dependent on the height and

configuration of the buildings which are approved for planning purposes at reserved matters stage. Consequently, it is not possible at this stage to make a fully precise assessment of the potential impact of the development on surrounding properties, particularly with regard to any interference with rights to light.

- 6.24 As a precautionary measure, however, all known landowners whose rights or interests might *potentially* have been affected by development in accordance with the 2014 Permission were identified in the schedule which formed part of the CPO and were given formal notification when the CPO was made and when it was confirmed. This included giving notice to more than 500 parties as owners or occupiers of properties where rights to light might potentially be affected based on an assessment of the maximum parameters of the 2014 Permission. In total some 30 objections from these parties were received.
- 6.25 Further analysis has been undertaken by the Developer's consultant team to identify any parties whose rights to light might potentially be affected by development in accordance with the 2018 Scheme. This was necessary, in particular, given the inclusion of the Green Park House land within the redevelopment site (which was not included in the CPO for acquisition) and the reconfiguration of the residential towers under the new permission. As explained above it is not possible to fully assess the precise impact of the development on any individual properties at this stage, as this will largely depend on the height and configuration of the towers approved at reserved matters stage. For the purpose of identifying properties as potentially affected by the development it was assumed that the 2018 Scheme including all five towers would be built to their maximum heights (although this is unlikely to be the case).
- 6.26 The Developer has indicated that given the need to fully identify in due course the parties (a) who hold the benefit of rights to light and (b) who would suffer any interference (or the extent of any such interference) as a result of the finally approved and developed scheme it has not yet been possible to carry out any meaningful negotiations with individuals for the release of their rights by agreement. However, the Developer has stated that following finalisation of the form of the development and as matters progress towards delivery, it will be able to enter into detailed discussions with any owners or occupiers who may be entitled to statutory compensation.
- 6.27 The analysis undertaken by the Developer based on the maximum parameters of the 2018 Scheme identified a further 20 properties, in relation to which there may be a new or greater impact of significance in comparison with the assessment undertaken in respect of development pursuant to the 2014 Permission. In order to give early notification to the potentially affected parties and to enable them to comment at this stage, on 24 January 2018 the letter attached at Appendix 4 was sent by the Council to all known owners and occupiers of the 20 properties listed in the schedule which is also included in Appendix 4. The 20 properties are predominantly commercial premises but they also include some dwellings and residential buildings which comprise a number of flats. The list of addressees was prepared on a comprehensive basis to include all known owners and occupiers of the relevant properties, even though it cannot be ascertained at this stage how many of the recipients would have the benefit of a right to light or whether any such right might be

interfered with by the development. For example some of these parties may own or occupy a property which would experience no change in the amount of light received as a result of the development. In addition, in some cases any right to light may have been expressly excluded, for example through the terms of a lease or tenancy agreement. A total of 203 letters were sent to owners and occupiers of the 20 properties (including 35 letters sent to parties outside the UK).

6.28 The letter explained the effects of sections 203 and 204 of the 2016 Act and that at this stage it could not be ascertained with precision whether the recipient's property would be affected or the extent of any effects. It invited recipients to discuss the position with the Council's advisers, Deloitte and/or to make comments should they wish to do so. In response, the Council has received written responses from only three parties and Deloitte has received telephone enquiries from two parties. The written responses comprised:

- a. a letter on behalf of the company which owns Lunar House in Wellesley Road to express disappointment that the Developer had not consulted them on the preliminary redevelopment scheme to enable them to gauge the right to light impact on their property. The Council has responded to explain that any potential impact on their property cannot be assessed at present (for the reasons given above). The Developer's contact details and those of Deloitte were included in the response so that the company could discuss the position further should they wish to do so;
- b. an email from the owners of Alhambra House requesting an extension of time to respond, to which the Council agreed. This was followed by a further email from the owners requesting an assessment of the impact on their property once the proposals are developed. Officers have responded explaining that the Council will not be undertaking assessments of individual properties, but that the Developer will be responsible for considering the approach to assessing the extent of any impacts when the relevant part of the development comes forward. The officers' response also reiterates that, in the event that the owners have a right to light which is materially interfered with by the completed development they would be entitled to claim statutory compensation from the Developer, and states that at that stage the Developer will consider meeting reasonable professional costs in connection with such a claim; and
- c. a letter from agents acting on behalf of St Michael's church who support the regenerative nature of the proposed development but are concerned about the potential right to light impact on the church and have indicated that they are keen to explore design options, if significant design changes are possible. They conclude:

In the event that this situation cannot be resolved via the design process to respect the Rights to Light enjoyed by the Church, evidently the proposals will proceed via the statutory provisions you have outlined. We believe it would be appropriate for the reasonable costs of their Rights to Light and Neighbourly Matters consultant, [] of Rapleys LLP, to be paid for to provide them with an independent review.

A response has been sent to the agents explaining that as the planning application was based on maximum and minimum parameters there is some flexibility within those parameters as to the final massing and detailed design of the scheme. It reiterated that whilst at this stage it is not possible to fully assess the extent of potential impact on rights to light to individual properties, the Developer has confirmed that in the event that the owners of the Church have a right to light which is materially interfered with by the completed development, at that stage the Developer will consider meeting reasonable professional costs in connection with any claim.

- 6.29 The telephone queries to Deloitte comprised a call from an owner to clarify which property the Council's letter of 24 January 2018 related to and a call on behalf of the Land Registry (an occupier of Trafalgar House) to ask about procedure and whether it was necessary to take any immediate action to protect their position in respect of any claim. Both enquiries have been satisfactorily addressed by Deloitte.

