

Title of meeting:	Cabinet & Full Council
Date of meeting:	Cabinet 5 th October 2021 & Full Council 13th October 2021
Subject:	Regeneration of the City Centre (part thereof) compulsory purchase order resolution report
Report by:	Tristan Samuels - Director of Regeneration
Wards affected:	Charles Dickens
Key decision:	Yes
Full Council decision:	No

1. Purpose of report

- 1.1 This report sets out the important role the city centre plays in accommodating the growth needs of the city.
- 1.2 The city centre has for many years been a Council priority, defined in the current and emerging local plans as an area of housing and economic growth with the areas of New Landport and Landport Gate identified for regeneration and redevelopment. This paper talks to an opportunity for the Council to bring a substantial site together to plan, enable and progress the regeneration of this important area in the City.
- 1.3 This report provides an update to Cabinet as to the progress to develop the site of the original projects known as Northern Quarter and West of Commercial Road (Commercial Road shopping area and North of Market Way) and seeks approval of a series of recommendations to progress delivery of an extended City Centre Regeneration project also known as New Landport.

2. Recommendations

The Cabinet is recommended to:

- 2.1. Approve the land assembly strategy for this City centre regeneration project as attached at Appendix 1.
- 2.2. Delegate authority to the Director of Regeneration and S151 Officer on the advice of the City Solicitor in consultation with the Leader to:-

2.2.1. Negotiate and complete acquisitions of legal interests, on the basis of the statutory Compulsory Purchase Order (CPO) Compensation Code, in land required for the delivery of the City Centre Regeneration scheme.

2.2.2. To procure and appoint specialist advisers for:

- Land referencing Agents
- Specialist compulsory purchase surveyors

2.2.3. To approve the progress of all work necessary to establish a case for compulsory purchase of land required for the City Centre Regeneration scheme.

2.2.4. To approve, in principle, the use of compulsory purchase powers for the acquisition of land to deliver the City Centre Regeneration scheme (indicatively shown in red on the attached plan at Appendix 2) and note that the making of any compulsory purchase order will be subject to a further report to Cabinet confirming that the criteria in paragraph 3.22 have been met.

2.3. Cabinet are asked to note that the redline area shown on the plan (Appendix 2) is currently widely drawn around the entire City Centre Regeneration scheme application site area. It is not anticipated that all land/interests including the two churches *St. Agatha's* and *All Saints*, as shown will need to be acquired to deliver the scheme however, a degree of flexibility prior to detailed technical approval of the scheme and its mitigation, is required at this stage. Officers will take all reasonable measures to minimise the need to acquire third party interests in accordance with CPO Guidance and the existing design approach to the scheme.

2.4. Cabinet are asked to note that Officers will need to seek a future resolution to grant the Director of Regeneration and the City Solicitor authority, in accordance with section 122 of the Local Government Act 1972, to declare that any land acquired or held and required for the delivery of the City Centre Regeneration scheme may, where they conclude that it is no longer needed for its present purpose, appropriate the land for such statutory purpose as necessary to deliver the City Centre Regeneration scheme, and to authorise the overriding of such easements, rights, or other adverse matters burdening the land, where that is needed to deliver the scheme, in reliance on section 203 of the Housing and Planning Act 2016.

2.5. Delegate authority to the Director of Regeneration and S151 Officer on the advice of the City Solicitor in consultation with the Leader to acquire the Delancey assets for a consideration to be disclosed to group leaders in a confidential briefing by the Chief Executive.

That Cabinet recommends to the City Council that;

2.6. Authority is delegated to the Director of Finance and Section 151 Officer in consultation with the Leader of the Council, to amend the Corporate Capital Programme to fund the acquisition of the Delancey assets from unsupported borrowing in 2021/22.

