

**For General Release**

<b>REPORT TO:</b>	<b>CABINET 7 April 2014</b>
<b>AGENDA ITEM:</b>	<b>6</b>
<b>SUBJECT:</b>	<b>Whitgift Centre and surrounding land – Proposed compulsory purchase order</b>
<b>LEAD OFFICER:</b>	<b>Jo Negrini, Executive Director of Development &amp; Environment</b>
<b>CABINET MEMBER:</b>	<b>Councillor Jason Perry Cabinet Member for Planning, Regeneration and Transport</b>
<b>WARDS:</b>	<b>All Wards</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> Croydon's Sustainable Community Strategy 2013 - 2018 This sets out the Council's priorities for developing and maintaining Croydon as an attractive place in which to live, work, visit and socialise. The regeneration of the Whitgift Centre and surrounding land and addresses the following priorities: <ul style="list-style-type: none"><li>• An Enterprising City</li><li>• A Connected City</li><li>• A Sustainable City</li></ul> Goal One: A better borough Priority One – A great place to invest, work and live Improve Croydon's town centre by: <ul style="list-style-type: none"><li>• Development of the retail realm to ensure a mixed economy;</li><li>• Encouraging stronger town centre offer and developing a mixed night-time economy</li></ul> Priority Two – More educational opportunities, skills and jobs Goal Two: Protect vulnerable people Priority Three – Ensure a choice of housing	

**FINANCIAL IMPACT:**

The Council would be fully indemnified against all costs and compensation liability associated with a 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 would receive best consideration reasonably obtainable for the disposal of land within the proposed redevelopment site, which is to be held by the Council for planning purposes at the time of disposal.

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.

**KEY DECISION REFERENCE NO.: 1282**

This is a Key Decision as defined in the Council's Constitution. The decision may be implemented from 1300 hours on the 5th working day after it 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 That Cabinet resolves, subject to consideration of the matters set out in this report and the prior completion of the proposed CPO Indemnity Land Transfer Agreement ("**ILTA**"), to make a compulsory purchase order pursuant to powers under sections 226(1)(a) and 226(3)(a) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (in accordance with the procedures in the Acquisition of Land Act 1981) for the acquisition of the land shown coloured pink and the creation and acquisition of new rights over the land coloured blue on the draft Compulsory Purchase Order map attached at **Appendix A** to this report (the proposed "**Order Land**") for the purposes of facilitating the comprehensive redevelopment, development and improvement of the land to provide a mixed use retail-led town centre scheme including retail, leisure, residential, community facilities, offices, and car parking, new and improved pedestrian linkages, amenity areas and associated servicing and infrastructure on land including the Whitgift Centre, the former Allders Store and surrounding land, as more fully described in the report ("**the Scheme**").
- 1.2 That the Executive Director of Development and Environment, acting on advice from the Director of Democratic and Legal Services, be authorised on behalf of the Council:
  - (a) to enter into the ILTA with Croydon Limited Partnership, Westfield Holdings Limited, Hammerson UK Properties Plc and Whitgift Limited Partnership and to dispose of such of the Council's existing land interests in the proposed redevelopment site as are specified in the ILTA, together with all other land acquired to facilitate the Scheme, on the basis that the terms of the ILTA are expedient in accordance with section 233(1) Town and Country Planning Act 1990 ;
  - (b) subject to completion of the ILTA, to take all steps to secure the making, confirmation and implementation of the Compulsory Purchase Order ("**the Order**") including the publication and service of all notices and the

promotion of the Council's case at any public inquiry, including but not limited to the steps in (c) to (h) below;

- (c) to make any amendments, deletions or additions to the draft Order Map and/or draft schedules to the Order so as to include and describe all interests in land and rights required to facilitate the carrying out of the Scheme;
- (d) to acquire interests and new rights in the Order Land either by agreement or compulsorily (including pursuant to any blight notices as appropriate) including conduct of negotiations, making provision for the payment of compensation and where appropriate, provision for temporary and/or permanent relocation of affected parties and/or for cases of exceptional hardship ;
- (e) to negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of blight notices and/or the withdrawal of objections to the Order and/or undertakings not to enforce the Order on specified terms, including where appropriate seeking the exclusion of land or rights from the Order, making provision for the payment of compensation and/or for relocation;
- (f) in the event that the Order is confirmed by the Secretary of State, to advertise and give notice of confirmation and thereafter to take all steps to implement the Order including, as applicable in accordance with the ILTA, to execute General Vesting Declarations and/or to serve Notices to Treat and Notices of Entry in respect of interests and rights in the Order Land;
- (g) to take all steps in relation to any legal proceedings relating to the Order including defending or settling claims referred to the Lands Tribunal (Lands Chamber of the Upper Tribunal) and/or applications made to the courts and any appeals; and
- (h) to retain and/or appoint external professional advisers and consultants to assist in facilitating the promotion, confirmation and implementation of the Order, the settlement of compensation and any other claims or disputes.

1.3 That Cabinet notes and supports Croydon Limited Partnership's continuing efforts to acquire by agreement the interests in land and new rights needed to facilitate implementation of the Scheme, including pursuant to the Land Acquisition and Relocation Strategy to be attached to the ILTA.

## **2. EXECUTIVE SUMMARY**

2.1 This report outlines proposals for the comprehensive redevelopment, development and improvement of the site of the Whitgift Centre, the former Allders Store and surrounding land to provide a mixed use town centre retail-led scheme, including retail, leisure, community facilities, offices, housing

and car parking, new and improved pedestrian linkages, amenity areas and associated servicing and infrastructure ("the **Scheme**"). Outline planning permission and conservation area consent have been granted by the Council for the Scheme. Within the next few weeks Croydon Limited Partnership ("**CLP**") intends to submit an additional related planning application in respect of an improved and expanded entrance to the Scheme from North End at Chapel Walk.

- 2.2 The purpose of this report is to enable Cabinet to consider whether or not the Council wishes to support the Scheme through use of its compulsory purchase powers and whether there is sufficient public interest justification for doing so. Subject to Members' consideration of matters set out in this report it is recommended that the Council makes a compulsory purchase order ("the **Order**") to facilitate the implementation of the Scheme.
- 2.3 The extent of the interests and rights in land proposed to be acquired are described in section 8 of this report ("the **Order Land**"). A draft map of the Order Land is contained in **Appendix A** .
- 2.4 The report sets out the background to and need for the Scheme and information about current ownership of the proposed Order Land. It explains the relevant powers of the Council to acquire land compulsorily and the Council's equivalent powers to acquire land and rights by agreement. The report explains in outline what the compulsory purchase process involves and also sets out advice on government policy on the use of these powers contained in the Office of Deputy Prime Minister Circular 06/2004 entitled Compulsory Purchase and the Crichel Down Rules ("**CPO Circular**").
- 2.5 The report describes factors of relevance to a decision on compulsory purchase, including the conformity of the Scheme to the planning policy framework, the financial viability and deliverability prospects of the Scheme and its prospects of proceeding within a reasonable time frame, its impact on affected land owners and occupiers and whether the proposals could be achieved by other means. It includes matters for Cabinet's consideration in relation to the Council's public sector equality duty and the implications for the Human Rights of third parties. It addresses the overall question of whether there is a compelling case in the public interest for compulsory acquisition.
- 2.6 The report recommends that the Order is made only once the contractual arrangements between the Council, CLP, Westfield Holdings Limited, Hammerson UK Properties Plc and Whitgift Limited Partnership ("**WLP**"), including an indemnity for the Council, have been completed (in a document known as the "CPO Indemnity Land Transfer Agreement" or "**ILTA**").
- 2.7 A separate exempt and confidential report at item B1 on Part B of the agenda for this meeting provides additional exempt information including further legal advice in relation to the proposals in this report.

### 3. BACKGROUND AND NEED FOR THE SCHEME

- 3.1 Croydon town centre is recognised in the London Plan as London's largest Metropolitan Centre. It is identified as an "Opportunity Area" in the London Plan (2011) (and Revised Minor Early Alterations 2013 and Draft Further Alterations 2014) on account of the opportunities it offers for accommodating growth and large scale development, but also because of the need for integrated action to address the challenges it faces.
- 3.2 The proposed redevelopment site forms a key part of Croydon town centre's Retail Core, the area identified in the Croydon Opportunity Area Planning Framework (2013) ("**OAPF**"), as the town centre's primary comparison retail location. The Retail Core includes the Whitgift and Centrale shopping centres, North End and extends up to Wellesley Road, Poplar Walk, Tamworth Road and Frith Road. Over recent decades the Retail Core has been in decline and has suffered from a lack of co-ordinated investment. Consequently, much of the retail provision is tired and does not meet the current needs and expectations of shoppers and retail and leisure occupiers, and in particular quality retailers. The retail offer in Croydon is more downmarket than that of other neighbouring centres and there is leakage of retail expenditure to other neighbouring centres (including Bromley, Central London and out of town locations such as Bluewater). There are high levels of vacancy in the Retail Core as was identified in the OAPF (approximately 18% in 2011). The Council's Annual Monitoring Report for 2014 showed that in respect of retail units (planning use Class A) as at January 2014 the level of vacancies across the Croydon Metropolitan Centre (of which the Retail Core is the principal retail element) was 21%.
- 3.3 For the past 15-20 years, it has been widely recognised that significant change and investment is needed to reverse the town centre's decline and enable Croydon to fulfil its function as a Metropolitan Centre. The need for regeneration of Croydon's retail offer and the wider town centre was recognised at the time of the Park Place proposals (which extended from Allders, South of George Street to Katharine Street) and a compulsory purchase order was confirmed in 2007 by the then Secretary of State to support that development. However, that development did not come forward and there is a pressing need for intervention to ensure the town centre and its retail offer is revitalised.
- 3.4 The Order Land is the most important regeneration opportunity in the town centre and its proposed redevelopment provides the opportunity to transform Croydon's retail and leisure offer and in doing so transform Croydon's image. The proposed redevelopment of the Order Land also provides the opportunity to act as a catalyst for wider regeneration in Croydon's town centre.
- 3.5 In short, for many years Croydon has not been fulfilling its function as a Metropolitan Centre. In order to address this, Croydon needs to revitalise its retail and leisure offer including recapturing shoppers lost to other centres, improving its qualitative offer and range of retailers, and greatly improving the physical shopping and wider town centre environment, in terms of quality

of the retail and leisure floorspace and the surrounding public realm and connectivity. Additional housing will also help foster a vibrant town centre.

- 3.6 If the decline is to be reversed and the town centre is to fulfil its function as a Metropolitan Centre, the Whitgift Centre and surrounding land, including the site of the former Alders Store, require redevelopment in a holistic way that will act as a catalyst for and complement regeneration of the wider town centre. The OAPF expresses a strong preference for regeneration of a large part of the Retail Core to be undertaken in a comprehensive way. The provision of new town centre housing will make a significant contribution towards the creation of a new sustainable residential community in the Croydon Metropolitan Centre, helping to realise both the Mayor of London's and Croydon Council's vision for the Metropolitan Centre as expressed in the OAPF and will contribute towards meeting the significant need for new homes in Croydon. Although relevant planning policies and guidance set out strategies and objectives for achieving these aims, to date, the complexity of the relevant land ownerships in the proposed redevelopment site has presented a significant obstacle to achieving the policy aims.
- 3.7 On 25 November 2013, the Strategic Planning Committee resolved to grant outline planning permission and conservation area consent for a comprehensive redevelopment scheme for the Whitgift Centre and surrounding land, including the former Alders store, pursuant to application nos. 12/02542/P and 12/02453/CA. On 27 November 2013 the Mayor of London confirmed that he did not intend to direct a refusal or direct that the planning application be determined by him. On 17 December 2013, the Secretary of State notified the Council that he had decided not to exercise his powers to call in the application for his own determination. On 5 February 2014 outline planning permission and conservation area consent were issued following completion of an agreement under section 106 of the Town and Country Planning Act 1990 which makes provision for such matters as public transport, highways and public realm improvements, affordable housing and employment and training opportunities.
- 3.8 As noted in paragraph 11.29 below, on 26 February 2014, solicitors acting for (1) Equiom (Isle of Man) Limited (2) Almark Limited (3) Whitgift One Limited and (4) Whitgift Two Limited ("**Whitgift Trust**") notified the Council of a proposed claim for judicial review in respect of the grant of outline planning permission and conservation area consent, to which the Council has responded in robust terms. The Whitgift Trust has management control of the Whitgift Centre. On 19 March 2014, a claim for judicial review was filed with the High Court on behalf of those parties. Further advice to Members in respect of this claim is provided in paragraphs 11.29 – 11.32 below. Cabinet will be updated at the meeting on the current position regarding the claim, before Members reach a decision on the recommendations in this report.
- 3.9 The main components of the Scheme are described in section 4 of this report. The Scheme generally accords with national, regional and local planning policies as set out in this report and the report to Strategic Planning Committee of 25 November 2013. Implementation of the Scheme would transform the town centre and make a very significant contribution to the

achievement of the objectives of the OAPF. It will entail major investment in Croydon town centre and would bring substantial benefits in terms of the social, economic and environmental well-being of the Council's area. The proposals for which outline planning permission and conservation area consent have been granted offer the best opportunity for the Council to secure a comprehensive scheme in accordance with the relevant planning policies within a reasonable timeframe.

- 3.10 Prior to January 2013, Westfield Shoppingtowns Limited ("**Westfield**") and Hammerson UK Properties Plc ("**Hammerson**") were making separate efforts to acquire the land and rights needed to undertake redevelopment through agreements with affected land owners. In January 2013 the two companies formed a joint venture "Croydon Limited Partnership" ("CLP") and associated companies in order to take their proposals forward. Certain important land interests in the proposed redevelopment site have already been acquired by, or are under the control of, CLP and/or associated companies/its participants and efforts to acquire further land interests and rights by agreement are continuing. However, given the complexity and diversity of the land ownerships in the site it is not likely that all the necessary land interests or rights can be assembled by agreement so as to enable the Scheme to proceed to meet the policy objectives within a reasonable time frame. It therefore appears expedient that such negotiations should continue, but within the framework of a compulsory purchase order which will ensure assembly of the necessary interests if negotiations fail to achieve this aim. Sections 5 and 6 of this report describe the land interests and rights which would need to be assembled to facilitate implementation of the Scheme and those already in the ownership or control of CLP, its associated companies and/or its participants at the time of this report.

#### **4. THE REDEVELOPMENT PROPOSALS – "THE SCHEME"**

- 4.1 The proposed redevelopment site is bounded to the North by Poplar Walk and to the South by George Street. Wellesley Road and North End form the Eastern and Western boundaries. The site includes the whole of the Whitgift Centre, the former Alders store, a number of retail units in North End and George Street, car parks, a number of largely vacant office towers located within and above the Whitgift Centre, vacant office buildings fronting Dingwall Avenue (Focus House and London House), the existing Marks and Spencer store on North End. Dingwall Avenue also forms part of the proposed redevelopment site. The building at 96-98 North End is included in the proposed Order Land to enable an expanded and improved entrance to the Scheme to be constructed from North End at Chapel Walk (as indicated above, this is expected to be the subject of an additional planning application from CLP in the coming weeks). CLP have engaged with Council officers on this proposed planning application. Further details of the proposed Order Land (which includes land adjoining the proposed redevelopment site in respect of which certain new rights will need to be created and acquired) are provided in section 8 below.
- 4.2 The outline planning permission (ref 12/02542/P) authorises a mixed use redevelopment of the major part of the proposed site with approximately

137,000 sq.m of retail floorspace, between 32,500 - 49,000 sq.m of residential accommodation (equivalent to between 400 and 600 residential units), leisure facilities of approximately 16,000 sq.m, community facilities of approximately 1,000 sq.m, office space of approximately 2,000 sq.m and a car park of approximately 3,500 spaces, limited by planning condition to 3,140 spaces on most days of the year (with 30 additional spaces for disabled drivers in respect of the residential element). The core elements of the Scheme are:

- ① the redevelopment of the existing Whitgift Shopping Centre, the former Alders store and surrounding land to provide an increased and substantially improved retail offer, transforming Croydon town centre and recovering its position as a major retail destination in accordance with its planning status as a Metropolitan Centre and Opportunity Area;
- ① the introduction of a new full range quality department store which will be located at the Southern end of the Scheme;
- ① the introduction of a number of new local, national and international retailers to increase the depth, breadth and quality of the retail offer in Croydon, allowing it to compete with other Metropolitan Centre retail destinations;
- ① the provision of an increased and improved leisure offer which will enhance and diversify the day and night time economy and support the town centre's viability and vitality;
- ① the provision of food, beverage and dining options to help improve the vibrancy of the town centre;
- ① 400 to 600 new high quality residential town centre homes, including affordable housing;
- ① a series of new public spaces and continuous pedestrian routes linking the Northern, Eastern, Southern and Western areas of the central Retail Core and the wider town, including a new East West 24 hour pedestrian route through the Scheme between North End and Wellesley Road;
- ① improvements to the management and maintenance of public areas including North End;
- ① town centre car parking in keeping with modern retail and leisure destination requirements; and
- ① transport improvements through planning obligations, including financial contributions towards bus and tram services, improvements to Wellesley Road and provision for cyclists.



4.3 The outline planning permission and conservation area consent for the Scheme includes the following elements, the details of which will be controlled through the parameter plans and design guidelines approved pursuant to the outline planning permission and the planning conditions attached to that permission:

**Retail:** A new anchor store of modern and high quality design intended for occupation by a new full range quality department store. This would be located in the South East quadrant of the Scheme to provide a focal point within the Scheme and a new landmark within the town centre. The ability to attract a new anchor store tenant is considered to be key to improving the quality of the retail offer in the Retail Core, not only through its own presence, but in terms of attracting other new high quality retail occupiers to the Scheme. The design of other new retail units within the Scheme would be consistent with the current requirements of retailers, aimed at attracting the best of local, national and international retailers.

**Leisure:** Up to 16,428 sq. m of leisure accommodation would be provided which may include a cinema, bowling alley and other entertainment zones.

**Residential:** The residential accommodation is proposed to be focused on the Eastern edge of the site overlooking Wellesley Road. A mix of units is proposed. A minimum of 5% of the units proposed are to be three bedroom homes. Fifteen per cent of the total residential accommodation will be affordable housing units (at least 10% on-site with the remainder to be provided off-site or through a commuted sum).

**Office:** Up to 1,921 sq. m of office space is included in the Scheme.

**Community facilities:** Up to 1,135 sq. m of community facilities are to be included that could accommodate a range of activities such as a crèche, skills centre for training and employment, a multi-faith prayer room and a Shopmobility unit. These will be determined at the reserved matters stage.

**Parking:** The existing Whitgift multi-storey car park on Wellesley Road would be retained, refurbished and integrated into the Scheme. A new rooftop multi storey car park would also be constructed to the South of the existing car park, above the proposed retail centre. The Scheme would include 3,500 car parking spaces across these two multi-storey car parks. However, the number of spaces available is limited by planning condition to 3,140 other than in periods of high demand (on up to 20 days per year). Allocation is to be made for disabled parking spaces, parent and child spaces and a car club. Thirty additional "blue badge" spaces would be provided for the residential units. The car park would be an integral part of the Scheme and aligned with the remainder of the Scheme to ensure the delivery of a modern, safe and secure parking environment.

**Linkages:** The provision of the new 24 hour East-West route will help to improve permeability of the town centre and connect with the major transport hub at East Croydon Station and through to Croydon Old Town. The layout will establish a retail circuit that reinforces and significantly enhances

pedestrian linkages to the existing retail elements of the town centre and overcome existing barriers to pedestrian movements. The new principal shopping centre is designed to create an easy and convenient circuit that connects North End, Wellesley Road, Poplar Walk and George Street. This should have a catalytic effect on the rest of the town centre and improve footfall in surrounding areas.

**Public realm:** New and upgraded public realm would be provided throughout the Scheme. Five specific areas of public realm are to be provided within the redeveloped site with a minimum total area of 1,800 sq. m, including reconfiguration of part of Dingwall Avenue to create a new square, internal open space within the shopping centre, threshold open spaces at the perimeter of the site, publicly accessible rooftop open space and a communal amenity rooftop space for the residential development. The Scheme would also include public realm improvements to George Street, Poplar Walk, Wellesley Road, North End, Park Lane and Drummond Road through section 106 and section 278 agreements.

**Height and Massing:** The height and massing of the development (to come forward within the approved maximum and minimum levels) has been designed to take account of the topography of the town centre and to respect the surrounding existing built form. The proximity of the Central Croydon Conservation Area and listed buildings has been given special consideration in evolving the design. Those elements of the Scheme located towards George Street, North End and Poplar Walk reflect the appropriate maximum and minimum building heights. Greater height would be achieved towards the Wellesley Road frontage of the Scheme. This greater height and scale of built form provides improved definition compared to the existing built context.

**Sense of place, quality design and materials:** The design process has looked at all aspects of urban design. A mix of active uses, coupled with high quality architecture and detailed design are proposed to animate the streets and spaces, thereby fostering positive use of the public realm (the design and materials have been secured through the approved set of design guidelines). The high standard of the Scheme design would serve to preserve and enhance heritage assets. Elevational treatments and building materials are subject to further approval by the Council as local planning authority. The Scheme will be guided by a design code to ensure quality will be maintained.

**Safety and Security:** Safety and security are key elements of the design principles, with an emphasis on creating an environment that is safe, secure and inviting for shoppers and pedestrians as well as retailers and other occupiers. The Scheme is designed to ensure visitors' well-being at all times through the provision of well-lit streets and open spaces to create natural urban surveillance. The car parking areas are to be designed with excellent levels of lighting, CCTV coverage and clear signage (controlled through planning conditions). The introduction of a comprehensive mixed-use development including leisure facilities with the new East-West 24-hour route between North End and Wellesley Road should substantially increase the overall activity levels within the town centre throughout the day and into the

night. A comprehensive CCTV system, linked to the existing town centre system, is to be introduced throughout the Scheme and security officers would also be employed to patrol the area.

- 4.4 The Scheme will bring improvements to North End, both in terms of its physical environment and its management and maintenance, secured through the outline planning permission, section 106 agreement and the provisions of the ILTA.
- 4.5 The Scheme would offer Croydon and surrounding areas with a significantly enhanced retail and leisure offer and an inviting streetscape in an area requiring regeneration and improved permeability. It would introduce new town centre housing including affordable housing. It would provide a physically and visually permeable urban environment that extends the shopping core, facilitates significant improvements in footfall through the centre, linking the development to the surrounding town centre areas and creating a safe and pleasant environment. It would help Croydon to take full advantage of its excellent public transport accessibility.