Restrictive covenants

- 6.30 In addition to the rights to light issues described above, there is a restrictive covenant created by a conveyance in 1922 affecting part of the Green Park House site which (if enforceable) would prevent any building constructed on the land being used "for the manufacture or sale of any kind of intoxicating liquors". The covenant was imposed by the owners of the former Ruskin House who at the relevant time were associated with the temperance movement. Part of this land may be used for the development of the new Marks & Spencer store which could, among other things, sell alcohol.
- 6.31 Despite investigations, neither the Developer nor the Council have been able to locate the original or any copy of the 1922 conveyance in order to identify the extent of the land which benefits from this restrictive covenant. It is considered doubtful that there is now any party with the ability to enforce this ancient restrictive covenant, even if it is breached by the development.
- 6.32 In addition, a conveyance to the Council of part of the Green Park House land in 1967 contained a restrictive covenant on using the property for a printing business. Whilst this covenant might have been intended to benefit other land in the neighbourhood owned by the seller (HR Grubb Limited), the extract of the conveyance at the Land Registry does not identify the benefitting land and neither the Developer nor the Council have been able to do so. It is therefore not possible to identify whether there is now any party who holds the benefit of this restrictive covenant. Research at Companies House indicates that HR Grubb Limited changed its name in 1976 and the company was subsequently dissolved in 1998.
- 6.33 As explained above, the land assembly provisions under the ILTA once amended would trigger the application of section 203 of the 2016 Act so as to render the restrictive covenants unenforceable against the development, subject to payment of compensation to any third party who suffers loss as a result of being unable to enforce the restrictive covenants, should any such party exist. Again, this is necessary to ensure that the development is not inhibited by any such third party rights.

Summary - implications of the 2018 Scheme for third party rights and the inclusion of the Green Park House land and issues for consideration

- 6.34 The further assessment undertaken by the Developer indicates that implementation of the 2018 Scheme would have some additional implications for third party rights in comparison with the development authorised by the 2014 Permission (based on maximum parameters for the development).
- 6.35 All known landowners and occupiers whose rights or interests might potentially have been affected by development in accordance with the 2014 Permission were given formal notification in connection with the CPO. Some 30 objections were received and were taken into account before the Secretary of State's decision was made to confirm the CPO.
- 6.36 The Developer has identified a further 20 properties around the site in relation to which there is the potential for a new or greater impact of significance on rights to light in consequence of development of the 2018 Scheme. There are also two ancient restrictive covenants which, if enforceable, might be breached by the proposed development (including the use) of the Green Park House land. In so far as it has been possible to identify the potentially affected third parties, they have been notified by the Council and given the opportunity to comment.
- 6.37 If Members approve the recommendations in this report regarding amendment of the ILTA to facilitate the 2018 Scheme and the land assembly provisions of the amended ILTA are put into effect, the criteria for the application of section 203 of the 2016 Act would be met. The effect of section 203 would be to override private third party rights when development of the land comprised in the 2018 Scheme, including the Green Park House land, is carried out and require statutory compensation under section 204 to be paid to any party who suffers a relevant loss.
- 6.38 Given the effects on third parties of the land assembly provisions in the ILTA and the application of section 203, Members will wish to be satisfied that the public interest in the development proceeding is sufficient to justify the interference with the rights of third parties and that reliance on statutory powers to override their rights is proportionate (as is referred to further in section 11 below regarding human rights). Whilst both the Council and the Secretary of State were satisfied that this was the case in relation to the making and confirmation of the CPO (which in itself involved engaging the former provisions on overriding third party rights), given the updated redevelopment proposals and the inclusion of the Green Park House land in the redevelopment site it is necessary for Members to consider the revised implications for third parties which are described in paragraphs 6.20 to 6.33 above.
- 6.39 Over 200 letters were sent by the Council to potentially affected third parties on 24 January 2018 in relation to potential impacts on rights to light in respect of the 2018 Scheme, to which written responses from three parties and two enquiries have been received which are reported at paragraphs 6.28 and 6.29.
- 6.40 In deciding whether to agree the recommendation in paragraph 1.1 on the amendment of the ILTA to facilitate the 2018 Scheme the potential affects of

that development on third party rights and the responses to the Council's letter of 24 January 2018 are clearly important considerations. Other relevant matters include:

- a. as demonstrated by the grant of the 2018 Permission, the 2018 Scheme is acceptable in planning terms;
- b. there is a widely acknowledged, long standing need to secure the regeneration of Croydon town centre. The public benefits of the 2018 Scheme are considered by officers to be at least equal, if not greater than those of those which would result from implementation of the 2014 Permission and would be entirely consistent with the purposes of the CPO. In officers' view, implementation of the 2018 Scheme would be desirable in the public interest and would bring significant benefits in terms of promoting the economic, social and environmental well-being of the area;
- c. although the full extent of the impact of the finally approved development on third party rights cannot be assessed with precision at this stage, it is possible that implementation of the 2018 Scheme could be inhibited or prevented by the existence of third party rights or interests over the land;
- d. reliance on statutory powers to override any such rights is considered to be necessary because:
 - i) given the town centre location of the proposed redevelopment and the scale of development needed to meet the regeneration objectives, interference with third party rights and/or interests cannot reasonably be avoided;
 - ii) any such third party rights or interests cannot reasonably be released by agreement with affected owners or satisfactorily addressed by other means within a reasonable timescale, particularly given the uncertainty at this stage as to the precise impact on individual properties;
 - iii) the Developer has indicated that the proposed development is unlikely to proceed unless statutory powers to override the third party rights or interests are engaged to provide certainty;
- e. any third party who suffers loss as a result of interference with or breach of their rights would be entitled to statutory compensation.

6.41 Whilst it is a matter for consideration by Members, it is officers' view that the public interest in the development proceeding is sufficient to justify the interference with the rights of third parties and that reliance on statutory powers under section 203 of the 2016 Act to facilitate the 2018 Scheme, subject to payment of compensation under section 204 where applicable, would be proportionate.