3. Background

- 3.1. The Portsmouth Plan was adopted in January 2012 (the Local Plan), and a Supplementary Planning Document (SDP) in January 2013 adopted which specifically covers the City Centre Masterplan. The aim of the Local Plan is to provide a positive planning framework for the successful regeneration the city. A main element of the development strategy of the Local Plan & SDP is to locate additional development at key development sites within the city centre, with the aim of contributing to the vision of the City's sustainable Community strategy
- 3.2. Within the emerging 2021 local plan, currently approved for Regulation 18 consultation, Portsmouth's City Centre is recognised as a centre of importance for new development in the city and in the sub-region. Given this recognition the Council is committed to the regeneration of the City Centre to create a thriving, attractive, and vibrant environment for its residents, businesses and visitors.
- 3.3. As part of the emerging 2021 local plan consultation, the **City Centre Development Strategy (CCDS)**, a masterplan covering the City Centre area has been developed on behalf of the Council. The CCDS sets out a vision and spatial plan for the City Centre, proposing the type of place it should and could become, the types of development which will be sought in the City Centre and the place-making opportunities which may be possible.
- 3.4. **Portsmouth City Centre Vision** (taken from the CCDS): *"Every great city has a heart. Portsmouth city centre will continue to be that heart of the city, and will be a beautiful, durable and adaptable place - more compact, more diverse, easier to get around, greener and healthier, and looked after by its happy residents"*.
- 3.5. The future city centre will combine its proud heritage with a pride in its renewal. This will be underpinned by steps to transform the area with a renewed and sustained emphasis on the public realm, as a civilised, attractive, welcoming and open city environment.
- 3.6. The CCDS has identified five distinct identity areas, with opportunities for types of uses, public space and urban realm and unique design identity.
- 3.7. The identity areas are defined in the above map; from north to south the areas are as follows (with suggested area names as working titles from the CCDS which will be consulted on):
 - Herbert Street/Victory Retail Park ('Landport Gate')
 - City Centre North ('New Landport')
 - Commercial Road/Arundel Street area ('Paradise')
 - Portsmouth and Southsea Station area ('Work-station')
 - The Guildhall & Victoria Park area ('Guildhall & Victoria')

- 3.8. New Landport (City Centre North) comprises the area south of the vacant former ABC cinema site, down to the former Sainsbury's supermarket site and the Marketway car park (former Tricorn site). Much of the land within this area is underutilised. The area has great potential to be a vibrant neighbourhood; with potential for additional new residential and mixed use development and as a location for civic and commercial uses. There is also potential for a new public square or other improved public realm areas to provide another key focal space for the City Centre.
- 3.9. To enable the development of New Landport the transport infrastructure in the City Centre will need to improve the connectivity to and around the city centre, focusing on air quality improvements, public transport and active travel options that will improve health outcomes for local people whilst not hurting the economic prospects of the high street. The vision for the new City Centre infrastructure is inline with the council **Local Transport Plan 4 (LTP4)** and seeks support all road users whilst enable a shift towards sustainable transport options. The new project would be encouraged to include landscaping and design strategies which will create a high quality, pleasant and safe environment which in turn will increase its appeal to shoppers and investors and so increase the competitiveness of the city centre.
- 3.10. The CCDS has identified a potential delivery capacity for the city centre, with upper and lower range scenarios depending on the type and mix of development options pursued. Both scenarios reflect what is considered the city centre's maximum capacity, assuming that all identified areas will come forward, this gives an indicative capacity in the region of 5,183 - 6,128 new homes and 77,100 to 88,300sq m of commercial, leisure, community and health uses. The majority of this is expected to be delivered during the plan period.
- 3.11. Negotiations with Delancey, a major land holder in the city for a joint venture (JV) were halted in April 2021, when it was agreed that the intent set out in the previous Heads of Terms to partner was no longer deliverable and by mutual consent both parties have agreed not to proceed with the JV. The landowner has invited the council to negotiate the acquisition of all their interests which will allow them to exit the city and focus on other business. Acquiring these assets in advance of a CPO will reduce overall expenditure by avoiding costs associated with the CPO process.
- 3.12. Whilst discussions to purchase have progressed, there is the possibility that these may stall, and the Council may have to rely on compulsory purchase powers and in these circumstances it is considered good practice to bring the CPO forward in parallel with other development work streams to ensure the development moves as fast as possible for the benefit of the city. A delegation to enable a CPO should it be required will facilitate negotiations and ensure a conclusion if an impasse is reached.