## **5. CURRENT LAND OWNERSHIPS**

- 5.1 Successful implementation of the Scheme would be dependent upon assembling a high number of land interests and rights. At least 360 third parties would be affected by the Scheme through land acquisition or the creation of new rights over land which they either own or occupy.
- 5.2 The major part of the Whitgift Centre is currently subject to at least four distinct "layers" of land interest, being those of the freeholder, the headlessor, the underlessor and the occupational tenants and other occupiers. Other parts of the site, including the car parks and former Allders store, are also subject to multiple land interests.
- 5.3 The Whitgift Foundation holds the freehold interest in the Whitgift Centre, and in part of the Marks and Spencer store, part of the former Allders store and in a number of surrounding properties.
- 5.4 The head leasehold interest in the Whitgift Centre has been acquired by Croydon (GP2) Limited as trustee for WLP, which is owned by CLP.
- 5.5 The under leasehold interest in the Whitgift Centre is held by the Whitgift Trust, who have management control of the Whitgift Centre.
- 5.6 There are approximately 160 occupational tenants and other interests in the Whitgift Centre and surrounding properties in North End and George Street. This figure includes major national retailers such as Arcadia (BHS, Top Shop, Top Man, Evans, Wallis and Burtons), Sainsbury, Sports Direct, O2, Boots, H Samuel and Ernest Jones, Natwest, New Look, River Island, Superdrug, H&M, WH Smith and Superdry (non-exhaustive list). It also includes approximately 40 smaller independent retailers, businesses and services. In addition, the former Allders department store (currently trading as Croydon Outlet Village) is occupied by approximately 95 concessionaires.

5.7 Other parties with significant interests in the proposed redevelopment site include (non exhaustive list):

- ⌚ Minerva Stores Limited, Allders (Croydon) Limited (in administration) and Metro Croydon Outlet Limited hold interests in the former Allders department store;
- ⌚ the Irish Bank Resolution Corporation holds charges over the Whitgift Trust's property holdings in the Whitgift Centre and surrounding properties;
- ⌚ Marks and Spencer Scottish Limited Partnership in relation to the Marks and Spencer store in North End;
- ⌚ Legal and General Assurance Society Limited in relation to 60-70 North End;
- ⌚ Archbishop Tenison's Foundation in 30 North End and parts of 2-28 North End;
- ⌚ the Official Custodian of Charities (on behalf of the Trustees of Ralph Snow's Charity) in 60 North End and units 107-109 and 1107-1109 Whitgift Centre;
- ⌚ Interests in the two multi-storey car parks are held by Eagle Croydon A Limited and Eagle Croydon W Limited, Bouwfonds Real Estate Investment Management BV and National Car Parks Limited; and
- ⌚ the Council holds freehold and leasehold interests in the car parks and other minor holdings in the site.

5.8 In addition to the land interests which would need to be acquired, certain new rights would be required over land which surrounds the proposed redevelopment site, in parts of George Street, Wellesley Road, Poplar Walk, North End and the Almshouses. If an Order is made, the schedule to the Order will include a full list of all interests in land and new rights which will be required.

5.9 No residential properties are proposed to be acquired, although new rights, to over-sail cranes during construction, undertake surveys and minor external works are proposed to be created in respect of some residential properties located in George Street and North End. The residential properties which would be affected by the creation and acquisition of new rights include three newly refurbished flats above 102 North End (102a, 102b and 102c North End), two of which are occupied and one is currently vacant. In addition, the Almshouses on George Street accommodate up to 12 residential occupiers (under licence). At 17-21 George Street (upper floors above the retail units), there are understood to be five occupants in multiple occupation, on the basis of assured short hold tenancies. The rights sought over these residential properties are rights to over-sail, survey and undertake minor external works. It is considered that the impact of the exercise of the

rights on the residential occupiers will not be significant and will not necessitate any temporary or permanent re-housing.

- 5.10 In addition to the land interests and new rights which will need to be assembled to implement the Scheme, the owners of certain properties surrounding the proposed redevelopment site would be affected by interference with their rights, for example rights of access, rights to light or the benefit of restrictive covenants on use of the proposed redevelopment site. As explained in section 9 below, section 237 of the Town and Country Planning Act 1990 would enable the Scheme to be implemented in accordance with the planning permission, notwithstanding any such interference with third party rights which might otherwise inhibit development. Where this applies, affected owners would be entitled to statutory compensation. The structure of the land transactions provided for under ILTA will be such as to enable section 237 of the Town and Country Planning Act 1990 to apply to the development and subsequent use of the proposed redevelopment site for the Scheme, without further decisions on the part of the Council other than in respect of land within the site which is currently in Council ownership. The precise extent of the properties likely to be affected by interference with rights is in part dependent on the final configuration of the buildings approved at reserved matters stage. However, all known landowners that may potentially be affected have been identified in the schedule which forms part of the Order and they will therefore receive notification if the Order is made.

## **6. THE DEVELOPER, THE LAND THEY HAVE ACQUIRED TO DATE AND THEIR EFFORTS TO ACQUIRE BY NEGOTIATION**

- 6.1 Westfield and Hammerson, the joint planning applicants and the partners that form CLP, are both highly experienced retail developers with a track record of completing schemes in the United Kingdom and internationally.

### **Westfield**

- 6.2 Westfield has investment interests in 90 shopping centres across Australia, the United States, the United Kingdom, and New Zealand, encompassing around 21,500 retail outlets and total assets under management of £37.8 billion.
- 6.3 Westfield is a long term owner and manager of assets in the best markets across the world and achieves a global footfall of 1.1 billion customers.
- 6.4 The Westfield approach to shopping centre development, which is also proposed in respect of the Scheme, integrates retail, food, leisure and events experiences.
- 6.5 In the UK, Westfield owns and manages five operational shopping centres including Westfield London (located in White City / Shepherds Bush) which opened in 2008 and last year attracted over 28 million visitors and achieves total annual sales of almost £1 billion.

- 6.6 In September 2011, Westfield opened the £1.8 billion Westfield Stratford City which was one of the largest urban regeneration projects ever undertaken in Europe and is the prestigious gateway to the London Olympic Park. It attracts 38 million annual visitors and achieves total annual sales of almost £1 billion.
- 6.7 Westfield is a vertically integrated business group undertaking ownership, development, design, construction, funds and asset management, property management, leasing and marketing activities

### **Hammerson**

- 6.8 Hammerson plc is a leading European retail Real Estate Investment Trust ("REIT") with operations in the UK and France. It has a portfolio of high quality retail assets which includes 20 prime shopping centres, 22 retail parks and investments in nine premium designer outlets. The Company's portfolio generates annual rents of £297 million and, as at 31 December 2013, was valued at £5.9 billion.
- 6.9 The Company's shopping centre portfolio includes over 2,000 shops and restaurants and attracts in excess of 250 million visitors per annum. Tenants' sales in the Company's shopping centres are over £4 billion annually. In the UK, Hammerson is the largest direct owner of retail parks with over 500,000 sq. m under management.
- 6.10 Hammerson has delivered landmark regeneration schemes, which provide attractive and efficient environments for occupiers, their customers and local communities. It has developed more than half of its eleven UK shopping centres including most recently Bullring in Birmingham, Highcross in Leicester, Cabot Circus in Bristol and Union Square in Aberdeen. It takes a long term approach to investment decisions and one its first schemes, Brent Cross, which opened in 1976, is still held within the portfolio with proposals for a significant new extension being progressed.
- 6.11 Its latest scheme is Terrasses du Port in Marseille, which is currently under construction and due to open in Spring 2014. The project is 100% Hammerson owned and represents an investment of £388.7 million. The scheme, anchored by a Printemps department store, totals 61,000 sq. m and will house over 100 high quality retail and restaurant brands as well as providing 6,500 shopper car parking spaces.

### **Land acquired to date**

- 6.12 As noted above, Croydon (GP2) Limited as trustee for WLP (which is owned by CLP) has acquired the head leasehold interest in the Whitgift Centre. This lease includes the Whitgift Centre multi-storey car park and a portion of the Marks & Spencer store which adjoins the Whitgift Centre and is due to expire on 24 June 2167. This lease entitles WLP to 25% of the net rental income from the Whitgift Centre.

- 6.13 In addition, Westfield (via group companies) has entered into an agreement with the Whitgift Foundation, the freehold owner of the Whitgift Centre, part of the Marks & Spencer store and a number of surrounding properties in order to ensure that the Foundation's land interests can be brought within the Scheme, subject to the terms of that agreement. The Council's legal advisers have inspected the relevant terms of that agreement.
- 6.14 CLP also owns the beneficial interest in the Centrale Shopping Centre, which lies outside the proposed redevelopment site on the Western side of North End.
- 6.15 To date CLP has made a number of relocation proposals to current occupiers within the Order Land and they are currently working on a number of further offers for compensation or relocation. Discussions and negotiations with landowners and occupiers will continue throughout the process if an Order is made.

#### **Efforts to acquire by negotiation**

- 6.16 Deloitte LLP has been instructed by the Council to advise on the efforts made by CLP to acquire the necessary land and rights by agreement, in the light of the advice in paragraphs 24 and 25 of the CPO Circular which advises that compulsory purchase of land and rights is intended to be a last resort in the event that attempts to acquire by agreement fail, but that it may often be sensible to run a compulsory purchase processes in parallel. The CPO Circular states that this will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations. A copy of Deloitte's report is attached as **Appendix H ("Deloitte Report")** to which Members are referred. Deloitte has concluded that the efforts that CLP has made to identify owners and occupiers and to engage with them with a view to progressing acquisition of their interest are satisfactory in the context of the CPO Circular guidance.
- 6.17 In cases where there has been any uncertainty about land ownership or occupation, notices have been placed in close proximity to the land in question to try and obtain further information. Further notices will be placed if the Order is made.

### **7. PROPOSED CONTRACTUAL ARRANGEMENTS WITH CLP AND RELATED PARTIES**

- 7.1 If Cabinet resolves to make the Order, the ILTA will be entered into between the Council and CLP and related parties before the Order is made. The ILTA will record the parties' objectives in relation to securing the comprehensive development of the proposed redevelopment site, regulate the manner in which those objectives are to be achieved and provide for the Council to be indemnified for costs and other liabilities associated with the compulsory purchase process.

#### **Parties**

- 7.2 The parties to the proposed ILTA are the Council (as acquiring authority and landowner), CLP (as developer and prospective land owner) and WLP (as landowner), with Westfield Holdings Limited and Hammerson UK Properties Plc acting as sureties of the liabilities of CLP.

### **Statutory powers and structure of the arrangements**

- 7.3 The relevant statutory powers of the Council are explained in section 9 of this report. All land interests which are to be acquired by the Council, whether compulsorily or by agreement will be acquired for planning purposes (under section 226 or 227 of the Town and Country Planning Act 1990). Consequently all disposals of land to CLP or its related entities will be governed by section 233 of that Act. Section 233(1) empowers the Council to dispose of the land:

*... to such person, in such manner and subject to such conditions as appear to them to be expedient in order-*

- (a) to secure 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) to secure 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.*

- 7.4 The terms proposed for the ILTA have been agreed to assist with the securing of the planning objectives whilst minimising, so far as practicable, the extent of the land interests which will need to be acquired by the Council in order to facilitate the Scheme. The contractual arrangements under the ILTA are also intended to ensure that development and use of the land, when carried out in accordance with planning permission will, where necessary, be subject to section 237 of the Town and Country Planning Act 1990 and so will not be restricted by private rights held by third parties which might otherwise prevent or inhibit the carrying out and use of the Scheme.

- 7.5 An overview of the structure of the proposed land assembly and land transfer arrangements is shown in the diagram in Appendix D.

### **Outline of the terms of the proposed ILTA**

#### Assembling the proposed development site

- 7.6 The Council and CLP are to work towards obtaining confirmation of the Order and acquiring all land interests within the Order Land required to enable delivery of the Scheme. All land interests within the proposed redevelopment site (referred to in the ILTA and in this section of the report as the "**Development Site**") are to be included in the Order, except for land interests owned by the Council, by the Whitgift Foundation, or by WLP (and a leasehold interest in Electric House which is currently held by the Home



Office on behalf of the Crown as referred to in paragraph 11.19). The Whitgift Foundation's freehold and leasehold interests are generally excluded from the Order (although some new rights over their land and a small area of land are proposed to be acquired pursuant to the Order) because the Foundation and the Westfield Group have entered into a separate agreement under which the Foundation is to grant a new long lease of the Development Site to WLP (or CLP or another entity in the same group "**Group Company**") as set out below. The land owned by WLP is to be brought within the Scheme through the terms of the ILTA. In order to assemble the Development Site and deliver the Scheme, WLP/Group Company can acquire land and rights by private treaty and call on the Council to transfer to it the land and rights which the Council is to acquire pursuant to the Order.

#### The Council's land interests

- 7.7 The Council is also required to transfer its own land interests in the Development Site to WLP/Group Company where required for development of the Scheme. The Council's land interests principally comprise freehold and leasehold interests in the two multi storey car parks. In due course, the Council will be asked to consider appropriating this land for planning purposes in so far as it is not already so held.
- 7.8 The Council's interests are only to be transferred just before the grant of the new Lease by the Whitgift Foundation referred to in paragraph 7.11 below, except in relation to the Alder's Car Park which may transferred to WLP/Group Company earlier in order enable early development works to be carried out.

#### Preconditions

- 7.9 Before the Council transfers any land acquired under the Order to WLP/Group Company there are a number of conditions that CLP must meet. On the first drawdown of land CLP must satisfy the Council that there is a reasonable prospect of delivery of the Scheme within a reasonable timescale. In assessing this the Council will have regard to progress being made by CLP to secure an anchor tenant for the Scheme, the amount of land being drawn down by CLP on first drawdown (which must be not less than a specified minimum value) and the fact that planning permission for the development has been granted (and not subject to any ongoing challenge). For any subsequent draw down of land (in the event not all requisite land is drawn down on first drawdown), CLP must show the Council that it requires the relevant land for the Scheme, that it continues to progress towards development including providing updated delivery programmes and land drawdown programmes and it must confirm that it intends to commence the retail component of the Scheme by the date shown on the updated delivery programme.

#### Developer obligations following draw down of land

- 7.10 Once land is drawn down by WLP/Group Company and provided it intends to commence development of the Scheme, then it must transfer all the land passed to it (and also its own existing land interests in the Site) to the Whitgift Foundation. The reason for this is that the Westfield agreement with the Whitgift Foundation requires the Whitgift Foundation to grant one unified lease of the whole of the Development Site to WLP/Group Company immediately upon that transfer taking place. This therefore creates a "unified" interest in the whole Development Site from which development can proceed, rather than piecemeal leasehold interests which would be difficult to administer in conveyancing and commercial terms. CLP covenants in the ILTA to ensure that agreement is enforced so that the Council takes comfort that this mechanism will all happen simultaneously.

#### Council lease

- 7.11 Assuming that the land transferred to and already owned by WLP/Group Company is transferred to the Whitgift Foundation pursuant to the ILTA, there is then an immediate grant of a lease to WLP/Group Company, a sublease to the Council ("**Council Lease**") followed by a sublease granted back to WLP/Group Company. The Council lease will be acquired by the Council pursuant to section 227 and the sublease granted under section 233 of the Town and Country Planning Act 1990. The reason for this lease and leaseback mechanism and the grant of the Council Lease is (a) to ensure that the numerous property interests in the Development Site are assembled in one "unified" interest in the whole site and (b) to enable the Council to acquire all of the interests in the whole of the Development Site for planning purposes and thereby ensure that the development and use of the land will benefit from the provisions of section 237 of the Town and Country Planning Act 1990, enabling development to be carried out in accordance with planning permission without restriction by private rights of third parties. This mechanism for the grant of the Council Lease is only required by the terms of the ILTA if the land transferred to and already owned by WLP/Group Company is transferred to the Whitgift Foundation (when it is thereupon required), but it is envisaged that this will be the case.

#### Developer sublease

- 7.12 The purpose of the grant of the sublease back to WLP/Group Company is so that the Developer can act as immediate landlord of the occupational tenants in the Scheme.

#### Land arrangements structure diagram

- 7.13 The structure diagram at Appendix D illustrates the proposed land transfer and leasing structure described above.
- 7.14 As set out above and as shown in the structure diagram, the terms of the ILTA envisage that the land and new rights compulsorily acquired by the Council will pass from WLP/Group Company to the Whitgift Foundation simultaneous with the grant of the development lease to WLP/Group Company to carry out the Scheme comprehensively. The ILTA provides for

the Council to be able to ensure that this simultaneous set of transfers and grant of the development lease occurs if the land and new rights are transferred to the Whitgift Foundation. This enables the grant of a combined unified development lease to WLP/Group Company rather than a piecemeal lease arrangement, in order to assist the commercial delivery of the Scheme. This structure makes it unnecessary to acquire the Whitgift Foundation's interests which, as set out above, are excluded from the Order because the Whitgift Foundation and the Westfield Group have entered into a separate agreement under which the Westfield Group can require that the Whitgift Foundation grants a new long lease of the Development Site to WLP/Group Company as set out above.

#### Building out the Scheme and remedies for failure

- 7.15 The ILTA does not contain obligations requiring CLP to build out the Scheme or carry out works for the Council's benefit and as such entering into the ILTA with CLP and related entities falls outside the scope of the Public Contracts Regulations 2006.
- 7.16 CLP is to aim to commence the retail component of the Scheme within a specified number of years of the Order being confirmed and to build out within a specified number of years (see further in the confidential Part B report). These dates are targets rather than obligations. Whilst the ILTA does not contain rights for the Council to require compulsorily acquired land to be transferred back to the Council if development does not take place, there are remedies for the Council if development does not take place as set out below:-
- ⌚ If no land is drawn down by WLP/Group Company within a specified time scale then either party can terminate the ILTA.
  - ⌚ If WLP/Group Company has drawn down land but failed to start development by the relevant retail commencement long stop date or has failed to complete development by the retail completion long stop date (see further in the confidential Part B Report) then the parties are to discuss potential steps designed to ensure the redevelopment of the site proceeds. This includes considering the submission of a revised planning application, varying the ILTA or selling the proposed development site (to the extent land has been acquired and assembled by the developer) to a third party developer, to allow development to continue as a whole. If no agreement can be reached then WLP/Group Company is entitled to retain the land it has acquired but it is required to carry out improvement works to North End to an agreed value (indexed) (or pay the Council such sum in lieu) and CLP must pay the Council best consideration for the land it retains in the context of the Scheme not proceeding (third parties would receive the appropriate compensation pursuant to the CPO process in any event). CLP must also provide (depending on the extent to which development has progressed) asset management initiatives at North End. Where

there is partial completion of development then the payment referred to in this paragraph for carrying out improvement works to North End is reduced pro-rata in proportion to the amount of development that has been achieved. The rationale for these requirements is to ensure that enhancement of North End is funded in the event that the Scheme is not proceeding which will provide some improvement to the area in that event. Whilst the Council and CLP consider that there are no impediments to delivery of the Scheme, as set out in other sections of this Report, the ILTA does not necessarily contemplate the situation where the Scheme does not proceed and secures some benefit to the North End area in the event of that happening.

- ⌚ The Scheme envisaged under the ILTA comprises a mixed use retail led scheme with a number of residential blocks built on top of the shopping centre as has been granted outline planning permission and conservation area consent. If CLP has not commenced development or sold the residential blocks to a third party developer within a specified timescale then the Council has a right (under a time limited call option for each block) to either acquire and develop each block itself (under a 250 year term lease of each block granted by WLP/Group Company) or to procure that a third party developer does so. The block leases are to be granted at market value. If that market value is less than the cost of designing and constructing the underlying structure of the development (created to enable construction of the residential blocks), then CLP has an option to require an overage payment from the Council or third party developer to recover those sunken costs.

#### Assignment and change of control

- 7.17 The ILTA can be assigned to a group company of CLP or to a third party developer who has the financial resources to procure development of the Development Site or to a party that the Council has approved (whose approval is not to be unreasonably withheld). CLP is also permitted to create a charge in favour of a bona fide funder in order to procure delivery of the Scheme.
- 7.18 No change of control in the ownership of CLP is permitted that takes the combined interest of Hammerson and Westfield in CLP below a reasonable level and provided that Westfield and Hammerson together must have a controlling interest in the development management company advising in connection with development of the Scheme and the asset management company that manages the assets comprised within the Development Site owned by CLP.
- 7.19 From the date the Development Site has been leased to WLP/Group Company by the Council, until the retail opening date, it cannot be sold or transferred by that entity other than to a group company of CLP or to a third party who is either financially able and has the resources to develop out the Site and to whom the ILTA is also transferred or has been approved by the Council acting reasonably.

### Termination of the ILTA

- 7.20 The ILTA can be terminated in a number of situations including that the Order has not been confirmed by a specified confirmation date, that the initial land draw down conditions has not been satisfied by a specified date, insolvency of CLP and the sureties, failure to reimburse the Council under the indemnity deed, breach of the alienation or Council Lease provisions in the agreement, transfer of the development site in breach of the terms of the ILTA (and in all cases after having given notice of any breach and any reasonable cure period has expired). In these situations the Council will be entitled to the usual contractual remedies.

### Expiry of the ILTA and the Council Lease

- 7.21 Once the Scheme has been built out then the obligations in the ILTA fall away. Similarly, the Council Lease can be terminated by either party once the Scheme is built out and no third party rights remain that would prevent use or development of the Development Site were the Council Lease to be terminated.

### North End

- 7.22 North End is to remain as public highway. The ILTA contains terms regarding the parties setting up a working group to agree a management strategy for North End to ensure that improvements are made to its management consistent with the intended high quality retail destination envisaged by the Scheme. The section 106 agreement related to the outline planning permission makes provision for the implementation of physical improvement works to a value of £2.1 million (indexed).

### Best consideration for land disposals

- 7.23 The consideration received by the Council for all disposals of land and rights must accord with the provisions of section 233 Town and Country Planning Act 1990. That consideration must be the "best consideration reasonably obtainable", taking account of the expediency factors in section 233(1) referred to above regarding the manner and conditions of disposal aimed at securing the planning objectives which are reflected in the terms of the ILTA. The ILTA contains a mechanism for review of the consideration to be undertaken following the acquisition by WLP/Group Company of the last substantive third party interest from the Council. That review is to be undertaken by the Council's appointed valuer in accordance with an agreed valuation methodology, in order to ensure that "best consideration reasonably obtainable" will be obtained pursuant to section 233 of the Town and County Planning Act 1990.

### Best consideration for the Council's land

- 7.24 The amount to be paid for the Council owned interests will be an initially approved amount based on an estimated agreed value but subject to the best consideration mechanism referred to above at paragraph 7.23 for a

review to be carried out at the time of disposal to ensure best consideration reasonably obtainable pursuant to section 233 of the Town and Country Planning Act 1990 is obtained.

#### Overriding third party rights – section 237

- 7.25 As noted above, the ILTA envisages that all land acquired by the Council, compulsorily or by agreement, will be acquired for "planning purposes" under section 226 or 227 of the Town and Country Planning Act 1990, including the new Council Lease referred to below. This will ensure that section 237 of the Town and Country Planning Act 1990 will apply to the development and use of the land, thus allowing the Scheme to be delivered and used in accordance with planning permission and conservation area consent but without constraints imposed by the private rights of third parties.

#### Indemnity and surety provisions

- 7.26 CLP is to indemnify the Council for the costs the Council will incur in acquiring third party interests in land and new rights, whether under the Order, pursuant to blight notices or by agreement, and in making payment of all other compensation to third parties, together with associated costs. This is to include compensation in respect of related statutory orders and in respect of interference with third party rights which are overridden by operation of section 237 of the Town and Country Planning Act 1990. CLP is also required to indemnify the Council for internal costs of specified officers' time, the costs of the Council's external consultants and Counsel and of any related legal proceedings.
- 7.27 CLP's obligations to compensate the Council under the CPO indemnity provisions and to make payments under the ILTA are guaranteed by Westfield Holdings Limited and Hammerson UK Properties Plc jointly and severally. This means that if CLP becomes insolvent then the guarantors agree to either step-in to CLP's shoes or provide an alternative party reasonably satisfactory to the Council to act as developer. If both CLP and the sureties are insolvent then the Council can terminate the ILTA.

#### Confidentiality and Freedom of Information

- 7.28 The ILTA contains confidentiality provisions and terms regarding dealing with Freedom of Information Act 2000 requests.

#### Section 233(1) and expediency

- 7.29 Officers, with the benefit of professional and legal advice (including the Deloitte report at Appendix H), consider that the terms of the ILTA are expedient for the disposal of the land in accordance with section 233(1) of the Town and Country Planning Act 1990. The terms of the ILTA are designed to secure the best use of the land and the carrying out of the Scheme within section 233(1). The terms of the ILTA also provide for the Council to receive best consideration that can reasonably be obtained within s233(3) for all such land disposals. Officers have had regard to the aim of

securing the planning benefits of the Scheme (section 233(1)), and have followed appropriate valuation and other best consideration principles including taking into account the terms of the disposal, land values, market conditions, development and finance costs, developer risk, and the proper planning of the Council's area.

## **8. THE PROPOSED ORDER LAND**

- 8.1 The extent of the land and new rights proposed to be included in the Order is shown on the draft Order Map in **Appendix A** to this report. The interests in land (including freehold, leasehold, tenancies and other land interests) proposed to be acquired are shown coloured pink on the draft Order Map ("the **Pink Land**"). Land over which new rights are proposed to be created and acquired are shown coloured blue ("the **Blue Land**"). Together these areas of land are referred to in this report as the "**Order Land**".
- 8.2 The Deloitte Report at **Appendix H** confirms that the boundary of the proposed Order Land has been drawn to create a site that is necessary for the construction and use of the Scheme, while minimising the impact of land and rights acquisition on existing owners and occupiers. The continuing necessity for all the land and rights sought under the Order will be kept under review as the Order progresses.
- 8.3 As can be seen from the draft Order Map, the Pink Land consists of a number of parcels of land, in a variety of town centre uses, but primarily consisting of the Whitgift shopping centre, the former Alders department store, the Marks and Spencer store and other retail units on North End and land to the rear and adjacent to these units, a number of largely vacant office units, including the office towers known as Blocks A-C, Block D (Centre Tower) and Block E located within and above the Whitgift Centre, land to the rear of properties on the northern side of George Street, Dingwall Avenue, the office blocks fronting Dingwall Avenue, namely Focus House and London House, the two multi storey car parks adjacent to the Whitgift Centre and the car park fronting onto Wellesley Road, as well as the subsoil of parts of some highway not already in the ownership of the Council.
- 8.4 The Blue Land, comprises land over which new rights are proposed to be created and acquired. The Blue Land encompasses land at Poplar Walk (Green Park House), North End (numbers 32-36, 58-92 and 100-112), George Street (the Almshouses, numbers 3, 3A, 11-25A), Wellesley Road (Electric House, HSBC Bank, and Meridian House), subsoil beneath Wellesley Road and Green Park House on Poplar Walk. New rights are required for the construction and future maintenance of the Scheme, including the right to over-sail cranes during construction and to undertake surveys to assess the condition of buildings in close proximity to the construction works. New rights are also required to carry out consequential modification works to allow properties and buildings physically affected by the carrying out and implementation of the Scheme to continue in beneficial use. Further details of the proposed rights to be created and acquired over the Blue Land are set out in section 4 of the draft Statement of Reasons appended at **Appendix B**.

- 8.5 The Blue Land consists of a number of separate parcels of land in differing uses, but predominantly retail and commercial with some residential use. As noted in paragraph 5.9, the residential properties within the proposed Blue Land comprise three flats above 102 North End, the Almshouses on George Street and the upper floors above the retail units at 17-21 George Street. As noted, the new rights sought over these residential properties are rights to over-sail, survey and undertake minor external works. The impact on the residential occupiers through the exercise of the new rights will not be significant and will not necessitate any temporary or permanent re-housing.
- 8.6 Interests currently held by the Council, interests held by the Whitgift Foundation and those held by Croydon GP2 Limited as trustee for WLP would be excluded from the Order Land. As set out in section 7 above, the interests of WLP are to be brought within the Scheme through the ILTA and those of the Whitgift Foundation are to be brought within the Scheme through the developer's contractual arrangements outside the ILTA which have been the subject of a due diligence exercise undertaken by the Council's external solicitors and are referred to further in the exempt report at item B1 on Part B of the agenda for this meeting.
- 8.7 Members are referred to section 4 of the draft Statement of Reasons in **Appendix B** which gives further details of the proposed Order Land.

## **9. RELEVANT COUNCIL POWERS AND RELIANCE ON COMPULSORY ACQUISITION**

- 9.1 Section 226(1)(a) of the Town and Country Planning Act 1990 empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council must not use this power unless it also thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:
- (a) the promotion or improvement of the economic well-being of the Council's area;
  - (b) the promotion or improvement of the social well-being of the Council's area;
  - (c) the promotion or improvement of the environmental well-being of the Council's area.
- 9.2 Where the Council is acquiring land compulsorily under section 226(1), section 226(3)(a) empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily any land adjoining that land which is required for the purpose of executing works for facilitating the development or use of that land.
- 9.3 In some circumstances only new rights over land would be required, such as a new right of access or a right to use the air space above a building to



enable the use of cranes during construction. In these cases it is usually not necessary to acquire the freehold or leasehold interest. Instead, section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council, subject to authorisation of the Secretary of State, to create and acquire new rights over land.

- 9.4 Section 227 of the Town and Country Planning Act 1990 provides an equivalent power for the Council to acquire land (including rights over land) by agreement (as opposed to compulsorily) for the planning purposes described in paragraphs 9.1 and 9.2.
- 9.5 It is proposed that, wherever possible, land and rights should be acquired by agreement to facilitate the Scheme. If an Order is made, efforts to acquire by agreement will continue in tandem with pursuing compulsory powers. The CPO Circular makes clear that compulsory purchase is intended as a last resort in the event that efforts to acquire by agreement fail. However, the CPO Circular also acknowledges that local authorities will need to consider when the land to be acquired will be needed and should plan a compulsory purchase timetable at the same time as conducting negotiations. The CPO Circular recognises that, given the amount of time needed to complete the statutory procedures, it may often be sensible to initiate compulsory purchase in parallel with such negotiation (paragraph 24 of the CPO Circular).
- 9.6 The proposed ILTA envisages that most of the land and rights acquired by the Council either by agreement or compulsorily (other than the sub-soil of highways, with the exception of Dingwall Avenue and part of Poplar Walk) will be transferred to the developer/related companies. Section 233 of the Town and Country Planning Act 1990 empowers the Council to dispose of land held for planning purposes on conditions which are aimed at securing, among other things, the best use of that land and any existing or proposed buildings and/or securing the construction of buildings and carrying out works needed for the proper planning of the area. Section 233(3) requires the Council to obtain the consent of the Secretary of State for any disposal if the consideration is "less than the best that can reasonably be obtained". All disposals of land pursuant to the ILTA will be on terms which secure that "best consideration" for the purpose of section 233(3) is obtained. Members are referred to the Deloitte Report at **Appendix H** which includes advice on this aspect.
- 9.7 The Council is required to exercise the power under section 233 in a way which, so far as practicable, secures that "relevant occupiers" (residents and those carrying on business on the land who wish to obtain accommodation) are provided with a suitable opportunity to obtain accommodation (s233(5)). A Land Acquisition and Relocation Strategy has been prepared which sets out the approach to relocation both in the short and longer term and is attached as **Appendix C**. CLP has confirmed that, so far as practicable, relevant occupiers will be provided with a suitable opportunity to relocate in the completed Scheme, Centrale or elsewhere in the town centre. This will apply both to national retailers and small independent businesses. In addition, a discretionary Exceptional Hardship Scheme has been devised to

assist certain owner occupiers who would not be eligible to make a valid claim for blight under the statutory regime. A copy of the proposed scheme is attached as **Appendix G**.

- 9.8 In addition to the Council's powers of land acquisition and disposal, section 237 of the Town and Country Planning Act 1990 makes provision for certain third party rights to be overridden when land which has been acquired or appropriated by a local authority for planning purposes is developed in accordance with planning permission. Development and use of such land in accordance with planning permission, either by the local authority or by a person deriving title under the authority, is authorised even though it interferes with a third party right, such as an easement, or it breaches a restrictive covenant on the use of the land. Any third party whose rights are overridden in consequence of section 237 is entitled to statutory compensation, assessed in accordance with statutory provisions for compensation for "injurious affection", based on the diminution in the value of their property.
- 9.9 The next two sections of this report provide an outline of what the compulsory purchase process involves and refer to further relevant policy guidance from the Secretary of State in the CPO Circular on the use of compulsory purchase powers.

## **10. OUTLINE OF THE COMPULSORY PURCHASE PROCESS**

- 10.1 The procedures for compulsory purchase under planning powers are mainly governed by the Acquisition of Land Act 1981, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965. Compensation for affected parties is governed by a number of statutes including, in particular, the Land Compensation Acts 1961 and 1973, the Compulsory Purchase Act 1965 and a considerable body of case law.
- 10.2 In outline, if Cabinet resolves to make an Order the main steps which will be taken include:
1. Making the Order
  2. Notification of persons affected and publicity for the making of the Order and the Council's intention to submit it to the Secretary of State for confirmation
  3. Submission of the Order to the Secretary of State
  4. Objections
  5. Public local inquiry
  6. Inspector's report to the Secretary of State
  7. Secretary of State's decision on confirmation
  8. Notification and publicity for the Secretary of State's decision

9. Six week challenge period
  10. Acquiring /taking possession of the Order Land (if Order confirmed)
  11. Compensation (if Order confirmed).
- 10.3 Throughout all these steps, reasonable efforts to acquire land and rights by agreement would continue.
- 10.4 The necessary work in gathering information needed to draw up the Order has been completed. The Order will include a schedule listing all owners, lessees, tenants and occupiers and others who are likely to have a claim for compensation if compulsory purchase takes place. These affected parties are known as "qualifying persons" and they must all receive the statutory notice at step 2 above. In addition they will be provided with a (non-statutory) "Statement of Reasons" for making the Order, a draft of which appears at **Appendix B**. The statutory notices will invite them to make representations/objections to the Secretary of State within a specified period of at least 21 days (step 4).
- 10.5 If valid objections to the Order are made to the Secretary of State by qualifying persons and they are not withdrawn he is likely to arrange for a public local inquiry to be held and the Council and all objectors will be notified (objections which relate exclusively to compensation may be disregarded for this purpose). The date of the Secretary of State's notification is known as the "relevant date". In the present case it is likely that a pre-inquiry meeting will be arranged, which must be held within 16 weeks of the relevant date. The public local inquiry would normally take place within 8 weeks of the conclusion of the pre-inquiry meeting. The Council will be required to provide the Planning Inspectorate and National Planning Casework Unit and all objectors with an outline Statement of Case within 8 weeks after the relevant date, followed by a Statement of Case within 4 weeks after the conclusion of the pre-inquiry meeting. The Secretary of State may require other parties to prepare outline and full Statements of Case.
- 10.6 After the inquiry the inspector will report to the Secretary of State who will decide whether the Order should be confirmed, modified or rejected (step 7). If the Order is confirmed the Council must publish notice of confirmation and give individual notices to all qualifying persons with a copy of the Order as confirmed (step 8). The date on which notice of confirmation is first published is important as a number of key time limits run from this date, in particular, the 6 week statutory challenge period (step 9) and the three year period within which the powers to acquire land under the Order must be "exercised", either by serving notice to treat or by executing a general vesting declaration (step 10).
- 10.7 So far as possible, all claims for compensation will be settled by agreement. Rights to compensation include not only the value of land taken (and the diminution in value of land adversely affected but not acquired), but claims in respect of disturbance to business and occupation as well as home loss (for

residential occupiers, where relevant), and basic loss and occupier loss (in respect of non-residential properties). Disputes over compensation are determined by the Upper Tribunal (Lands Chamber).

- 10.8 Once the Order has been submitted to the Secretary of State certain owner-occupiers of residential property (where relevant) and other property with a low rateable value may be entitled to submit claims for blight, in effect, seeking early acquisition of their land interest.
- 10.9 The CPO Circular (at paragraph 28) notes that compulsory purchase proposals inevitably lead to a period of uncertainty and anxiety for owners and occupiers of the affected land. It is essential that, if Cabinet resolves to make an Order, the Council keeps any delay to a minimum and completes the statutory processes as quickly as possible. Preparatory steps have therefore been taken by officers to ensure that in the event that Members resolve to make an Order, the statutory procedures can commence as soon as the contractual arrangements with the developer, including the indemnity for the Council (namely, the ILTA), have been completed. The terms of the contractual arrangements between the Council, CLP and other parties in the proposed ILTA have now been agreed.
- 10.10 The CPO Circular recommends (at paragraph 27) providing affected parties with full information about what the compulsory purchase process involves and their rights and duties, as well as an indicative timetable of events, all in an accessible format. If Cabinet resolves to make an Order arrangements will be put in place to ensure that affected parties are kept informed of the progress of the proposals, through a designated contact officer within the Council and through a dedicated web page on the Council's website which will include information about the proposals and their progress, information about the compulsory purchase process and where assistance can be obtained and copies of key documents, including an indicative timetable of events, to be updated as necessary. For the purposes of this report a provisional indicative timetable has been prepared and is included in **Appendix E**. This will be updated from time to time as necessary if Cabinet resolves to make an Order.

## **11. RELEVANT CONSIDERATIONS AND JUSTIFICATION FOR MAKING THE PROPOSED COMPULSORY PURCHASE ORDER**

- 11.1 Relevant considerations for Members in reaching their decision are set out throughout this report, but this section focuses on factors which arise from case law and Government policy on compulsory purchase as set out in the CPO Circular, to which the Secretary of State will have regard if the Order is made by the Council and submitted to him for confirmation.
- 11.2 The overarching consideration for the Council in deciding whether to make an Order and for the Secretary of State in deciding whether to confirm an Order is set out in paragraph 17 of the CPO Circular. This states:

*"A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be*

*sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention."*

Specific consideration is given to Human Rights issues in section 12 below.

11.3 In the context of that overarching consideration , the following issues should be considered:

- ① whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;
- ① the extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, social or environmental well-being of the Council's area;
- ① the potential financial viability of the Scheme, general funding intentions and the timing of available funding;
- ① impediments to implementation and whether the Scheme has a reasonable prospect of going ahead;
- ① whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means.

11.4 Paragraphs 16 – 29 and Appendix A to the CPO Circular, especially paragraph 16 of Appendix A, provide relevant guidance. The issues summarised above are addressed below.

#### **Compliance of the Scheme with the adopted planning framework and lack of planning impediments**

11.5 Details of the relevant national, London and local planning policies are set out in section 8 of the draft Statement of Reasons which appears as **Appendix B** to this report to which Members are referred. In summary the proposals are:

- ① Consistent with the National Planning Policy Framework 2012 ("NPPF") which supports the vitality of town centres through the "town centres first" approach and requires that retail, leisure and other town centre needs be met in full (and consistent with the recently published National Planning Practice Guidance ("NPPG") which gives guidance on how to interpret the NPPF). Approximately one third of the proposed redevelopment site is outside the Primary Shopping Area ("PSA") as identified in the Croydon Replacement Unitary Development Plan 2006 – Saved Policies 2013 but this area is immediately adjacent to the PSA and will function as an integral part of the comprehensive development. The whole development

site is entirely within both the Retail Core as identified in the OAPF and the Croydon Metropolitan Centre as identified in the London Plan and the Croydon Local Plan (Strategic Policies) 2013.

- ① Generally compliant with the London Plan (2011 and the Draft Further Alterations 2014) in which Croydon is identified as a Metropolitan Centre and the town centre (including the proposed Order Land) is identified as an "Opportunity Area" forecast for growth in view of the opportunities it offers for accommodating large scale development, but also as being in need of integrated action to address the strategic challenges it faces. The proposed redevelopment site sits wholly within the Retail Core and within the Metropolitan Centre. The area of non-compliance with the London Plan relates to parking standards. However, neither the Mayor of London nor the Secretary of State considered it necessary to intervene in consequence of this and car parking is to be controlled by condition.
  - ① Compliant with the Croydon Local Plan (Strategic Policies) (2013) which identifies Croydon Metropolitan Centre (including the Order Land), as the principal location in the borough for office, retail and cultural uses (including a diverse evening/night-time economy) and as the largest retail and commercial centre in South London.
  - ① Generally compliant with the OAPF adopted by the Mayor of London as supplementary planning guidance to the London Plan and by the Council as a supplementary planning document to the Croydon Local Plan. The OAPF identifies the need for significant change across a large part of the Retail Core and states that there is "a strong preference for this to be done in a holistic and comprehensive way". The OAPF also states that the outcomes sought by the OAPF would be most achievable through a comprehensive approach as part of a large redevelopment and renewal approach. The aim is to offer residents, visitors, shoppers and employees a significant retail destination for South London and the South East of England.
- 11.6 It should be noted that since the grant of outline planning permission the Government has issued the NPPG and cancelled a significant amount of planning policy and guidance. However, there are no changes of significance in the NPPG and the policy which it replaces which would affect the decision taken by Members to grant outline planning permission. It follows that the position at the compulsory purchase stage is broadly consistent with that when outline planning permission was granted.
- 11.7 The Scheme provides for a high quality, retail led mixed-use scheme incorporating an appropriate mix of uses including leisure and housing. It generally accords with the relevant policies of the London Plan (save for parking standards) and the Croydon Local Plan. It delivers or significantly contributes to all of the desired outcomes for the Retail Core set out in of the OAPF. Although this Scheme alone will not fulfil the entirety of the OAPF's housing target of 1,100 new homes over the 20 year life span of the Local

Plan, that figure relates to the whole of the Retail Core, of which the Whitgift redevelopment area forms only part. The Scheme accords with the objectives of the OAPF in terms of offering a comprehensive approach to a large part of the Retail Core. It will transform the area in accordance with the aims of national and local policies.

- 11.8 Outline planning permission and Conservation Area Consent were granted for the Scheme on 5 February 2014 and it is anticipated that a related planning application will be submitted in respect of the proposed expanded entrance to the Scheme from North End at Chapel Walk within the next few weeks. Reserved matters applications will be submitted in respect of the detailed design of the Scheme. It is considered that there are no planning impediments that would be likely to prevent implementation of the Scheme on the basis that the submitted details will be consistent with the outline planning permission parameter plans and design guidelines and the conservation area consent. Members are asked to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area and the setting of the listed buildings in relation to the Scheme which was considered in the determination of the outline planning permission and conservation area consent for the Scheme.
- 11.9 Members are referred to paragraph 11.29 - 11.32 regarding the implications of the recent claim for judicial review in respect of the outline planning permission and conservation area consent.

#### **Contribution to the economic, social and environmental well-being of the area**

- 11.10 The Council's sustainable community strategy for promoting or improving the social, economic and environmental well-being of its area, for the purpose of section 4 of the Local Government Act 2000: "Croydon's Sustainable Community Strategy 2013-18" ("the **Community Strategy**"), sets out a vision for the type of place the borough of Croydon has the potential to be by 2040. It explains its first priority for achieving its goal of becoming a "better borough" in the following terms:

*"We know that sustainable economic growth and development is best delivered through our significant town centre regeneration programme. This will act as a catalyst to attract businesses to invest, who in turn go on to thrive providing opportunities for local people.*

*The borough is the most important commercial centre outside central London for financial and business services. It serves as a major economic and employment centre for the region for both retail and public administration. Croydon's current 12,000 strong business base is one of the borough's most important assets."*

- 11.11 The Scheme will contribute to the achievement of a number of objectives identified in the Community Strategy and make a significant contribution to the economic, social and environmental well-being of the area, including:

In relation to economic and social well-being:

- ⌚ Reversing the decline of Croydon Metropolitan Centre through the provision of an increased and substantially improved high quality retail offer that will transform the status of Croydon town centre as a major retail destination, acting as a catalyst to further investment and economic growth;
- ⌚ The provision of a range and critical mass of new high quality retail facilities that improve the variety and diversity of shopping in the town centre including a new full range quality department store, and a range of other modern retail units to meet the requirements of national and independent retailers;
- ⌚ The provision of new leisure and food and drink facilities to provide a diverse town centre and improve its viability and vitality, including the currently underperforming evening economy;
- ⌚ The provision of improved and integrated car parking;
- ⌚ The creation of strong pedestrian routes, including improved links to East Croydon Station, West Croydon transport interchange and the wider town centre;
- ⌚ The creation of up to 5,000 additional jobs in the town centre (approximately 3,320 full time equivalents depending on precise final use classes) with a potential further 330 indirect jobs such as in new supply chains;
- ⌚ Approximately 4,300 "person years" of construction employment;
- ⌚ Investment in targeted training and employment support initiatives during both the construction and retail phases;
- ⌚ Targeted programmes to support and engage local young people;
- ⌚ New and improved community facilities;
- ⌚ Investment in pedestrian, cycling and public transport infrastructure in, through and around the town centre; and
- ⌚ In terms of physical regeneration an unsightly area of the town will be redeveloped to a high standard of urban design that will mend the urban fabric and help rejuvenate and enhance the character and appearance of the Central Croydon Conservation Area.

In relation to social and environmental well-being:

- ⌚ The provision of between 400 and 600 new homes including 15% affordable housing (at least 10% on-site with the remainder to be provided off-site or through a commuted sum);



- ⌚ Infrastructure and public realm benefits including the provision of public art;
  - ⌚ The creation of a sense of place through the character and coherence of the Scheme;
  - ⌚ Improvements to community safety and security;
  - ⌚ High standards of sustainable design and construction methods;
  - ⌚ Preservation and enhancement of the character and appearance of part of the Central Croydon Conservation Area and listed buildings which surround the proposed redevelopment site; and
  - ⌚ Provision for connection to any future district heating scheme.
- 11.12 The planning obligations related to the implementation of planning permission in the agreement under section 106 of the Town and Country Planning Act 1990 would bring benefits in terms of promoting and improving the economic, social and environmental well-being of the Council's area. The planning obligations include contributions to improvements to bus services (£10 million indexed), tram services (£15 million indexed) and local highway improvements (£2.5 million indexed). The developer will be required to implement a Local Employment and Training Strategy, target towards local vulnerable and disadvantaged groups, including job brokerage and educational support. The section 106 agreement also requires the provision of public art and public realm improvements.
- 11.13 Implementation of the Scheme will lead to private investment in excess of £1 billion in Croydon. It will bring both physical and economic improvements to the town centre and the borough as a whole. It will help to reverse the decline in the town centre and assist in achieving the vision in the Community Strategy vision of creating an enterprising, sustainable, connected, caring and creative city by 2040. It will provide a major commercial boost to the area with the opportunity to rebrand Croydon and act as a catalyst for regeneration and unlock the potential to regenerate a number of other sites.
- 11.14 Members are referred to the draft Statement of Reasons at **Appendix B** to this report which provides further details of the benefits and implications of the proposed Scheme in terms of the economic, social and environmental well-being of the Council's area.

### **Reasonable prospects of Scheme proceeding if an Order is made**

#### Potential viability and funding intentions

- 11.15 Westfield and Hammerson are two substantial developers with considerable experience and financial resources. CLP has indicated that its current intention is to fund the obligations under the ILTA and the Scheme internally from its own resources. However the arrangements between the partners

allow for third party funders to be brought in at the appropriate time as the Scheme progresses and the terms of the ILTA acknowledge this and make provision for this eventuality.

- 11.16 In order to ensure that there can be sufficient assurance as to potential viability and funding intentions, the Council has instructed Deloitte to report on these matters on a confidential basis. Their conclusion is that there are no impediments to the Scheme proceeding on account of financial viability or availability of funding. Members are referred to the exempt report at item B1 on Part B of the agenda for this meeting which includes further confidential advice from Deloitte on this aspect.

Lack of impediments

- 11.17 Potential financial impediments have been addressed above. The Secretary of State will also wish to be satisfied that there are no physical or legal impediments to the Scheme proceeding.
- 11.18 Investigations undertaken by CLP to date have not revealed any physical factors which would impede development.
- 11.19 One interest in the proposed Order Land has been found to be held on behalf of the Crown. This is a leasehold interest in Electric House, Wellesley Road held by the Home Office over which new rights are proposed to be created and acquired. This is unlikely to be of any practical significance as discussions with the Home Office have confirmed that its lease is due to be surrendered in June 2014. Therefore it will not be necessary to enter into an agreement with the Home Office.
- 11.20 There are no "special kinds of land" within the Order Land, such as common land, open space or allotments.
- 11.21 There is some operational land of statutory undertakers within the Order Land. All statutory undertakers have been identified and discussions are progressing with them. There are a number of electricity substations in the Whitgift Centre operated by UK Power Networks held pursuant to subleases. In addition, there are leasehold interests which encompass telecommunication apparatus and masts operated by electronic communications code operators within the Whitgift Centre. CLP has been engaging with each of these operators for a number of months. The negotiations are progressing and it is anticipated that agreement should be reached in all cases. In addition there are a number of statutory undertakers that operate apparatus within the Order Land. CLP is also in discussions with all of those undertakers regarding diversion of their apparatus.
- 11.22 As described above, planning permission and Conservation Area Consent were granted for the Scheme on 5 February 2014. It is anticipated that a planning application will be submitted in respect of proposals to expand and improve the entrance to the Scheme from North End at Chapel Walk within the next few weeks. Reserved matters applications will be submitted in respect of the detailed design of the Scheme. Those further applications will

be determined by Strategic Planning Committee in accordance with relevant planning policies and all other material considerations. There is no obvious reason why the necessary permissions might be withheld.

- 11.23 An application for an order under section 247 of the Town and Country Planning Act 1990 has been made to the Council in respect of the stopping up of the whole of Dingwall Avenue to create a new area of public realm and a quality approach to the proposed new anchor store. It is intended that if objections to the application for the stopping up order are made and an inquiry is to be held, it would be conjoined with the inquiry relating to the Order.
- 11.24 One or more agreements under section 278 and/or section 38 of the Highways Act 1980 are to be entered into by CLP with the Council and Transport for London as highway authorities in respect of proposed works to the highway related to the Scheme.
- 11.25 Licences under the Highways Act 1980 will be required for ground anchors beneath Wellesley Road and any scaffolding, hoarding or over-sailing on or over the highway required for the Scheme.
- 11.26 Whilst it is not a pre-requisite to implementation of the outline planning permission, the Council and the Greater London Authority are bringing forward proposals to introduce surface level crossings on Wellesley Road, in respect of which funding is available.
- 11.27 The proposed ILTA is designed to secure that, so far as reasonably practicable, if an Order is confirmed the Scheme should proceed within the timescales set by compulsory purchase legislation.
- 11.28 Taking account of the above factors, it is considered that there is a reasonable prospect of the Scheme proceeding if the Order is made.

Judicial review of outline planning permission and conservation area consent

- 11.29 Cabinet is asked to note that on 26 February 2014 the Council received notice of a proposed claim for judicial review by the Whitgift Trust in respect of the grant of outline planning permission and conservation area consent for the Scheme. A copy of the letter from solicitors acting on behalf of the Whitgift Trust and other parties and the response sent on the Council's behalf by Pinsent Masons LLP on 12 March 2014 and that sent on behalf of Westfield, Hammerson and CLP, who are named as interested parties, by Herbert Smith Freehills LLP on 12 March 2014 are included in **Appendix I**.
- 11.30 On 19 March 2014, a claim for judicial review was filed with the High Court on behalf of the Whitgift Trust. The claim will be robustly defended on behalf of the Council. A summary of the claim is also included in Appendix I.
- 11.31 Nonetheless Cabinet is asked to consider carefully whether or not it wishes to proceed with the recommended resolutions in light of this claim. Cabinet is asked to note that even if permission is granted by the Court to enable this

claim to proceed, and even if it were to result in the quashing of the outline planning permission and conservation area consent, the proposed Order would not be tied to a specific planning permission and nor is the ILTA so restricted. Members are advised firstly, that there is no requirement either in law or in policy that planning permission should have been granted before a compulsory purchase order is made and secondly, that there is no obvious impediment to an alternative planning permission being obtained to authorise the purposes described in the proposed Order (and in the ILTA) of a comprehensive retail led mixed use redevelopment being carried out on the proposed Order Land.

- 11.32 The Whitgift Trust made several objections to the planning application which was granted outline planning permission and to the conservation area consent application which was granted for the Scheme. The Whitgift Trust's interests and those of others opposed to the Scheme have been taken into account by the officers. It cannot be ruled out that the claimants, in applying for judicial review and whilst formulating their case in terms of alleged errors of law, are seeking to cause delay and disruption to the compulsory purchase process in order to seek to improve their negotiating position in the event that an Order is made.

**Whether the purpose for which the land is proposed to be acquired could be achieved by other means including an alternative location**

- 11.33 The purpose for which land and rights are proposed to be acquired is to enable comprehensive redevelopment of the proposed Order Land in accordance with the adopted planning policy framework. The outline planning permission which has been granted and the proposed ILTA envisage comprehensive redevelopment in general accordance with those policies.
- 11.34 The number and diversity of land interests and rights in the proposed Order Land indicate that the prospects of acquisition of all the available interests by agreement to enable comprehensive redevelopment within a reasonable timescale are unlikely.
- 11.35 Officers have considered whether redevelopment in accordance with the planning policy objectives might be achieved by individual landowners without the need for compulsory purchase. In order to implement the comprehensive nature of the Scheme, including the shopping centre layout, it would be necessary to cut across current land ownerships (physically and in respect of land subject to multiple interests). Consequently it is considered unlikely that redevelopment by individual owners would be a workable or realistic option. It would be dependent upon individual owners being willing and able to undertake redevelopment and to do so within an acceptable timeframe and would require a significant degree of co-operation between the current owners and occupiers which to date has not emerged. It would be likely to be complex and difficult to achieve. Officers have concluded that it would be likely to result in piecemeal and un-coordinated renovation or redevelopment of parts of the proposed Order Land, with the risk of substantial delays in development coming forward. In this context it

should be noted that a number of the major landowners within the Order Land have owned their sites for significant periods of time (including periods of considerable economic buoyancy prior to 2008) and no alternative, credible development proposals are currently proposed or considered likely to be capable of coming forward and implemented in a reasonable timescale.

- 11.36 In relation to the prospect of the planning objectives being achieved at a different location, in the present case, the scope for alternative locations is limited, in particular by the purposes of the proposed Order. The Order seeks to achieve a strong reinvigoration of the Metropolitan Centre and the Retail Core through implementation of comprehensive redevelopment. The OAPF sets out key objectives for this reinvigoration. As part of that, the Scheme (subject to detailed planning permission at the reserved matters stage) proposes the provision of a new high quality department store in the South East part of the Order Land which is an important component of the Scheme. There is no other site within the town centre realistically capable of achieving the purposes of the Order. The redevelopment of only a part of the Order Land could not fulfil those purposes.
- 11.37 Overall, it is concluded that there is no credible alternative which is likely to deliver a comprehensive scheme which meets the planning policy objectives within a reasonable timeframe.

**Overall justification: whether there is a compelling case in the public interest for the Order**

- 11.38 The need for comprehensive redevelopment of the proposed Order Land is acknowledged and supported in the adopted planning policy framework as summarised above. Delivery of the Scheme would fulfil the key planning policy objectives and transform Croydon's town centre and its retail offer. It would contribute significantly to the improvement of the economic, social and environmental well-being of the area as outlined above. Officers consider that there is a reasonable prospect that the Scheme will proceed and that there are no likely realistic alternatives to compulsory purchase to achieve the purposes of the proposed Order. The impact on the human rights of those likely to be affected by the proposed Order is considered in section 12 of this report. The impact of the Scheme in the context of the Equalities Act 2010 is considered in section 16 of this report. In officers' view, the considerable public benefits to be derived from implementation of the Scheme outweigh the harm caused by interference with the human and other rights of those likely to be affected by compulsory purchase. In officers' view, there is a compelling case in the public interest sufficient to justify the making of the Order.

**12. HUMAN RIGHTS**

- 12.1 In reaching their decision, Members should take account of the provisions of the Human Rights Act 1998. As a public authority, the Council must not act in a way which is incompatible with a Convention right protected by the Human Rights Act 1998. As outlined above, in officers' view there are strong

grounds on which to conclude that the Scheme is in the public interest sufficient to justify interfering with the human rights of those with an interest in the Order Land, including those whose homes are within the Order Land, as well as those businesses affected. The proposed Order does not include the acquisition of any residential properties but new rights will need to be created and acquired in respect of some residential properties as described in paragraphs 5.9 and 8.5.

12.2 The key provision of the CPO Circular is paragraph 17, quoted in paragraph 11.2 above. This not only summarises the national policy and the need for there to be a "compelling case in the public interest" for compulsory acquisition, but also meets the requirements of the Convention. In relation to Article 1 of the First Protocol of the European Convention, a fair balance is required to be struck between the public interest and private rights and in relation to Article 8, any interference with the right to respect for a person's private and family life and home must be proportionate.

12.3 Human rights protected by the 1998 Act of particular importance to the decision on compulsory purchase are those under Articles 6 and 8 and Article 1 of the First Protocol of the Convention.

12.4 Article 6 provides:

*" In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

12.5 The statutory procedures require that all those likely to be affected by the Order are notified and given an opportunity to object. If there are objections the Secretary of State will arrange a public local inquiry so that their objections can be heard (unless all parties agree to the written representations procedure). The legislation provides for statutory review in the event of challenge to the decision of the Secretary of State on confirmation of the Order. Disputes over compensation can be referred for hearing by the Lands Chamber of the Upper Tribunal. Taken together, the availability of these procedures satisfies the requirements of Article 6.