PART 2

(This Part relates to recommendation 1.2)

7. ARRANGEMENTS FOR LAND ASSEMBLY UNDER THE ILTA

Overall structure of the land assembly provisions

- 7.1 Before the Developer is entitled to serve a Drawdown Notice ("DD Notice") requesting the Council to acquire land under the CPO or to serve a Call Option Notice calling for the Council to transfer its land within the site to the Developer, certain pre-conditions and other requirements must be satisfied which are described in paragraphs 7.8 - 7.19 below.
- 7.2 The DD Notice will request that the Council makes one or more general vesting declarations ("**GVD**") and notices to treat ("**NTT**") in order to exercise the CPO powers in relation to outstanding third party interests specified in the DD Notice. In addition, the Developer may serve one or more Call Option Notices on the Council requiring the Council to transfer specified Council land interests within the redevelopment site to the Developer.
- 7.3 The Developer has confirmed that it intends to serve a DD Notice in respect of all the outstanding land interests subject to the CPO in one tranche and subsequently to acquire all of the Council's land interests in the development site pursuant to a single Call Option Notice. Subject to approval of the recommendations in this report, the Developer intends to serve the DD Notice on the Council on or around 19 June 2018 and the Call Option Notice in August 2019.
- 7.4 Following the service of a valid DD Notice and the subsequent acquisition by the Council of land under the CPO and thereafter the exercise of the Call Option by the Developer in respect of the Council land:
- a. all the: (i) land acquired by the Council under the CPO is to be transferred to the Developer and (ii) the Council land subject to a Call Option Notice is to be transferred to the Developer (as noted, the Developer may only request a transfer of the Council land with the intention of enabling the development to proceed);
 - b. before commencing development the Developer must transfer all that land, together with the land within the site that it has acquired by agreement, to the Whitgift Foundation (the owner of the freehold of the major part of the redevelopment site);
 - c. immediately thereafter the Foundation is to grant a "**New Headlease**" to the Developer: a single unified lease in respect of all of the redevelopment site;
 - d. the Developer is then required to grant a lease of all the land to the Council (the "**Council Lease**"), which the Council is to acquire under the planning powers in section 227 of the Town and Country Planning Act ("**1990 Act**").
 - e. the Council then grants the development lease to the Developer under the power in section 233 of the 1990 Act to dispose of land held for planning purposes ("**Developer Leaseback**").

These steps would take place sequentially, with steps b. - e. taking place immediately after one another. The structure chart at Appendix 3 illustrates these arrangements.

7.5 The Developer has confirmed that its contractual arrangements with the Whitgift Foundation remain in place and will be exercised at the appropriate time, such that the New Headlease to the Developer can be granted immediately following assembly of the required land. The Developer has confirmed that the land proposed to be demised by these leases is sufficient to enable development pursuant to the 2018 Permission to be implemented.

7.6 Clauses 4 - 7 of the ILTA deal with drawdown of the third party land, exercise of the Call Option(s) for Council Land, best consideration for land disposals and the further steps the Developer must take to prepare for development. The relevant terms of the ILTA are described below taking into account the amendments proposed in Part 1 of this report and on the assumptions of a single DD Notice and a single Call Option Notice.

Service of a Drawdown Notice (clause 4 ILTA)

7.7 Although the ILTA would allow for a series of DD Notices to be served on the Council, as noted, the Developer has confirmed its intention to serve a single DD Notice. The following summarises the key provisions in such a case.

7.8 Before the Developer can serve a DD Notice on the Council:

- a. the three pre-conditions described below must all be satisfied; and
- b. the Developer must have served notice on the Council stating whether it intends to implement the 2014 Permission or the 2018 Permission;

7.9 The Developer may not acquire any third party interests specified in a DD Notice unless:

- a. the DD Notice includes all the third party land interests required to carry out the Development (unless other criteria in the ILTA are met);
- b. the Developer serves notice confirming that the third party land interests specified in the DD Notice are required for the purposes of the development, providing reasons why they are required at that date (a "**RFD Notice**");
- c. there are no sums due but outstanding in respect of invoices issued by the Council in relation to the Developer's obligations to meet the costs of CPO land acquisition or otherwise to indemnify the Council (except where there is a bona fide dispute);
- d. the third party interest is not identified in the Acquisitions Schedule as being excluded.

7.10 The three pre-conditions which must all be satisfied before a DD Notice can be served are:

1. **Planning Pre-condition:** that planning permission has been obtained and the judicial review period has expired without challenge or any

challenge has been determined or the parties agree to an earlier date for discharge of the condition;

2. **CPO Pre-condition:** that a satisfactory CPO has become operative and the challenge period has expired without challenge or any challenge has been determined. This condition was satisfied on 23 February 2016, seven days after a claim by Bouwfonds, the former owners of the Whitgift and Allders car parks, was withdrawn;
3. **Reasonable Prospect of Delivery Pre-condition:** i.e. the condition referred to in this report as the "RPD Pre-condition" - that the Council, acting reasonably, is satisfied that there is a reasonable prospect of delivery of the whole of the development (comprising the retail component and the residential component) within a "Reasonable Timescale", defined to mean:
 - a. substantial start on site of the retail component within five years of the "Confirmation Date" (which is deemed to be 23 February 2016) - the "Retail Commencement Target Date";
 - b. practical completion of the retail component within nine years of the Confirmation Date or if earlier, 4 years from the programmed date for substantial start on site of the retail component (ignoring certain agreed demolition) - the "Retail Completion Target Date";
 - c. disposal or substantial start on site of the residential component within ten years of the Confirmation Date – the "Residential Commencement Longstop Date"; and
 - d. practical completion of the residential component within twenty years of the Confirmation Date the "Residential Completion Longstop Date".

7.11 The RPD Pre-condition is the main subject of this Part of the report.

7.12 The ILTA requires the Developer to provide a statement and supporting evidence covering specified matters to assist the Council in determining whether the RPD Pre-condition is satisfied. These matters are summarised in section 8 of this report together with a non-confidential summary of the advice of officers and the Council's external advisers in respect each of the points. Although information about these particular matters is intended to assist the Council in reaching a decision on the RPD Pre-condition, it does not comprise an exhaustive or definitive list of the matters the Council can or should take into account. The overall question is whether, acting reasonably, the Council is satisfied that there is a reasonable prospect of delivery of the whole Development, comprising the Retail Component and the Residential Component, within a Reasonable Timescale (as defined above).