Land Assembly

- 3.13. Negotiations have commenced to secure the property interests of the major land holder within the proposed area. Meanwhile although progress has been made in acquisitions that will be necessary to deliver the New Landport scheme, land assembly remains a critical risk for the delivery of the project.

- 3.14. The redevelopment of the former Sainsburys site in isolation is physically possible but to maximise the benefits of regenerating the area any new development should be extended across land that is not in the ownership of the Council and without this, the objectives of the CCDS cannot be met nor the wider regeneration aspirations for the area.
- 3.15. The Council has already identified the principle landowners across the area and has commenced discussions with them regarding the acquisition of land required to deliver the New Landport proposals. The Council already owns significant land holdings that will be needed for the proposed scheme, and wherever possible the scheme uses land already acquired under previous plans to regenerate the area.
- 3.16. Regeneration will be delivered in a phased manner and as such the land assembly programme will need to follow suite. The consideration of the potential need to use powers of compulsory acquisition is considered to be an essential backstop, to facilitate delivery of the scheme in line with the Council's intended programme.
- 3.17. Not all land and property interests that may be affected by the scheme are immediately identifiable, even with reference to information at the land registry. Officers are therefore proposing the appointment and use of land referencing services, through which it will establish a comprehensive log of all land and property interests - these will include all freeholds, leaseholds, tenancies, easements, rights, and any other legal interests that may need to be acquired for delivery of the scheme. The outcome of the land referencing exercise will show all the relevant parties that the Council will need to enter into negotiations for the acquisition of their interests. It will also identify where there is land in unknown ownership which can only be acquired through compulsory purchase.
- 3.18. Whilst it is anticipated that further progress can be made on the negotiated approach for some parcels of land and legal interests it is good practice and appropriate to consider the use of compulsory purchase powers.
- 3.19. The government recognises in its "*Guidance on Compulsory Purchase*" dated July 2019, ([CPO guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818117/cpo-guidance-july-2019.pdf)), that if acquiring authorities wait for negotiations to break down, this can have detrimental impacts on the timing of delivery of public projects. Therefore, depending on when the land is required, the guidance considers it sensible for an acquiring authority to:
- plan a compulsory purchase as a contingency measure; and
 - initiate formal procedures
- 3.20. Importantly, the CPO Guidance expressly recognises that such steps "*...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*".
- 3.21. The CPO Guidance requires acquiring authorities to attempt to acquire land by agreement before embarking on the CPO process, although it is recognised that for schemes involving the acquisition of the number of interests, it is sensible to run the

CPO process in parallel with ongoing negotiations.

3.22. This report seeks members support for a resolution 'in principle' for the use of compulsory purchase powers to assemble the City Centre Regeneration scheme site, should all reasonable attempts to acquire the necessary land and interests fail. As the guidance makes clear, use of compulsory purchase powers is intended as a 'last resort'. Officers acknowledge that any decision to proceed to make a CPO will be subject to a further report to Cabinet to confirm the following:

- that there was a compelling case in the public interest for the use of compulsory purchase powers;
- that there were no planning, funding or other legal impediments to the City Centre Regeneration being delivered,
- that reasonable attempts to acquire all interests by agreement have been made but not all have been successful;
- considering any interference with the human rights of those with an interest in the land affected; and
- reporting on the results of an assessment of the impacts on residents, visitors and employees to be measured and evaluated, with special focus on the likely effect of the proposals on those sharing protected characteristic (race, pregnancy, age, disability, gender reassignment, marriage/civil partnerships, religion/belief, sex, sexual orientation (as defined by the Equality Act 2010)), in order for the Council to fully understand those impacts, and to consider measures to mitigate impact, make reasonable adjustment, and foster good relations between those sharing protected characteristics, and those who do not.

3.23. The main benefit of the use of compulsory purchase is the certainty of being able to obtain vacant possession to a planned programme. This is absolutely vital in order give the Council confidence that the scheme will be delivered. The use of compulsory purchase also provides a level of certainty on project programming which in turn would allow the Council to enter into commercially sound construction contracts. This is because, once the CPO is confirmed and the legal challenge period has passed, the Order can be implemented and a date for vacant possession fixed in accordance with the project programme.