12.6 Article 8 provides:

*" Everyone has the right to respect for his private and family life, his home and his correspondence.*

*"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

12.7 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. As described in paragraphs 5.9 and 8.5 the effects of the proposed Scheme on residential occupiers are likely to be minimal. In officers' view, the public benefits to be derived from the Scheme taken together with compensation and measures which will be required of CLP to minimise the adverse affects on residents are sufficient to secure compliance with Article 8.

12.8 Article 1 of the First Protocol provides:

*" Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."*

12.9 Article 1 of the First Protocol again indicates that compulsory purchase must strike a fair balance between the public interest and the private rights protected by Article 1, equivalent to proportionality under Article 8. For the reasons set out above, it is considered that there is a compelling case in the public interest for the Order to be made and this satisfies the requirements of proportionality and fair balance.

### **13. FINANCIAL RISK ASSESSMENT CONSIDERATIONS**

13.1 The Council would be fully indemnified against all costs and compensation liability associated with a compulsory purchase order for the Whitgift Centre and adjoining land. Costs would be expected to arise in terms of CPO costs and compensation, land transactions, fees and internal staff costs. The funds for these would be uncapped but with a proactive budgeting system to ensure strong cost control.

13.2 If the Order is sought and confirmed, when land interests and rights are drawn down and transactions completed, funds would be placed in an escrow account to cover costs in advance of any payment being required from the Council. Fees and internal costs would be repaid monthly in arrears.

13.3 The Council has negotiated a Parent Company Guarantee with Westfield Holdings Limited and Hammerson UK Properties Plc to securely underwrite the costs to the Council.

13.4 The Scheme would bring improvements to both the physical environment and management and maintenance of North End. Whilst the Council will need to continue to support North End financially, the improvements would be at no additional cost to the Council.

13.5 It is envisaged that, should the development proceed, additional funds would be available to the Council in terms of business rates, council tax and New

Homes Bonus. Whilst it is difficult to accurately predict these increases, due to the potential impact of legislative change, it is envisaged that a sum of between £906,000 and £1,204,000 could arise per annum.

- 13.6 In accordance with section 233 of the Town and Country Planning Act 1990, if Cabinet decides to proceed, the Council will receive best consideration reasonably obtainable for the disposal of all the land within the proposed redevelopment site, which is to be held by the Council for planning purposes at the time of disposal.

(Approved by: Richard Simpson, Director of Finance and Assets.)

#### **14. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

- 14.1 The Council Solicitor comments that the key legal implications arising out of the recommendations are referred to within the body of this report. The Council has taken advice from Leading Counsel in relation to the matters set out in this report and has also been supported and advised by external solicitors Pinsent Masons LLP. Further legal advice is set out in the Part B exempt report.

(Approved by Sean Murphy, Principal Corporate Solicitor (Regeneration) on behalf of the Council Solicitor and Monitoring Officer.)

#### **15. HUMAN RESOURCES IMPACT**

- 15.1 There are no significant human resources implications arising from this report, although clearly Council officer resource will be required to progress the recommendations.

(Approved by Adrian Prescod, HR Business Partner, for and on behalf of Interim Director of Workforce, Interim, Chief Executive Department.)

#### **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. Section 149 of the Equality Act 2010 places the Council, as a public authority, under a legal duty ("the public sector equality duty"), in the exercise of all its functions, to have due regard to the need to:

- ⌚ eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
- ⌚ 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



- ⌚ foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

16.2 Section 149 of the Equality Act 2010 and its predecessor provisions have been considered by the courts on a number of occasions. The principles derived from these cases include:

- ⌚ "due regard" requires more than simply giving consideration to the above factors, councillors should be aware of the special duties the Council owes to those with protected characteristics;
- ⌚ "due regard" is the regard that is appropriate in all the particular circumstances including, on the one hand, the importance of the areas of life of the members of the protected group that are affected and the extent of the effects; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing;
- ⌚ no duty is imposed to take specific steps, it is a duty to have regard to the need to achieve the various goals referred to above;
- ⌚ the duty must be fulfilled before and at the time that a particular policy which might affect protected groups is being considered. It involves a conscious approach and state of mind. It must be exercised in substance, with rigour and with an open mind. It is not a question of ticking boxes;
- ⌚ the duty must be discharged by the public authority, it cannot be delegated;
- ⌚ it is a continuing duty; and
- ⌚ it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they have considered the public sector equality duty.

16.3 To assist Cabinet in discharging the public sector equality duty a full Equality Analysis ("**EqA**") has been undertaken to assess the impact on protected groups of the making of a compulsory purchase order and implementation of the Scheme, in line with the Equality Act 2010 and Croydon Equality Strategy 2012-16. The report of the EqA is attached as **Appendix F**. The EqA includes consideration of the impact upon protected groups whose lives may be affected by the acquisition of land and rights, by the construction of the Scheme and/or by the completed Scheme. (Members may wish to note that Equality Impact Assessments were also undertaken in respect of the planning policies taken into account in relation to the Scheme namely, for the submission Draft Core Strategy which has now been adopted as the Croydon Local Plan: Strategic Policies 2013 and for the OAPF.)

16.4 The EqA for the proposed Order identifies that the wider community potentially affected would include:

- ⌚ Those who currently own or occupy land within and around the affected area including business and land owners;
  - ⌚ Current visitors as well as future visitors to the affected area for work or leisure and to use the retail and other town centre facilities; and
  - ⌚ Those who live within or around the affected area now or will do so in the future;
- 16.5 The potential impact on each of the protected groups is examined in detail within the EqA.
- 16.6 The EqA notes that the Land Acquisition and Relocation strategy and the proposed Exceptional Hardship Scheme, taken together with the statutory compensation code, will ensure that fair and non-discriminatory processes are in place. Those responsible for disposing of the completed retail and residential phases will be required, by Part 4 of the Equality Act 2010, to ensure that they do not discriminate against protected groups when selecting tenants and purchasers, in the terms they offer and when managing the completed development.
- 16.7 The EqA identifies that there would be temporary negative impacts on groups including age and disability as well as pregnancy and maternity due to disruption in the town centre environment during the construction phase. However, suitable mitigation measures would be put in place during the construction process to reduce the adverse effects on these groups.
- 16.8 A potential negative impact has also been identified on businesses around West Croydon station as well as other businesses surrounding the proposed development site, relating to the potential for 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, once the Scheme is complete, the proposed new 24 hour East-West Galleria to be created by the development will help to ensure that the Scheme interacts well with surrounding areas, including West Croydon. In addition, the Council will work with CLP 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 potential negative impact would in part be addressed by the requirements of the section 106 planning agreement which aim to support local independent businesses.
- 16.9 It is considered that once the development 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. The proposed new, well-connected and well-designed public spaces would create quality meeting places which would help to foster good relations between all members of the community. The new public spaces together with the safe improved public links will also help to mitigate crime

and the fear of crime, of particular benefit to vulnerable members of protected groups.

- 16.10 The development is expected to create some 5,000 permanent new jobs and under the section 106 agreement, the developer is to provide support for training and employment opportunities. The Council will work with CLP to ensure that protected groups are able to take the full benefit of these opportunities. Under the terms of the section 106 agreement, recruitment for the new jobs created by the development will be targeted towards Croydon residents, particularly those who are long term unemployed. CLP will be required to deliver a wide range of initiatives through a comprehensive training and employment strategy to help local people into work. This will range from providing apprenticeships and internships, to supporting local contractors and backing new business start-ups by providing test trading space in the shopping centre.
- 16.11 If Cabinet resolves to make an Order the EqA will be monitored and reviewed throughout the progression of the proposals in order to ensure that any future impact can be measured and mitigated against as necessary.
- 16.12 To conclude, steps are being and will be taken to ensure that the acquisition and relocation processes are applied in a fair and non discriminatory manner. Steps will also be taken to minimise the adverse effects on protected groups during construction and any such effects suffered by surrounding ethnic minority businesses. The proposals will bring a range of benefits to disabled and other protected groups including in relation to enhanced access, housing provision, lifetime homes provision, dial-a-ride, shop mobility, employment and training opportunities, public realm and public transport improvements. These features of the proposals will assist in ensuring that protected groups have equal access to the new jobs, facilities and homes in a major growth area.

## **17. ENVIRONMENTAL IMPACT**

- 17.1 In reaching its decision on the outline planning permission and conservation area consent applications on 25 November 2013, Strategic Planning Committee took into account the related environmental information submitted by the applicants and relevant representations on that information, as required by regulation 3(4) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 ("**EIA Regulations**").
- 17.2 Further environmental information may be required pursuant to the EIA Regulations in relation to reserved matters applications submitted pursuant to the outline planning permission, or in relation to any other planning applications which may be made in connection with the Scheme. The need for further environmental information will be considered by the Council, as local planning authority, in each case at the relevant time.

## **18. CRIME AND DISORDER REDUCTION IMPACT**

- 18.1 In the course of determining the planning application, 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 permission (which is to be secured by a planning condition) it is considered that the Scheme would provide a safe and secure environment.

## **19. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

- 19.1 The reasons for the recommendation are set out in more detail above. As set out in this report the need for reinvigoration and investment in Croydon's town centre dates back over many years. The need for action to address its decline is identified in both the Council's and the Mayor of London's current planning policies. The physical environment of the town centre is tired and unwelcoming. Croydon does not currently fulfil its potential as a Metropolitan Centre and Opportunity Area as demonstrated by increasing vacancy levels and lack of up-market retailers compared with other competing centres.
- 19.2 The Scheme proposed by CLP offers a realistic and achievable prospect of halting and reversing the decline of the town centre by creating a modern, safe and attractive retail and leisure environment on a key town centre site, incorporating a range of complementary town centre uses including housing and improvements to the public realm and connections to other parts of the town centre. It will bring ancillary benefits including investment in improved public transport. It will improve the economic competitiveness of Croydon and transform its attractiveness as a place to invest in. Implementation of the Scheme will make a very significant contribution towards the economic, social, and environmental well-being of the Council's area.
- 19.3 Implementation of the Scheme is dependent upon assembling a high number of land interests and creating and acquiring a number of new rights over land. The prospect of this being achieved by agreement with all affected landowners within a reasonable timescale is considered to be unlikely.
- 19.4 Members are referred to the section of this report beginning at paragraph 11.29 regarding the judicial claim in respect of the outline planning permission and conservation area consent on behalf of the Whitgift Trust and other parties and the advice in that paragraph before deciding whether they wish to proceed with the recommendations.

## **20. OPTIONS CONSIDERED AND REJECTED**

- 20.1 In accordance with national policy in paragraph 16(iv) of Appendix A to the CPO Circular, the broad options considered and rejected by officers are set out in this report in paragraphs 11.33 – 11.37 to which Members are referred for their consideration.

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## **BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972**

Croydon Sustainable Community Strategy 2013 – 2018

Croydon Opportunity Area Planning Framework (2013)

Report to Strategic Planning Committee 25 November 2013

London Plan (2011) (and Revised Minor Early Alterations 2013 and Draft Further Alterations 2014)

Croydon Local Plan: Strategic Policies (2013)

Office of Deputy Prime Minister Circular 06/2004: Compulsory Purchase and the Crichel Down Rules

National Planning Policy Framework

National Planning Practice Guidance

### **Appendices**

- A. Proposed CPO (introduction) and CPO Map
- B. Proposed Statement of Reasons to accompany the CPO
- C. Land Acquisition and Relocation Policy
- D. Structure chart to show proposed land transfer arrangements
- E. Provisional indicative timetable of events
- F. Equality Analysis
- G. Proposed Exceptional Hardship Scheme
- H. Deloitte Report
- I. Correspondence between solicitors and a summary of the claim for judicial review of the outline planning permission and conservation area consent.