7.13 The ILTA specifies the information which must be set out in the DD Notice. This includes identifying the third party land and new rights to be acquired, the method by which the Developer proposes that each interest is to be acquired (GVD or NTT) and the timeframe for making the GVD or serving NTT.

Exercise of the Call Option in respect of the Council land (clause 5 ILTA)

- 7.14 The ILTA includes the grant of an option to the Developer to purchase specified Council land interests within the site at any time after the three pre-conditions for drawdown of third party land described in paragraph 7.10 have been satisfied and prior to the "Retail Commencement Target Date" (i.e. 23 February 2021). As noted, the Developer has confirmed that it envisages serving a single Call Option Notice in August 2019 in respect of all the relevant Council interests.
- 7.15 The relevant Council land interests comprise the Council's interests in the Allders and Whitgift car parks and the subsoil of a small area of land in Poplar Walk and are described in paragraphs 10.1 and 10.13 and are shown in the indicative plans at Appendices 6 and 7. If the recommendations in paragraph 1.2 are approved, the Executive Director of Place, acting in consultation with the Director of Law & Monitoring officer, will be given delegated authority to appropriate the Council interests in the two car parks for planning purposes in the event that a valid Call Option Notice is served on the Council.
- 7.16 Following satisfaction of the pre-conditions for drawdown the Developer may serve a Call Option Notice on the Council to trigger the transfer of the specified Council land interests to the Developer.
- 7.17 To exercise the Call Option the Developer must serve a Call Option Notice in a prescribed form, together with two further notices:
- a. a RFD Notice confirming that the Council's land interests are required for the development; and
 - b. a DP Notice (unless such a notice has been served in the preceding 6 months). This notice must include confirmation that the level of return demonstrated by the appraisal of the Retail Component is sufficient to proceed with that Component and that the Developer intends to commence and complete the Retail Component within the timescales indicated in the most recent iteration of the Anticipated Delivery Programme.
- 7.18 The Developer may not serve notice to exercise the Call Option if a "COP Notice" has been served by the Council and the Developer has not complied with that notice. A "COP Notice" is a notice requesting the Developer to confirm progress in preparing for commencement of development. To date, no such notice has been served by the Council.
- 7.19 As noted, the Developer may only take a transfer of the Council land with the intention of enabling the development to proceed. In general, completion of the transfer of the Council land pursuant to the Call Option is to take place immediately before the date on which the New Headlease is to be granted to the Developer by the Whitgift Foundation (although in the case of the Council's interest in the Allders car park, transfer may take place at an earlier date if this is necessary to facilitate its demolition).

Best consideration for land disposals by the Council (clause 6 ILTA)

- 7.20 The ILTA specifies that the consideration to be paid by the Developer to the Council for the land interests in the redevelopment site (including those to be acquired from third parties under the CPO and those currently owned by the

Council) must accord with section 233 of the 1990 Act. That section requires the Council to obtain the best consideration that can reasonably be obtained (unless the consent of the Secretary of State is obtained or a short lease granted). It is generally acknowledged that in assessing "best consideration" for the purpose section 233, the manner of the disposal and the conditions the Council has imposed in order to secure the planning objectives of the disposal can be taken into account. The ILTA includes an appendix setting out a "Best Consideration Mechanism", prepared by the Council's advisers, Deloitte, which describes in greater detail how the calculations of best consideration are to be undertaken. The calculation of best consideration is to be undertaken at the time of transfer to the Developer of third party interests and Council land interests.

8. DEVELOPER'S EVIDENCE IN SUPPORT OF THE "REASONABLE PROSPECT OF DELIVERY PRE-CONDITION"

- 8.1 Clause 4.2 of the ILTA sets out the information which the Developer is required to provide to assist the Council in determining whether the RPD Pre-condition is satisfied.
- 8.2 The Developer has provided information to the Council and its external advisers in a confidential data site hosted by its solicitors. The Developer considered this necessary in order to protect its commercially sensitive confidential information.
- 8.3 The Developer's Summary Indicative Programme for implementation of the scheme is contained in Appendix 5. It envisages that permission for the 2018 Scheme (rather than the 2014 Permission) will be implemented and that the retail component would open for trade in the the Spring of 2023, with first occupation of the residential component in the last quarter of 2024.
- 8.4 The table below summarises the requirements of clause 4.2 of the ILTA (taking account of the amendments proposed in Part 1) and the items supplied by the Developer in each respect. The exempt report in Part B includes a fuller analysis.

Sub-clause 4.2 ILTA	Requirement	Supplied by Developer
(a)	Updated Anticipated Delivery Programme	The Developer has provided two programmes showing key milestones for the development. Together these constitute the Anticipated Delivery Programme.
(b)	Anticipated Drawdown Programme	The Developer has provided a summary of the key dates for the the sequencing for transfer of Third Party Interests, gaining of vacant possession, and anticipated date of the grant of the Council lease It has also provided a schedule showing the

		target dates for possession for each interest in the Order Land.
(c)	Statement and supporting evidence showing progress to date and anticipated future steps in preparing for commencement of the Retail Component to meet the "Retail Commencement Target Date" the "Retail Completion Target Date" (see paragraph 4.7) including the points listed as (i) – (viii) below	
(i)	Detailed planning and design including programme for reserved matters approval	The Developer has provided a set of documents in relation to the size of the scheme and layout of the scheme, and programmes for the discharge of planning conditions and for reserved matters.
(ii)	Leasing (including a leasing strategy for the development and any parts of the existing Whitgift Centre during phasing of the development)	The Developer has provided a "Pre-Letting Strategy" which sets out the proposed tenant mix, timetable for leasing, and the marketing approach. It has also provided agreed Heads of Terms with a cinema operator.
(iii)	Procuring a building contractor and negotiation of constructions contracts for the Retail Component including a programme	The building contract has not yet been entered into, but other material has been provided to explain the way in which this is to proceed.
(iv)	Continued design of the Retail Component	The Developer has provided design information up to RIBA Stage 2 and also explained the timetable for proceeding to RIBA Stage 3.
(v)	The anticipated funding position for the Retail Component (including internal and external funding)	The Developer has provided the Council's advisers with a funding statement, which identifies the sources of funds necessary to carry out the development. This has been confirmed by the respective parent companies.
(vi)	Confirmation that (A) the level of return demonstrated by the appraisal of the Retail Component is sufficient to	The Developer has provided the Council's advisers with a funding statement, which confirms that the level of return demonstrated by the appraisal of the Retail Component is sufficient to proceed with that Component and that the Developer intends to commence and complete the Retail Component. This

	proceed with that Component and (B) that the Developer intends to commence and complete the Retail Component	has been confirmed by the respective parent companies. In support of the level of return that the Developer has confirmed is sufficient to proceed, it has provided viability information to the Council's advisers
(vii)	Progress with pre-letting the new anchor store in the South East quadrant of the Site	The Developer has provided agreed Heads of Terms for a new anchor store in the south east quadrant of the site, which have received the board approval of the anchor store and of the Developer.
(viii)	Progress with pre-letting the new Marks & Spencer store in the Northern section of the Site	The Developer has provided Heads of Terms that have been agreed for the letting of the new Marks & Spencer store in the Northern section of the site, which received the board approval of Marks & Spencers and of the Developer. The Developer has updated the Council that in the course of negotiations, there have been changes to the terms that were agreed, which will require additional board approvals from Marks & Spencer.
(d)	Written notice of which Planning Permission it intends to implement	The Developer has informed the Council that it intends to implement the 2018 Permission, formal notice is to follow shortly.

8.5 In addition to the specified information required by clause 4.2 to the ILTA set out above, the Council and its external advisers have requested other material that is relevant to the RPD Pre-Condition.

8.6 In reviewing all of the documents and information supplied by the Developer in respect of the specific items referred to in the ILTA and the additional matters, officers and the Council's advisers have considered four key areas which contribute to the consideration of the RPD Pre-Condition. The conclusions reached by officers and the Council's advisers is summarised under the following headings:

- Programme and Procurement: The programmes provided show the commencement and completion of the Development within the timescales required by the ILTA. Given the overall timetable, the absence of a building contract is understandable. The overall position is satisfactory.
- Funding and Finance: The information provided and an analysis of the Developer's financial statements is sufficient to demonstrate that the

Developer (through its joint venture partners) has a reasonable propensity to fund the Croydon development. The overall position is satisfactory.

- **Leasing and Anchor Stores:** The Developer has made demonstrable progress in advancing agreements with its two proposed anchor stores and assuming that agreement with those parties can be finalised, the wider leasing strategy is considered to be broadly reasonable. The joint press release issued by CLP and John Lewis Partnership on 31 May 2018 indicates that John Lewis Partnership is confident that it will proceed to open a store in the new scheme.
- **Development Appraisal and Viability:** the scheme can be considered to be at the margins of what is deemed viable, however the position on viability supports the view that there is a reasonable prospect of delivery.

8.7 Officers and the Council's external advisers have given careful consideration to all of the documents and information supplied by the Developer in relation to the RPD Pre-condition and their overall advice to Members is that, having regard to all of the material and the circumstances, the Cabinet may reasonably determine that the RPD Pre-condition has been met. The matter is more fully set out in the exempt report in Part B of the agenda for this meeting, by reference to a report by the Council's external advisers, Deloitte LLP.

9. STEPS FOLLOWING SERVICE OF A VALID DRAWDOWN NOTICE

9.1 Clause 7 of the ILTA describes steps the Developer must take following first acquisition of land from the Council pursuant to a DD Notice in order to prepare for commencement of development. These steps include progressing the matters summarised in the table in paragraph 8.4, such as detailed planning and design, pre-letting the Retail Component including the two new anchor stores, procuring a building contractor and progressing construction contracts, reviewing the funding arrangements and undertaking updated appraisals for the Retail Component.

9.2 As mentioned, the DD Notice must specify the land interests and new rights to be assembled by exercising the CPO powers. The Council would exercise the CPO powers by making one or more GVDs and serving NTTs on some individual interests and in respect of the new rights. Land subject to a GVD would vest in the Council no earlier than 28 days after the date of service of notice that the GVD has been executed. Where NTT is served, the land interests and new rights would be conveyed to the Council (or potentially direct to the Developer) once compensation has been agreed or settled by the Upper Tribunal (Lands Chamber), or the land has been transferred by deed poll, so transfer of title to the land, or the creation of the new rights, is likely to take place at a later date. However, possession of the property subject to a NTT could be taken following a minimum period of 14 days after service of a notice of entry. (The time periods for vesting under a GVD and taking possession pursuant to a NTT and notice of entry have been extended to

three months by the Housing and Planning Act 2016, but only in respect of compulsory purchase orders confirmed on or after 3 February 2017.)

- 9.3 Within 5 working days prior to any GVD being executed or NTT being served the Developer must pay, into a specially created escrow account, a sum equal to 100% of the Approved Estimate for the relevant third party interests proposed to be acquired.
- 9.4 As noted, the ILTA also entitles the Developer to serve a Call Option Notice on the Council to trigger the transfer of specified Council land interests within the development site to the Developer. Prior to the transfer, the Council is to appropriate its land for planning purposes (other than the small area of land in Poplar Walk which is proposed to be stopped up) as described in the following section.
- 9.5 The "best consideration mechanism" prescribed in the ILTA would apply to all land to be transferred to the Developer (third party and Council), to ensure that this requirement of section 233 of the 1990 Act is satisfied.

10. APPROPRIATION OF COUNCIL LAND WITHIN THE SITE AND DISPOSAL TO THE DEVELOPER

- 10.1 As noted above, the ILTA (clause 5) grants the Developer an option to purchase certain Council owned land within the site once the pre-conditions for drawdown of third party land have been satisfied. The option can be exercised by service of a Call Option Notice on the Council, together with certain other notices. Completion of the transfer of the Council land to the Developer is to take place immediately before the New Headlease is due to be granted to the Developer by the Whitgift Foundation, unless otherwise agreed. The Council land within the site which may be the subject of a Call Option Notice includes the Council's interests in the Alder's car park (and associated land) and the Whitgift car park:

Title Number	Property	Freehold/ Leasehold
SGL564898 (part)	Land and buildings on the North side of Dingwall Avenue forming part of title number SGL564898 including such interest as the Council may hold in the subsoil of a half width of the adjacent public highway in Dingwall Avenue	Freehold
SGL215330	Multi-Storey Car Park, and Public Conveniences at The Whitgift Centre, Wellesley Road, Croydon	Leasehold (from 25 December 1968 to 23 December 2067)

- 10.2 Appendix 6 contains an indicative plan showing the location of these Council land interests, both of which are subject to leases already held by the Developer. These Council land interests are proposed to be appropriated for planning purposes before they are transferred to the Developer if a valid Call Option Notice is served.
- 10.3 The precise powers under which the Council holds these two plots of land are not recorded but the land is treated as being held for general investment purposes and it is likely that the general powers to acquire land for the "the benefit, improvement or development" of the Council's area under section 120(1)(b) of the Local Government Act 1972 ("**1972 Act**") would apply. To put the position beyond doubt and ensure that the land is held for the relevant purposes, it is proposed that this land should be appropriated by the Council for planning purposes (i.e. the purposes for which land could be acquired by agreement under section 227 of the 1990 Act).
- 10.4 Section 122 of the Local Government Act 1972 enables the Council to appropriate land held for one purpose to another purpose, provided that the land is no longer required for the purpose for which it is held immediately before the appropriation and the Council would (in principle) have power to acquire land by agreement for the "new" purpose.
- 10.5 The Council must give specific consideration to the question of whether the land continues to be required for its existing purpose and in doing so it must consider the comparative needs in the public interest for the existing use and the proposed new use (it is not necessary that the land should be surplus or unused). It is to be noted that the Council does not currently receive any significant income from either of these two properties. It is clear that the land is, however, required to enable the Whitgift redevelopment.
- 10.6 In relation to the requirement that there should (in principle) be a power to acquire land by agreement for the new purpose: section 227 of the 1990 Act authorises acquisition of land by agreement for planning purposes. The criteria for the application of that section are the same as those for section 226 of the 1990 Act which are described in paragraphs 6.13 and 6.14 above. For the reasons referred to above, the Council can be satisfied that if (theoretically) it were to be acquiring the land, doing so would facilitate redevelopment in relation to the land and that the redevelopment would contribute to the economic, social and/or environmental well-being of the area.
- 10.7 One implication of the land being appropriated for planning purposes is that sections 203 and 204 of the Housing and Planning Act 1990 would apply to override any third party rights which might inhibit development of this land, subject to payment of statutory compensation. Development of this land was contemplated when the CPO was made and potentially affected third parties were notified as described in paragraph 6.24 above.
- 10.8 If the land is appropriated for planning purposes, section 233 of the 1990 Act would apply to its disposal to the Developer (as it would in respect of all the land to be included in the Developer Leaseback). Section 233 empowers the Council to dispose of land held for planning purposes in such manner and subject to such conditions as appear to the authority to be "expedient" to secure specified planning purposes namely:

- (a) the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by themselves or by any other person), or
 - (b) the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of the area of the authority.
- 10.9 Thus the terms of any disposal of planning land by a local authority should secure that the planning objectives of section 233 (and the public benefits of the intended development) are achieved.
- 10.10 The authority must also obtain "best consideration reasonably obtainable" for the disposal of planning land, but taking account of the manner and terms of the disposal aimed at securing the planning purposes referred to above.
- 10.11 The terms of the ILTA are considered to be sufficient to satisfy the requirements of section 233 of the 1990 Act.
- 10.12 It is considered that the relevant requirements of section 122 of the 1972 Act would be met following satisfaction of all the relevant pre-conditions for draw down of land under the ILTA and once valid DD and Call Option Notices have been served by the Developer. It is therefore recommended that the Executive Director of Place acting in consultation with the Director of Law & Monitoring Officer, be given delegated authority to appropriate the land described in paragraph 10.1 and shown in Appendix 6 for planning purposes in the event that a valid Call Option Notice under the ILTA is served.
- 10.13 In addition to the Council land interests referred to in paragraph 10.1, it is proposed that the subsoil of a small area of land in Poplar Walk should also be transferred to the Developer in the event that an SUO in respect of this land is made by the Council. The extent of this land, which is the subject of the Developer's recent application for an SUO in connection with the creation of a new area of public realm in Poplar Walk, is shown cross-hatched in black on the indicative plan in Appendix 7. As this land is held by the Council for highway purposes and currently forms part of the public highway, at present it could not be appropriated for any other purpose. Although it is not intended that this land should be appropriated for planning purposes, the subsoil of this area of land may be the subject of a Call Option Notice served on the Council by the Developer if an SUO has been made, so that it may be included in the New Headlease.

PART 3

11. HUMAN RIGHTS

- 11.1 The implications of the CPO for the human rights of third parties were considered by the Council and by the Secretary of State when the CPO was made and when it was confirmed. Given the inclusion of the Green Park House land in the 2018 Scheme and the additional third parties affected (or affected in a different way) it is important that Cabinet reviews the implications for those whose rights may be overridden by the updated scheme.

- 11.2 Whether as a result of appropriation or acquisition of land by the Council, the triggering of powers to override third party rights under section 203 of the 2016 Act may involve interference with the human rights of neighbouring owners, in particular:
- the right to peaceful enjoyment of possessions under Article 1 of the First Protocol of the European Convention on Human Rights (**ECHR**); and
 - in the case of residential property, the right to respect for private and family life and home under Article 8 of the ECHR.
- 11.3 Whilst these are very important rights, they are not unqualified. Article 1 of the First Protocol indicates that in any decision which engages this right, a fair balance must be struck between the public interest and the private rights protected by Article 1. Article 8 acknowledges that interference with the right to respect for private and family life and a person's home may be justified if it is in accordance with law and necessary in a democratic society. Any such interference must be proportionate in the public interest. In relation to Article 1, the existence of a right to compensation may be relevant to some degree when determining whether the interference with private rights is proportionate.
- 11.4 As a public authority, a local authority must not act in a way which is incompatible with these rights, which are protected in the United Kingdom by the Human Rights Act 1998. Any decision by a local authority to acquire or appropriate land which has the effect of engaging section 203, should take account of the requirements of the Human Rights Act 1998.
- 11.5 The human rights implications were carefully considered by the Council when the CPO was made and by the Secretary of State when the CPO was confirmed and in both cases it was concluded that the public interest in the redevelopment scheme proceeding was sufficient to justify the interference with the human rights of those with an interest in the land affected and that such action was proportionate. However, given the inclusion of additional land in the 2018 Scheme and that it has somewhat different implications for certain third party rights it is important that the effects for the human rights of third parties are considered again at this stage.
- 11.6 Members should consider the potential effects on neighbouring owners as well as the public benefits of the development proposed in connection with the 2018 Scheme. The analysis undertaken by the Developer identified a further 20 properties in relation to which there may be new or greater impact on third party rights to light compared to the analysis undertaken in respect of the 2014 Scheme. For the reasons described above, in the present case, at this stage it is not possible to make a precise assessment of the effects on individual landowners and occupiers. However, as also noted above, the Council has written to third parties whose rights might potentially be overridden by the application of section 203 of the 2016 Act in relation to implementation of the 2018 Scheme in order to allow them the opportunity to make representations to be considered by Members before a decision is reached. The Council has received only a limited response to its letter which is reported at paragraphs 6.28 and 6.29 to which Members are referred.

- 11.7 As regards the public benefits of the 2018 Scheme proceeding, in short, officers consider that they are at least equal to if not greater than those which would result from implementation of the 2014 Permission. Members are referred to the background section of this report which summarises the need for regeneration of Croydon town centre and paragraph 4.1 which compares the 2018 Scheme with the earlier development proposals.

12. CONSULTATION

- 12.1 Public consultation was undertaken in connection with the planning applications for the 2014 Permission and for the 2018 Permission and the results were reported to Planning Committee before decisions were reached on those applications.
- 12.2 The CPO was subject to the statutory requirements for notification of affected third parties and the right to make objections which were considered at the public inquiry in 2015.
- 12.3 The results of notification of third parties potentially affected by the revisions to the scheme and the application of sections 203 and 204 of the 2016 Act in respect of any rights to light from which they may benefit are reported in section 6 of this report.

13. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 13.1 Under the CPO Indemnity and Land Transfer Agreement the Council is indemnified against liabilities for costs and compensation associated with the compulsory purchase order for the Whitgift Centre and surrounding land.
- 13.2 Before the CPO powers are exercised to acquire land and rights from third parties, funds would be placed in an escrow account to cover costs in advance of any payment of compensation being required from the Council. Fees and internal costs would be repaid monthly in arrears.
- 13.3 Implementation of the scheme will contribute to the promotion of the economic social and environmental well-being of the Council's area and would be likely to bring indirect financial benefits in terms of business rates, council tax and New Homes Bonus. It will also trigger implementation of the Growth Zone in Croydon, based on retention by the Council of the uplift in business rates in the designated Growth Zone area.
- 13.4 In accordance with section 233 of the Town and Country Planning Act 1990, the Council is to receive best consideration reasonably obtainable for the disposal of land within the proposed redevelopment site.

(Approved by: Lisa Taylor Director of Finance, Investment and Risk (Deputy Section 151 Officer))

14. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 14.1 The Solicitor to the Council comments that legal implications are embodied in this report which includes input from both the Council's external and internal solicitors.

(Approved by: Sean Murphy, Head of Commercial and Property Law and Deputy Monitoring Officer on behalf of the Director of Law and Monitoring Officer)

15. HUMAN RESOURCES IMPACT

- 15.1 There are no immediate HR implications that arise from the recommendations in this report for LBC staff.

(Approved by: Sue Moorman, Director of Human Resources)

16. EQUALITIES IMPACT

- 16.1 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It places a local authority under a legal duty ("the public sector equality duty") to have due regard to the following matters in the exercise of all its functions, namely the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
- b. advance equality of opportunity between persons who share a "relevant protected characteristic" (i.e. the characteristics referred to above other than marriage and civil partnership) 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.

- 16.2 The public sector equality duty was taken into account by Cabinet in relation to the decision to make the CPO and by Planning Committee Members throughout the planning process. It is a continuing duty, which Members must review and address in relation to all decisions relating to the Whitgift scheme.

- 16.3 Members of protected groups in the wider community potentially affected by the proposed development are likely to include current and future:

- visitors to the town centre for work or leisure or to use the retail and other town centre facilities;
- residential occupiers within or around the town centre
- occupiers of other land within and around the town centre, including business and land owners.

- 16.4 An Equality Analysis (EqA) was undertaken in connection with the compulsory purchase order for the Whitgift site. In addition, Equality Impact Assessments (EqIA) were undertaken in connection with both the Croydon Local Plan: Strategic Policies 2013 and the Croydon Opportunity Planning Framework (adopted in 2013). Most recently, an EqIA was undertaken for the Proposed Submission Croydon Local Plan: Strategic Policies – Partial Review.
- 16.5 Officers consider that these assessments continue to be relevant to the recommendations in this report and that the following conclusions continue to apply.
- 16.6 Implementation of the Whitgift redevelopment is considered to include the following benefits for protected groups:
- improving access to and the permeability of the town centre;
 - providing more job opportunities and making provision for skills training;
 - providing a choice of housing, such as affordable housing and family homes to meet people's needs at all stages of life and the needs of people with disabilities;
 - conserving and creating spaces and buildings that are safe, accessible and that foster cohesive communities
 - promoting cultural activities which can directly or indirectly celebrate the diversity and multiculturalism of the borough;
 - promoting well designed community and leisure facilities to meet the aspirations and needs of a diverse community; and
 - improving transport and access across the Borough and particularly to and from the town centre.
- 16.7 It is considered that the redevelopment proposals could have a negative impact on some protected groups, but only over a temporary period. There would be temporary negative impact on groups including age and disability as well as pregnancy and maternity groups due to disruption in the town centre environment during the construction phase. However, suitable mitigation measures are to be put in place by the Developer during the construction process to reduce the adverse effects on these groups.
- 16.8 A potential negative impact has been identified on businesses around West Croydon station as well as other businesses surrounding the proposed development site in the event that there were to be reduced footfall or a reduction in visitors in the surrounding area either during construction or longer term. Many of these businesses are ethnic minority businesses. However, in the longer term the proposed new 24 hour east-west Galleria to be created by the development will help to ensure that it interacts well with the surrounding retail town centre. Improved north-south connections through the site and a considerably improved public realm in Poplar Walk will also assist in improving linkages to businesses in West Croydon. In addition the Council will work with the Developer to create a suitable environment to cater for a diverse range of ethnic business owners and workers in Croydon. Specialist business advice and translation services are also available from the Council to assist with any issues which arise for these protected groups and others

during the development process and beyond. This negative impact would in part be addressed by the requirements of the section 106 planning agreement which aims to support local independent businesses through employment and training.

- 16.9 It is considered that overall, once the redevelopment proposals have been completed, all groups would benefit from the improved physical environment in Croydon town centre as well as the wider economic benefits stemming from the proposals.

17. ENVIRONMENTAL IMPACT

- 17.1 The environmental impact of the redevelopment has been fully assessed as part of the planning process and appropriate conditions have been imposed on the 2018 Permission to ensure that satisfactory mitigation is applied to minimise adverse impacts.

18. CRIME AND DISORDER REDUCTION IMPACT

- 18.1 In the course of determining the planning applications, responses to statutory consultation were considered including comments from the Crime Prevention Design Officer, local representations and other material considerations. Subject to the mitigation proposed in connection with the outline planning permissions (secured by planning condition) it is considered that either the 2014 Scheme or the 2018 Scheme would provide a safe and secure environment.

19. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 19.1 The amendments to the ILTA are required to make provision for the updated scheme and their approval is a necessary preliminary step prior to the Council's consideration of the RPD Pre-condition for drawdown of land under the ILTA.
- 19.2 In relation to the proposed inclusion of Green Park House in the development site and the engagement of statutory powers to override third party rights, whilst it is a matter for Members to consider, it is officers' view that there are clear grounds for concluding that the public interest in the proposed redevelopment proceeding is sufficient to justify reliance on section 203 of the 2016 Act, subject to the payment of statutory compensation to affected third parties, and that such action would be proportionate.
- 19.3 Officers propose that the recommendation in paragraph 1.2 to authorise the Executive Director of Place, acting in consultation with the Director of Law & Monitoring Officer, to enter into a further supplementary agreement to amend the ILTA, be approved.
- 19.4 Based on the information and evidence supplied by the Developer and the advice of its external advisers it is officer's view that there is a reasonable

prospect of delivery of the whole development (comprising the Retail Component and the Residential Component) within a Reasonable Timescale. Officers therefore propose that the recommendation in paragraph 1.2 to authorise the Executive Director of Place, acting in consultation with the Director of Law & Monitoring Officer to take the necessary steps to implement the CPO and take related actions (subject to the completion of the further supplemental agreement to amend the ILTA and the relevant notices being served by the Developer) be approved.

- 19.5 The recommendation in paragraph 1.2 to delegate authority to the Executive Director of Place, acting in consultation with the Director of Law & Monitoring Officer to appropriate the Council's land interests in the car park sites is intended to ensure that the appropriation of Council land can be put in place at the relevant time. Again, officers propose that the relevant recommendation be approved.

20. OPTIONS CONSIDERED AND REJECTED

- 20.1 Not to amend the ILTA or appropriate the Council land. Those options are rejected as they would not allow the Whitgift redevelopment to proceed in accordance with the 2018 Scheme.
- 20.2 Not to conclude that the RPD Pre-condition is satisfied. That option is rejected as not being the appropriate course of action to take and given the timescale for implementation of the CPO, it would not allow the 2018 Scheme to be implemented.

CONTACT OFFICER: Heather Cheesbrough, Director of Planning and Strategic Transport, tel: 020 8760 5599

APPENDICES TO THIS REPORT

Appendix 1 - Red line boundaries of the outline planning permission granted in 2014 and for the application for 2018 Scheme

Appendix 2 - Table of main proposed amendments to the ILTA

Appendix 3 - Structure chart to show proposed land transfer arrangements

Appendix 4 - Letter to owners and occupiers and schedule of properties

Appendix 5 - Summary Indicative Programme for the 2018 Scheme

Appendix 6 - Plan of Council land interests proposed for appropriation for planning purposes and transfer to the Developer

Appendix 7 – Plan of land in Poplar Walk proposed to be stopped up and the subsoil transferred to the Developer

BACKGROUND PAPERS:

Cabinet Report 7 April 2014 – Agenda item 6 - Whitgift Centre and surrounding land – Proposed compulsory purchase order (including Equality Analysis Appendix F)

Cabinet Report 15 September 2014 - Agenda item 7 - Strategic Metropolitan Centre – Update

Planning Committee Report 14 November 2017 – Agenda item 6.1 – Application ref: 16/05418/OUT - Whitgift Shopping Centre and Surrounding Land, Croydon, CR0 1LP