3.24. A resolution approving the 'in principle' use of compulsory purchase powers at this stage in the process, will demonstrate the Council's commitment to the timely delivery of the City Centre Regeneration and its related benefits.

3.25. The Council has appointed Pinsent Masons, a leading law firm to advise on all legal aspects of the City Centre Regeneration scheme and a land assembly strategy has been developed which includes advice on CPO. Legally privileged and confidential advice prepared by Pinsent Masons is attached to this report at appendix 4 (this is an exempt confidential appendix). Should the Council seek to progress a CPO, it will have regard to the advice set out in the CPO Guidance and the advice of its appointed legal advisors.

3.26. The key target dates for the City Centre Regeneration scheme are:

- Planning application submission - March 2022
- Land referencing - Starting December 2021
- Preparatory CPO work (including engagement with landowners) - In hand
- Target planning application determination - March 2023
- Construction commences - March 2024

4. Reasons for recommendations

- 4.1 The main body of the report gives specific details to the background of the recommendations all of which are considered by officers as important to ensure the timely delivery of the City Centre Road scheme and its associated regeneration benefits.

5. Integrated impact assessment

- 5.1 An integrated impact assessment has been completed and is attached at appendix 3.

6. Legal comments

- 6.1 The making of a CPO follows the statutory process set down in the Acquisition of Land Act 1981 (as amended). There are a number of compulsory purchase powers available to the Council. External legal advice is to be sought and reviewed in line with the council internal policy to ascertain the most appropriate power for the purpose of assembling the site. This process will be carried out alongside obtaining the details to the land to be acquired and the development proposed to be undertaken on that land.

There are a range of statutory powers the council can utilise (subject to secretary of state approval in some instances). However, these are precise and distinct to the specific land requirements - which, as detailed in this report are not fully clear in terms of necessary due diligence. Full details as to the matters and specifics of the development are yet to be fully determined and therefore the suggested route forward (legally), cannot be set out. These are to be discussed and formulated with the City Solicitor

- 6.2 Subject to authorisation by the Secretary of State, the Council has the power under section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) to acquire compulsorily land in its area to facilitate the carrying out of development, re-development or improvement on or in relation to the land, provided that the Council thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives: the promotion or improvement of the economic well-being of the area; the promotion or improvement of the environmental well-being of the area; the promotion or improvement of the

social well-being of the area. Alternatively - sections of the Highways Act 1980 offer principal powers for acquisition of the land for the construction of new highways and the improvement of existing.

6.4 Note in all cases the compensation payable must be in accordance with the Compulsory Purchase Compensation Code.

7. Director of Finance's comments

7.1 The total cost of enabling the new City Centre Regeneration land acquisition costs for the scheme (but excluding any development costs and acquisitions to date), is not yet known but is likely to be significant. Before any acquisition of land is considered the Council will financially appraise the cost of acquisition, the likely holding costs, meanwhile use cost and income and ultimately the value of development on each acquisition.

7.2 Acquisitions will only be made if:

- overall value for money can be demonstrated.
- an appropriate funding source is identified.
- a business case approved by the S151 Officer has been prepared.

7.3 Such an approach will ensure that only necessary costs are incurred prior to the scheme achieving full funding.

7.4 The cost to procure the services of specialist consultants as detailed in the report will be met from the Redevelopment of the City Centre scheme in the Council's already approved Capital Programme.

7.5 The report from Cabinet recommends that the Council's Capital Programme is amended so that Unsupported Borrowing can be used to acquire the sites. Any amendments to the Capital Programme must be approved by Full Council and the recommendations within this report acknowledge that.

.....
Signed by:

Appendices:

Appendix 1 - Land Assembly Strategy

Appendix 2 - Red line plan for CPO

Appendix 3 - Integrated Impact Assessment

Appendix 4 - Exempt: Confidential advice note from Pinsent Masons (exempt for publication, s100A of the Local Government Act 1982 Schedule 12A, paragraph 3)

Appendix 5 - Exempt: Redacted offer letter to Delancey

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by: