

Report Title:	Compulsory Purchase Order – Nicholson’s Walk Shopping Centre, Maidenhead
Contains Confidential or Exempt Information	No - Part I
Lead Member:	Councillor Johnson, Lead Member for Business, Economic Development and Property
Meeting and Date:	Cabinet – 25th March 2021
Responsible Officer(s):	Duncan Sharkey, Managing Director
Wards affected:	St Mary’s

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REPORT SUMMARY

1. In July 2019 Full Council approved the sale of the Council’s freehold interest in part of the Nicholson’s Walk Shopping Centre and Central House and to enter into an agreement to relocate the Nicholson’s Car Park as part of a new masterplan for the regeneration of the town centre.
2. The decision was taken to aid the regeneration of the town centre and allow the site assembly for the purpose of redevelopment of the overall site.
3. The recommendation was made and approved to assist with further site assembly if required.
4. Denhead S.A.R.L., who are developing out the site, now need assistance with acquiring the interests of the remaining landowners and leaseholders to facilitate the site delivery.
5. The purpose of this report is to enable the voluntary or compulsory acquisition of all necessary third-party land interests to bring forward comprehensive regeneration of the town centre.
6. This report seeks authority to make and promote a compulsory purchase order to facilitate the redevelopment and regeneration of the Nicholson’s Shopping Centre, Nicholson’s Multi-Storey Car Park and surrounding land to deliver a comprehensive mixed use development (as edged red on the plans in Appendix C).
7. Authority is also sought for officers to make the CPO and to undertake all necessary steps/work to secure the confirmation and subsequent implementation of the CPO.
8. Prior to making the CPO the Council will enter into an indemnity agreement with the developer Denhead S.A.R.L who will be responsible for all costs and liabilities arising in undertaking and completing the CPO.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and the attached draft Statement of Reasons and:

- i) **Authorises the use of CPO powers to acquire all property interest in the site known as the Nicholson’s Walk Shopping Centre,**

- Nicholson’s Car Park, Siena Court and adjoining areas identified in the plans contained in Appendix C, Maidenhead.
- ii) Approves that council officers continue to negotiate the acquisition by agreement of all third-party interest in the land in advance of confirmation of a CPO.
 - iii) Approve the Council entering the CPO Deed of Indemnity with Denhead S.A.R.L. to ensure all liabilities and costs will be the responsibility of the developer.
 - iv) Authorises the Managing Director in consultation with the Lead Member for Business, Economic Development and Property to take all necessary steps required for the making, confirmation, and implementation of the CPO.

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
<p>To proceed with the making of the compulsory purchase order (CPO) and thereafter the associated steps to acquire the necessary interests and rights over land to enable the Scheme to be delivered and to engage s.203 of the Housing and Planning Act 2016 to override third party rights which exists over the Order Land.</p> <p>This is the recommended option</p>	<p>The CPO is required to ensure that the Scheme can be advanced and delivered within a reasonable time frame. Without the CPO there is no certainty that the Scheme would be delivered as intended.</p>
<p>To not advance the proposed compulsory purchase i.e. Do Nothing</p> <p>This is not recommended</p>	<p>If the CPO is not promoted by the Council, on account of the number of parties with whom agreement needs to be reached in respect of the acquisition / surrender of their interest and securing of new rights for construction purposes, it is likely that the Scheme would not be delivered.</p>

- 2.1 The CPO process enables the necessary steps to be taken to secure the acquisition of all necessary land interest to deliver the regeneration of the site

known as Nicholson Walk Shopping Centre on the map at appendix C (“the site”). It.

- Gives officers specific authority to begin the process of making the CPO.
- Indicates to third party landowners that the Council intends to take all necessary steps to acquire the necessary land interests to enable regeneration of the site to proceed.
- Secures the appropriate authority for land acquisition notices to be served on third party landowners.

3. KEY IMPLICATIONS

3.1 The rejuvenation and revival of the character of Maidenhead Town Centre has been a key objective of the Council for several years. The main aims are captured in the Maidenhead Town Centre Area Action Plan (MTCAAP) which identified 4 key themes to achieve this, namely:

(a) Place making

(b) Economy

(c) People

(d) Movement

3.2 The Nicholson’s Shopping Centre, whilst still well-occupied, has several issues which makes it no longer fit for purpose. The owners of the shopping Centre, Denhead S.A.R.L. has recently submitted a hybrid planning application for the redevelopment of the Nicholson’s Shopping Centre and surrounding land.

3.3 The emerging Local Plan also identifies the Nicholson Centre and surrounding area as a development site for mixed use development comprising retail, community, employment, and residential uses.

3.4 The Developer's planning application (20/01251/OUT) proposes:

“(1) The OUTLINE planning permission (with all matters reserved) for four buildings that range in height, with the highest being 88.70m and the lowest being 66.2m on the site for a comprehensive mixed-use redevelopment comprising:

- Residential Institutions (Class C2) - up to 29,400 m2 (GEA).
- Business Use (Class B1) - up to 29,700m2 (GEA).
- Flexible Retail, financial and professional services, restaurants, and cafes, drinking establishments, hot food takeaways, non-residential institutions and

assembly and leisure (Class A1 / A2 / A3 / A4 / A5 / D1 / D2) - up to 4,400 m2 (GEA).

- Parking and plant space - up to 13,600 m2 (GEA).
- Formation of new pedestrian and vehicular access.
- Means of access and circulation and car parking within the site; and
- Provision of new public open space and landscaping.

(2) FULL DETAILS for the demolition of all existing buildings on site, , construction of two residential buildings comprising 25 storeys, and part 15/part 10 storey and a landscaped podium (Class C3), construction of a 4 storey office building (Class B1), the provision of a new public open space, and landscaping and the erection of a multi-storey car park and flexible retail, financial and professional services, restaurant and cafes, drinking establishments, assembly and leisure, and heritage and community centre uses (Class A1 / A2 / A3 / A4 / A5 / D1 / D2)."

- 3.5 The delivery of new accommodation is only one facet of the scheme. The new development will re-establish connections across the town centre, repairing links which were lost when the shopping centre was constructed in the 1970s. The focus of the scheme is on permeability and connectivity, creating new public spaces around a mix of workspace, homes, shops, and public space, reinvigorating both the daytime and nighttime economy of the town centre.
- 3.6 The delivery of the Scheme is complex on account of its town centre location and the existence of several tenancies and other rights across the shopping centre. The shopping centre has been poorly performing for some time and has passed through several differing ownerships over recent years. This has led to a varied asset management strategy which has not been conducive to advancing the much-needed redevelopment of the shopping centre as several tenants have been granted long term leases which cannot be terminated early.
- 3.7 The shopping centre's location in the town centre, abutted to its north and east by neighbouring properties in third party ownership, increases the complexity of delivering the Scheme. The proximity of neighbouring properties and the nature of the construction means rights need to be secured over neighbouring properties for crane oversailing, access, scaffolding, and purposes required for the construction and on-going management of the Development. In addition, the history of the shopping centre's service deck being used by neighbouring properties on the High Street for their own servicing and provide access routes, means that there are a number of existing rights which need to be interfered with.
- 3.8 The Nicholson Shopping Centre is owned by Denhead S.A.R.L. (the Developer), which is a collaboration between Tikehau Capital and Areli Real Estate. The Developer has submitted a planning application (the Development) for the redevelopment of the shopping centre and surrounding

area (as detailed above), the application currently benefits from a resolution to grant planning permission. In order to facilitate the development, the subject of the planning application, there are several third-party land and rights which need to be acquired.

The Developer has been proactive in securing agreements with tenants to secure the surrender of leases within the shopping centre, but in order for the Development to proceed, and for the associated public benefits to be realised, the land assembly exercise needs to be completed. The range of parties with whom agreement needs to be reached necessitates the use of the Council's compulsory purchase and Section 203 (Housing Act 2016) powers if the Developer's development is to proceed in a reasonable timeframe.

- 3.9 At present there are 13 tenants who occupy retail accommodation with whom an agreement has not been completed to vary their lease terms. Negotiations are ongoing and there are several tenancies in which an in-principle agreement has been reached with the occupier and is with the respective legal advisers to formalise. Whilst there is constructive dialogue with all occupiers who have not yet agreed lease terms, in some instances there is a notable difference of opinion as to the level of payment due to secure varied lease terms. The use of the Council's compulsory purchase powers is therefore necessary to ensure that vacant possession of the retail accommodation can be secured within a reasonable timescale and allow the proposed redevelopment to proceed. The confirmation of the Council's intention to proceed with a CPO will also assist with discussions as the compulsory purchase compensation code sets a clear framework for the assessment of compensation which will hopefully allow differences of opinion as to the price payable for the variation of a lease to be narrowed.
- 3.10 To deliver the Development a significant level of land assembly needs to be completed in addition to the leasehold interest referred to above. These include freehold interests and the variation of existing rights of adjoining properties and obtaining new rights required for construction, maintenance, and the creation of connections. The details of the interests to be acquired or varied are included in the draft Statement of Reasons included in Appendix B.
- 3.11 The Plans at Appendix C identifies the extent of the land to be included within the CPO boundary [and extent of new rights].
- 3.12 The recommendation to make the CPO and use associated powers (set out below) is based on the public benefits that will be achieved on completion of the Development, weighed against the effects of delivering it (including the effect of the exercise of the powers) and the likelihood that without the use of the Council's statutory powers, the Development would not be brought forward resulting in the town centre being dominated by a failing shopping centre.
- 3.13 The most appropriate and specific power available to the Council to make a compulsory purchase order in relation to the Scheme is section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) (**TCPA**).

- 3.14 It states that a local authority shall have power to acquire compulsorily any land in their area *“if the authority think that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land.”*
- 3.15 Under section 226(1A), the power must not be exercised unless members think that the development, re-development or improvement of land is likely to contribute to the achievement of the promotion of improvement of the social, economic and/or environmental well-being of the area.
- 3.16 The exercise of the section 227 power, to acquire land by private treaty ahead of vesting under the CPO, is for the same planning purpose.
- 3.17 The Council should also have regard to the CPO Guidance¹ published by the Government.
- 3.18 Paragraph 1 of the CPO Guidance states
- “Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.”*
- 3.19 Paragraph 2 of the CPO Guidance goes on to state
- “Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest”* and that authorities *“should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected”*.
- 3.20 Compulsory purchase is intended as a last resort to secure land assembly. However, the CPO Guidance does acknowledge that given the length of time it can take to secure a CPO, it can be sensible to plan for and initiate the formal CPO process alongside the negotiation process.
- 3.21 In terms of process, the Council can make the CPO (once authorised) but before it can be implemented, it will require confirmation from the Secretary of State unless no objections are made or are not withdrawn, in which event the Council can confirm the CPO itself.
- 3.22 In the event that the CPO is made and objections are made and not withdrawn, it is likely that a public inquiry will be held and a planning inspector appointed to consider whether to confirm the CPO or to make a recommendation to the Secretary of State whether to confirm.

¹ "Guidance on Compulsory Purchase process and The Crichel Down Rules" – July 2019

- 3.23 Paragraph 105 of the CPO Guidance acknowledges that it may not always be *"feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained before proceeding with the order."* Accordingly, the guidance recognises that it is not necessary for planning permission to have been issued for the proposed scheme before an order can be made.
- 3.24 The CPO Guidance identifies that the Council will need to be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time, this should include:
- (a) a clear idea of how it intends to the use land proposed to be acquired; and
 - (b) show that all necessary resources are likely to be available to achieve that end within a reasonable timescale.
 - (c) that the development is unlikely to be blocked by any physical or legal impediments to implementation (for example a need for planning permission or other consent or licence).
- 3.25 The factors which the Secretary of State will consider in deciding whether to confirm an order made pursuant to Section 226(1) (a) of the Town and Country Planning Act 1990 include:
- (a) whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area, or, when no such up to date Local Plan exists, with the draft Local Plan and NPPF.
 - (b) the extent to which the scheme will contribute to the achievement of the economic, social and/or environmental well-being of the area.
 - (c) whether the purpose for which the Order land is to be acquired could be achieved by any other means.
 - (d) the potential financial viability of the scheme for which the land is being acquired. The Guidance states that "a general indication of funding intentions, and of any commitment from third parties will usually suffice to reassure the Secretary of State that the scheme will proceed".
- 3.26 Acquisitions of land for planning purposes under section 226 or 227 of the Town and Country Planning Act 1990 (TCPA) will engage Sections 203 to 205 of the Housing and Planning Act 2016 (**2016 Act**) where other qualifying criteria are satisfied (see below). This authorises the interference with relevant rights and converts the right to an injunction (blocking development) to a right to compensation (under Section 204 of the 2016 Act) on a reduced statutory basis (which reflects the reduction in property value) for any infringement.
- 3.27 It is likely that a stopping up order will be required as part of the proposals in relation to highway and/or footways. This will need to be applied for to the Secretary of State and can be applied for in advance of or post planning permission. Officers will liaise with the Developer to manage the timing of that

process in conjunction with the CPO process. There are not expected to be any impediments to the securing of a stopping up order.

4. FINANCIAL DETAILS / VALUE FOR MONEY.

- 4.1 All costs associated with the CPO process and acquisition costs (including compensation costs and reasonable internal costs) will be borne by the Developer under the proposed CPO Indemnity Agreement. The draft form of the CPO Indemnity Agreement allows for the following:
- i. Denhead S.A.R.L. as developer is to pay the Council funds for all estimated costs, in advance on a forecasted quarterly basis; these funds will be put on deposit and available as and when needed.
 - ii. Indemnity/obligations to pay in relation to any blight notices/advance payment requests.
 - iii. The Council is not obliged to acquire any interests following a confirmed CPO until the Developer has first deposited the properly assessed compensation monies with the Council together with an additional contingency.
- 4.2 It is considered therefore that the Council's risk to exposed financial liability is kept to a minimum subject to the CPO Indemnity Agreement first being entered into before the Order is made. A copy of the draft Deed of Indemnity is contained in Appendix A.

5. LEGAL IMPLICATIONS

- 5.1 SLS and Denton's have been instructed by the Council to conclude the Deed of Indemnity Agreement with the Developer Denhead S.A.R.L. The costs of this are to be met by the developer.
- 5.2 Specialist CPO solicitors and surveyors will be appointed to undertake the necessary professional work and negotiations with all cost to be met by the developer.
- 5.3 The CPO process is governed by law, principally the Acquisition of Land Act 1981. There is a public and lawful process which must be followed by the Council to secure the confirmation of CPO powers. Additionally, the CPO Guidance gives further direction on the required process and relevant considerations to be considered.
- 5.4 Under section 226(1)(a) of the TCPA the Council, if authorised by the Secretary of State for Communities and Local Government, has the power to acquire land compulsorily where it thinks that the acquisition will facilitate the development, redevelopment or improvement of land. Section 226(1A) provides that the Council may only use this power if it thinks that doing so will contribute to the achievement of the economic, social, and environmental well-being of the area. Members must therefore address these questions when deciding whether to authorise the use of the CPO powers. The Section

3 explains the justification for the use of the Council's compulsory purchase powers.

- 5.5 Also, under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 the Council can acquire new rights over land. Members will see that there are areas of land shaded blue on the plan at Appendix 1, which identifies the land which is not needed permanently for the development, but which are needed for the purposes of access, crane oversailing and to carry out works.
- 5.6 The Secretary of State will only confirm the CPO if he or she is satisfied that there is a compelling case in the public interest to do so. Officers consider that a robust case can be presented, with section 3 setting out how the tests set under the CPO Guidance are met.
- 5.7 The Developer and Council, through a jointly appointed CPO surveyor, have been in discussions with those whose land and interests are required. Efforts to acquire the land and interests by agreement will take place, but without the use of CPO powers it will not be possible to acquire all the required land and interests within a reasonable timeframe.
- 5.8 Those who wish to object to the CPO may do so and are entitled to be heard at a public inquiry held to consider the case for, and the objections to, the CPO. Those whose land and interests are acquired will be entitled to compensation calculated based on legislation and related case law known as the "Compensation Code".
- 5.9 Consideration must also be given to the interference with rights protected by the Human Rights Act 1998, including Article 8 (respect for private and family life and home), and Article 1 (the right to peaceful enjoyment of possessions) of the European Convention on Human Rights. A decision to make a CPO must strike a proportionate balance between the public interest associated with the regeneration of the land and the interference with private rights. With the implementation of relocation strategies; the attempts to acquire by agreement; the fact that parties will receive fair compensation under the "Compensation Code", and the fact that there is a compelling case in the public interest for the exercise of the Council's CPO powers, it is considered that the interference with the private rights of those affected that would be the inevitable result of the exercise of compulsory purchase powers conferred by the CPO would be lawful, justified and proportionate.

6. RISK MANAGEMENT

- 6.1 There is limited risk for the Council as all associated costs will be indemnified by Denhead S.A.R.L.
- 6.2 Councils are often called upon to exercise their powers of CPO to enable regeneration in their area of operation. Council officers will ensure that appropriate external specialist have been appointed, and that the CPO process is undertaken according to the relation legislation.

Table 2: Impact of risk and mitigation

Risks	Uncontrolled risk	Controls	Controlled risk
LOW Challenge to CPO	NO	Preparation of a CPO and related documents is a technical and complex area, carrying a risk of challenge. However, the Council has retained experienced and expert external legal advice and the documents have been reviewed by leading counsel.	YES
LOW Affected Parties not being identified	NO	A specialist lands referencing firm has been appointed to undertake the land referencing exercise to mitigate against this risk. The discussions being held by the Developer and CPO Surveyor with those affected when seeking to acquire their land and interests also help to identify the parties with interests in the area.	YES
MEDIUM Cost	NO	The cost of preparing the CPO and any compensation related to the compulsory purchase of land / new rights, or the interference with existing rights, fall on the Developer and may be the subject of security. As such, the Council is protected. There is a risk that owners and occupiers will seek sums more than the estimates for the costs of land acquisition. This risk has been mitigated through the receipt of professional valuation advice and the setting of	YES

Risks	Uncontrolled risk	Controls	Controlled risk
		appropriate budgets. An indemnity in relation to all costs arising out of the CPO process and compensation payments will be provided to the Council by the Developer through the CPO Indemnity Agreement. The CPO process will not be commenced until this agreement is in place.	
LOW CPO not confirmed by Secretary of State		There is a small risk that the Secretary of State does not confirm the Order. Experienced professionals have been instructed to present the strongest case, including leading Counsel.	

7. POTENTIAL IMPACTS

7.1 The Equality Act 2010 place a duty on the Council, in the exercise of its function, to have due regard to the need to-

- a. eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- c. foster good relations between persons show share a relevant protected characteristic and persons who do not share it.

7.2 The relevant protected characteristics are:

- a. Age
- b. Disability
- c. Gender reassignment
- d. Pregnancy and maternity

- e. Race
- f. Religion or belief
- g. Sex
- h. Sexual orientation

- 7.3 An Equality Impact Assessment screening form has been completed and is available on the [council's website](#).
- 7.4 This report has considered the Equality Act 2010 and how it proposes are designed to reduce the inequalities of outcome which result from socio-economic disadvantage. The Council is committed to improving the quality of life and wider participation for all the economic, educational, cultural, and social and community life within the Borough. This is achieved by pursuing successful regeneration of the Borough's regeneration areas, in this instance Colindale. This benefits all sections of society by directly addressing the shortage of housing in the Borough across all tenures.
- 7.5 Consultation has and will continue to be undertaken with residents and the wider community to ensure that the Development reflects local needs (as far as practicable) and that affected third parties are kept informed of the development programme.
- 7.6 The duty under the Equality Act 2010 is a continuing one, and "due regard" means the regard that is appropriate in all the circumstances. It is not a duty to take specific steps, not to achieve results. A public body needs to be satisfied that it has sufficient information to make informed decisions.
- 7.7 Having had due regard to its duty under the Equality Act 2010 the Council is confident that facilitating the delivery of the scheme will contribute towards the social, economic, educational and cultural improvements for existing and future residents of the Borough. It will also increase levels of social inclusion within a mixed and diverse community.

Human Rights

- 7.8 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 there is a compelling public interest sufficient to justify interfering with the human rights of those with an interest in the Order Land, in compulsorily acquiring the third party interests and interference with third party rights. The proposed Order does not include the acquisition of any residential properties.

7.9 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.

7.10 Articles 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"

7.11 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 the 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 to the Lands Chamber of the Upper Tribunal. Taken together, the availability of these procedures satisfies the requirements of Article 6.

7.12 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 the general principles of international law."

7.13 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.

7.14 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.

7.15 Data Protection/GDPR - All personal data, that is captured under GDPR will be processed and stored by Denhead S.A.R.L. and their specialist consultants. The council will not hold any unnecessary information, other than that associated with the outstanding land ownership, as part of the CPO process.

7.16 Staff resources will be allocated to deal with this project from the Council's property company.

8. CONSULTATION

- 8.1 Extensive public consultation has been held by the developer Denhead S.A.R.L. prior to submitting the planning application.
- 8.2 The developer Denhead S.A.R.L. has engaged and consulted with leaseholders and property owners on their proposals and entered negotiations to acquire the necessary interests to proceed with the development.
- 8.3 Denhead S.A.R.L. will continue to negotiate with the remaining landowners and tenants to come to a naturally beneficial conclusion in the hope that the need for a final tribunal is not necessary. However, the CPO process will be prepared on the basis that this may well need to be implemented and carried all the way to its natural conclusion, should an agreement for settlement not be reached.

9. TIMETABLE FOR IMPLEMENTATION

Implementation date if not called in: Immediately

The full implementation stages are set out in table 3.

Table 3: Implementation timetable

Date	Details
April – May 2021	Land Referencing
June 2021	Submit CPO to Secretary of State
June 2021	Serve CPO Notices
November/December 2021	Anticipated date of Public Inquiry
April 2022	Secretary of State Decision

10. APPENDICES

This report is supported by 3 appendices:

- Appendix A – Draft Compulsory Purchase Order Deed of Indemnity
- Appendix B – Draft Statement of Reason
- Appendix C – Plans of Interests to be Acquired

11. BACKGROUND DOCUMENTS

This report is supported by 1 background document:

- Equality Impact Assessment Screening Form

12. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Date returned
Cllr Johnson	Lead Member for Business, Economic Development and Property	11/02/21	11/02/21
Duncan Sharkey	Managing Director	11/02/21	12/02/21
Adele Taylor	Director of Resources & S151 Officer	11/02/21	23/02/21
Andrew Vallance	Head of Finance	11/02/21	
Emma Duncan	Deputy Director Law & Governance & Monitoring Officer.	11/02/21	
Elaine Browne	Head of Law	11/02/21	15/03/21
Nikki Craig	Head of HR, Corporate Projects, and IT	11/02/21	17/02/21
Louisa Dean	Communications and Marketing Manager	11/02/21	
Kevin McDaniel	Director of Children's Services	11/02/21	11/02/21
Hilary Hall	Director of Adults, Health & Commissioning	11/02/21	12/02/12
Karen Shepherd	Head of Governance	11/02/21	
	Other e.g. external		

REPORT HISTORY

Decision type: Key decision Date it was first entered into the Cabinet Forward Plan: 22 nd June 2020	Urgency item? No	To Follow item? No
Report Author: Chris Pearse, Head of Capital Projects, and Asset Management, RBWM Property Company Limited 01628 796761		

Appendix A – Draft Deed of Indemnity

DRAFT

CPO Deed of Indemnity

Dated

Denhead S.À R.L.
(the Developer)

Royal Borough of Windsor and Maidenhead
(the Council)

Dentons UK and Middle East LLP
One Fleet Place
London EC4M 7WS
United Kingdom
DX 242

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Contents

1	Interpretation	1
2	Statutory Powers and Council's Obligation	10
3	The Costs	10
4	Payment of Costs	11
5	Acquisitions by Private Treaty	13
6	Dealings in the Council's Land	14
7	Blight Notices	14
8	The RCO	16
9	Making the CPO	16
10	Confirmation of the CPO	18
11	Acquisition by/vesting in the Council	21
12	Acquisition Costs payable to Third Parties and Claimants	23
13	Role of the Selected Agent	25
14	Option Structure	25
15	Cessation of Deed	26
16	Notices	26
17	Expert Determination	27
18	VAT	28
19	Council's Powers as Local Planning Authority	29
20	Contracts (Rights of Third Parties) Act 1999	29
21	Jurisdiction	29
22	Council's Legal Costs	29
23	Assignment	29
24	Good Faith	30
25	Confidentiality	30
	Appendix 1 – Plan	33
	Appendix 2	34

Deed of Indemnity

Dated

Between

- (1) **Denhead S.À R.L (the Developer)** a limited company (*societe a responsabilite limitee*) governed by the law of the Grand Duchy of Luxembourg having its registered office at 15 Boulevard F.W. Raiffesisen, L-2411 Luxembourg, registered with the Luxembourg *Registre de commerce et des societes* under number B232225
- (2) **Royal Borough of Windsor and Maidenhead (the Council)** of Town Hall, St Ives Road, Maidenhead SL6 1RF;

Recitals

- A The Developer proposes to carry out the Development and is the freehold owner of part of the Site known as the Nicholson's Shopping Centre in Maidenhead.
- B The Council is prepared to consider supporting the necessary land acquisition by promoting and making a CPO under Section 226(1)(a) of the 1990 Act in order to secure the necessary Additional Interests and facilitate the Development on the basis that it is indemnified by the Developer on the basis as provided for in this Deed.
- C The Council is also prepared to take in land and interests owner by the Developer under arrangements separate from the CPO for the purposes of extinguishing third party rights pursuant to section 203 of the 2016 Act.
- D The Developer acknowledges that by the Council entering into this Deed, the Council cannot fetter its discretion to make or exercise its CPO powers. The making of the CPO will always be subject to it being properly authorised by the Council's members and the Council being satisfied pursuant to the Guidance that there is a compelling case in the public interest for such CPO to be made
- E The Developer also acknowledges that the Council will require to be put in funds in advance of incurring any CPO costs and that payment will be made pursuant to a Cost Demand in advance of such costs being incurred by the Council.
- F On the basis that the Developer continues to seek acquire (so far as is reasonably practicable) the Additional Interests by private treaty negotiation, working with the Council to undertake such negotiations and (if appropriate) making such acquisitions and there being a Planning Permission the Council is willing to seek authority to make, promote and implement the CPO in respect of the Additional Interests.

It is agreed:

1 Interpretation

- 1.1 In this Deed the following words and expressions shall unless the context requires otherwise have the following meanings:

1976 Act means the Local Government (Miscellaneous Provisions) Act 1976

1981 Act means the Acquisition of Land Act 1981

1990 Act means the Town and Country Planning Act 1990

2016 Act means the Housing and Planning Act 2016

Acceptable CPO means a Confirmed CPO confirmed by the Secretary of State with modifications which the Developer is reasonably satisfied will enable the Development to be constructed in its entirety and brought into beneficial use

Acquisition Costs means subject to Clause 3.2 all costs and expenses incurred in accordance with the CPO Compensation Code, the aggregate of all compensation costs and expenses payable to all Third Parties and Claimants and all administrative project management acquisition professional and/or other costs and expenses reasonably and properly incurred or to be incurred by the Council arising from or in connection with the preparation for and the making and obtaining confirmation of and the implementation of the CPO [and any RCO] (whether the same are (where relevant) agreed with the relevant Third Party or Claimant or determined by the Lands Tribunal or a court or other competent third party) including without limitation:

- (a) the purchase price or any compensation for or in respect of any Additional Interests which the Council acquires:
 - (i) pursuant to the CPO; or
 - (ii) as a result of any Blight Notice; or
 - (iii) by private treaty;
- (b) any payment under the Compulsory Purchase Act 1965 or the Land Compensation Acts 1961 and 1973 made as a result of the acquisition of or interference with any land interest or right within or over the CPO Land (including for the avoidance of doubt any payment pursuant to sections 23-29 of and Schedule 3 to the Land Compensation Act 1961);
- (c) any statutory interest and any costs payable to any Third Party or Claimant (including without limitation interest which may be payable by virtue of the Council taking possession of any land or interest referred to in paragraph (a) and (b) of this definition before the amount of any payments referred to in those paragraphs have been agreed);
- (d) any legal valuation or other costs and expenses payable to a Third Party or Claimant;
- (e) all disturbance and home loss payments to which any Third Party or occupier is entitled;
- (f) occupiers and business loss payments payable to a Third Party or Claimant;
- (g) the purchase price and any compensation (including any payment for severance or injurious affection) payable as the result of the severance of land in common ownership and the costs of accommodation works the Council is required to carry out as a result of the CPO in respect of land not included in the CPO and not otherwise acquired by the Council;

- (h) any Advance Payment;
- (i) any compensation payment pursuant to sections 203 and 204 of the 2016 Act together with any SDLT and any other tax liabilities which the Council may incur as a consequence of exercising its powers under S203 (including Appropriation where applicable) and the transfer of an interest to the Developer following the use of those powers;
- (j) any compensation payable for depreciation payable under Part I of the Land Compensation Act 1973 as a result of physical factors caused by the use of public works comprised in the Development;
- (k) all payments arising from or in connection with any RCO;
- (l) subject to Clause 18, a sum or sums equal to any irrecoverable VAT in respect of any of the Acquisition Costs save to the extent that the Council is entitled to obtain repayment or credit in respect of the same; and
- (m) any additional costs the Council incurs as a result of the Developer refusing to approve any payments or delaying approval of that payment or failing to provide the Council with necessary funds to make payment on the day it is due.

but excluding any CPO Costs

Acquired Land means any interest in the Additional Interests acquired by private treaty by the Developer or pursuant to Clause 7 by the Council

Additional Interest(s) means all Third Party Land Interests Third Party Rights and any New Rights required to facilitate the Development

Advance Payment means any payment which the Council is required to make in respect of the CPO Land under sections 52, 52A [and 52B] of the Land Compensation Act 1973 (as amended)

Application means the hybrid planning application (part-outline, part-full) application reference 20/01251/OUT for comprehensive mixed-use redevelopment of the Site and any subsequent replacement alteration variation or amendment of the same required for the Development.

Appropriation means appropriation of Council Interests for planning purposes by the Council pursuant to section 122 of the Local Government Act 1972 in respect of land within the Site owned by it but not held for planning purposes relevant to the purpose of the CPO and the term "**Appropriate**" shall be construed accordingly.

Approved Expenditure means in respect of the Acquisition Costs:

- (a) the estimate set out in the Compensation Schedule or as otherwise may be agreed with the Developer plus a contingency equivalent to 10% of those estimated Acquisition Costs; or
- (b) the amount determined under Clause 17 (Expert Determination); or
- (c) the amount determined by the Lands Tribunal or the amount settled by the Developer in the course of negotiations after making a reference to the Lands Tribunal; or

- (d) the amount of any other full and final settlement reached by the Developer in relation to any interest in the Additional Interest with the Council's approval.

Blight Notice means a notice served on the Council under Part VI of the 1990 Act in respect of any Additional Interest

Claimant means a person entitled to the payment of compensation as a consequence of the making of and/or implementation of the CPO and/or the exercise of the Council's powers pursuant to Section 203/204 of the 2016 Act and/or upon Commencement of the Development who is not a Third Party

Commencement means the commencement of the Development pursuant to the Permission by the carrying out of a "material operation" (as defined in section 56(4) of the 1990 Act) save that for the purposes of this Deed works of demolition site clearance and levelling decontamination remediation and the erection of security fencing shall not be included (and "**Commence**" and "**Commenced**" shall be constructed accordingly)

Compensation Schedule means the schedule to be prepared by the Developer and approved in writing by the Council being a schedule of estimated Acquisition Costs as revised from time to time in accordance with Clause 12

Conditions means any of the following conditions:

- (a) the expiry of the challenge period for the grant of the Planning Permission without a challenge being commenced or if commenced the date on which all relevant proceedings are exhausted and a Planning Permission is granted or upheld;
- (b) the expiry of the challenge period for the confirmation of the CPO without challenge or the ultimate determination of any challenge against the confirmation of the CPO leaving intact an Acceptable CPO;

Confirmed CPO means any CPO as confirmed by the Secretary of State (or by the Council if the Secretary of State so allows)

Council External Costs means only the reasonable and proper costs incurred by the Council for goods and/or services relating to the making and implementation of the CPO and all other matters contemplated by this Deed supplied by third parties including legal, surveying, Counsel's fees and other professional costs incurred in accordance with clause [3.2.2].

Council Internal Costs means only the Council's reasonable and proper internal costs incurred in accordance with clause [3.2.1]

Council Interests means any land or interests held by the Council within the Site

Costs means subject to Clause 3 the CPO Costs and Acquisition Costs

Costs Demand means a quarterly or six monthly written demand of the Costs anticipated to be incurred by the Council in a relevant quarter or six months which is consistent with the costs plan prepared and approved in accordance with clause 2.4(d).

Counsel means a barrister who is a member of the Planning and Environmental Bar Association of at least ten (10) years post qualification experience or such other suitably experienced barrister as the parties may from time to time agree

CPO means a compulsory purchase order or orders to be made pursuant to Section 226 of the 1990 Act to acquire the Additional Interests

CPO Compensation Code means the principles derived from the body of statute and case law and established practice applicable to the ascertainment, payment or determination of compensation in relation to compulsory acquisition including (but not limited to) the Land Compensation Acts of 1961 and 1973, the Compulsory Purchase Act 1965, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Planning Act 2008 (as subsequently amended by the Housing and Planning Act 2016 and the Neighbourhood and Planning Act 2017)

CPO Costs means subject to Clause 3.2, all reasonable and proper costs, fees and expenses reasonably and properly incurred or to be incurred by the Council (including Council External Costs and Council Internal Costs in accordance with the terms of this Deed arising from or as a consequence of:

- (a) the preparation (including land referencing and other preparatory procedures) and making and obtaining confirmation of and the implementation of the CPO including the costs of any assessments or studies required to be undertaken to support the CPO process;
- (b) the negotiation for and acquisition of any Additional Interests by agreement in advance of confirmation of the CPO or in advance of the GVD or notice to treat (including costs and any acquisition made consequent on any Blight Notice or purchase notice);
- (c) the holding and management of any Additional Interests;
- (d) the preparation (including without limitation land referencing and other preparatory procedures) and making and obtaining confirmation of and the implementation of the CPO;
- (e) the negotiations for the payment of compensation to Third Parties and Claimants and other matters relating to the acquisition of any Additional Interests including necessary relocation arrangements;
- (f) implementing the Sheriff's warrant procedure necessary to secure vacant possession;
- (g) the rehousing by the Council of any person displaced from a dwelling in consequence of the Council compulsorily acquiring any Additional Interests;
- (h) the service of notice to quit on any tenant of the Council occupying land where possession is required in order to implement the Development;
- (i) all costs incurred in relation to service of any Notices to Treat, Notices of Entry, GVD;
- (j) the costs of security for the Additional Interest (if acquired by the Council) and hoarding costs, utility disconnection, utility removal costs and payment of empty property council tax and/or business rates (as applicable)
- (k) the costs of removing any squatters and/or unlawful occupiers of the Additional Interest

including (without limitation):

- (i) all legal (including Counsel's fees), surveyors', valuation, land referencing, advertising, project management and other professional costs and disbursements;
- (ii) all SDLT and HM Land Registry fees and other disbursements arising out of the acquisition holding and management of any Additional Interests and the disposal of any Additional Interests pursuant to this Deed;
- (iii) all outgoings in respect of any Additional Interests acquired by the Council such as (but not limited to) the payment of rent, insurance, and service charge but not for repairs and maintenance unless such costs have first been approved in writing by the Developer;
- (iv) all costs charges and expenses in connection with (or in anticipation of) prosecuting or defending (including taking advice from Counsel in connection with) any of the following:
 - (aa) any appeal or application for judicial review in respect of the confirmation, non-confirmation or partial confirmation of the CPO or the making of a GVD or service of a notice to treat or notice of entry;
 - (bb) any reference to the Lands Tribunal or court for the determination of the statutory compensation payable in respect of the acquisition of any Additional Interests;
 - (cc) any reference to the Lands Tribunal following the service of a Blight Notice;
 - (dd) any other claim reference or proceedings in connection with or arising out of the CPO process (including any Public Inquiry or reference to the Expert for the determination of any dispute as provided in this Deed) including any court challenge to the Council's decision to make, proceed or implement the CPO of the Secretary of State's decision to confirm the CPO (in whole or part);
- (v) mediation or other costs associated with any alternative dispute resolution process connected with the CPO or the RCO and/or any objection thereto;
- (vi) all costs expenses and other monies awarded against the Council in connection with or arising out of any Public Inquiry, Lands Tribunal reference, appeal, judicial review and any other claim or litigation (including any reference to the Expert for the determination of any dispute as provided for in this Deed); and
- (vii) subject to Clause 18, a sum or sums equal to any VAT in respect of any of the CPO Costs save to the extent that the Council is entitled to obtain repayment or credit in respect of the same

but excluding the Acquisition Costs and provided further that the Council shall seek to minimise the duplication of any CPO Costs under item (k(i)) (above) to the extent it is reasonably practicable to do so.

CPO Land means the land (and each and every part of it) in or over which Additional Interests are to be acquired pursuant to the CPO

Deed means this deed of indemnity

Deliverable CPO means a CPO for which Counsel has provided a written opinion or confirmed verbally that there is a 50% (or better) chance of success that the CPO will be confirmed

Development means the development permitted by the Planning Permission

Designated Account means the bank account held by the Council into which the Costs are to be paid and identified pursuant to Clause 2.4(a)

Developer's Interests means those interests in land or in rights in the Site which are from time to time held by the Developer

Developer's Notice means the written notice to be served by the Developer on the Council requesting the Council commence the CPO process

Development means the construction on the Site of the development permitted by the Planning Permission

Drawdown Notice means such notice or notices to be served by the Developer on the Council from time to time during the lifetime of the CPO and such notices shall:

- (a) identify the Third Party Land Interests to be acquired by GVD;
- (b) identify any Third Party Land Interests or Third Party Rights to be acquired by Notice To Treat/Notice to Enter (if applicable);
- (c) identify any New Rights to be acquired;
- (d) the proposed timetable for acquiring such interests as identified in the relevant Drawdown Notice (having regard to any administrative processes the Council may need to undertake in order to comply with the Drawdown Notice); and
- (e) confirm the Approved Expenditure has been deposited with the Council.

and any Drawdown Notice shall always be consistent with the agreed Vesting Strategy

Expert means a person appointed pursuant to Clause 17

Guidance means the document issued by the Department for Communities and Local Government titled "*Guidance on Compulsory Purchase Process and The Criche Down Rules*" published July 2019 (as subsequently amended or replaced).

GVD means a notice or notices in "Form 2" in relation to a general vesting declaration served under the Compulsory Purchase (Vesting Declarations) Act 1981 by the Council pursuant to the CPO

Highway Authority means the highway authority as determined in accordance with section 1 of the Highways Act 1980

Land Swap Agreement means the agreement between the Developer and the Council dated 12 February 2020 and any documents supplemental to or varying such agreement from time to time.

Lands Tribunal means the Lands Chamber of the Upper Tribunal or the successor to its functions insofar as they are relevant to this Deed

Letter of Reliance means the letter to be procured by the Developer from the Selected Agent in favour of the Council substantially in the form at Schedule 1

Longstop Date means (unless the parties otherwise agree) the date [**] years from the date of this Deed or ** years from the Unchallenged Date whichever shall occur first

New Rights means any right (or easement) as the Developer reasonably considers is required to be obtained (or overridden) in order to Commence carry out and complete and operate the Development and/or use the same following completion from any Third Party having an interest in any property or otherwise having the benefit of any right whatsoever affecting the Site or the Development and which are capable of being acquired under Section 13 of the 1976 Act or extinguished by the operation of the CPO

Notice of Entry means a notice of entry pursuant to Section 11 of the Compulsory Purchase Act 1965

Notice of Treat means a note to treat served pursuant to Section 5 of the Compulsory Purchase Act 1965

Option Structure means the structure for the disposal of the Developer's Interests and/or Additional Interests and/or Acquired Land for the Development and related agreements the approved drafts of which are set out in Appendix 2 and reference to "Leaseback" in Clause 23 (Assignment) shall have the meaning as given to that term in such agreements.

Planning Permission means the planning permission granted pursuant to the Application

Plan means the plan annexed to this Deed as Annexure 2

Pre-Existing Costs means all costs, fees and expenses (including Counsels Fees and Council's Internal Costs) incurred by the Council in connection with and in preparation for the making of the CPO prior to the date of this agreement in the sum of £X [XX Thousand Pounds] to be paid by the Developer to the Council on execution of this Deed

Programme means the Developer's summary programme as shall from time to time be approved by the Council for making, promoting and implementing the CPO

Public Inquiry means a public local inquiry or inquiries held by the Secretary of State to consider objections (or via the use of written representations) before determining whether or not to confirm the CPO and (if applicable) the RCO

RCO means an order or orders made under Part X of the 1990 Act or under the Highways Act 1980 to facilitate the temporary and/or permanent stopping up, closure diversion and/or pedestrianisation of any highway, footpath or public walkways or other public rights of way required to facilitate the Development

Relevant Income means interest received by the Council on moneys from time to time standing to the credit of the Designated Account and any rent or other income received from time to time as a result of the holding or ownership of any Additional Interests

Secretary of State means the Secretary of State for Communities and Local Government or any replacement minister exercising the current powers of the Secretary of State relating to the discharge of powers under the 1990 Act and the 1981 Act

Selected Agent means Newsteer the Developer's appointed agent (with a Letter of Reliance to the Council) (or such other agent agreed with the Council)

Site means the land and buildings shown edged red on the Plan

Third Party means any person owning Third Party Land Interests or Third Party Rights or from whom a New Right is to be acquired and (if applicable) the successors in title to such person

Third Party Land Interests means any freehold or leasehold interests in or tenancy within the Site which are not owned or controlled by or vested in the Developer or the Council at the date of this Deed and are required to be acquired to facilitate the carrying out completion and maintenance (or use and enjoyment) of the Development

Third Party Rights means any rights of way light and air or other easements of any nature whatsoever covenants and other interests not vested in the Council or Developer in or over beneath or affecting any part of the Site which would be infringed by the Development or would adversely affect or in any way prevent or impede the carrying out completion and maintenance of the Development (or its use and enjoyment)

Unchallenged Date means the expiry of the statutory period in relation to a Confirmed CPO leaving it free from any proceedings or statutory challenge

VAT means value added tax within the meaning of the Value Added Tax Act 1994

Vesting Strategy means the Developer's summary programme as shall from time to time be provided to the Council for implementing the CPO and acquiring the Additional Interests such strategy to be first discussed and agreed with the Council pursuant to the requirements of Clause 10.2

Working Days means any day except Saturday Sunday or other public holidays in England

- 1.2 In this Deed unless the context requires otherwise references to the singular include the plural and *vice versa*; references to persons shall include bodies corporate and *vice versa*; and references to clauses and to schedules shall be construed as references to clauses and schedules of this Deed unless expressly provided otherwise.
- 1.3 The expression "the Council" shall include its statutory successor in respect of the functions to which this Deed relates.
- 1.4 References to statutes or statutory provisions include that statute or provision as amended modified re-enacted or replaced from time to time and any order, instrument or regulation made or issued under it or deriving validity from it.
- 1.5 Where any approval, consent, agreement is required to be given or action taken or discretion exercised pursuant to the terms of this Deed it shall be in writing and (unless expressly stated

to the contrary) shall not be unreasonably withheld or delayed and for the avoidance of doubt "in writing" shall include written instructions sent by email on or behalf of the Parties either by their employees, officer the Selected Agent and/or the Council or the Developer's solicitors.

- 1.6 Headings in this Deed are for convenience only and shall not affect the construction of this Deed.

2 Statutory Powers and Council's Obligation

- 2.1 This Deed is made pursuant to Section 1 of the Localism Act 2011 and all other powers so enabling.

- 2.2 Subject to Clause 2.3, the Council agrees and undertakes to the Developer that it will take all reasonable steps as soon as reasonably practicable to seek authority to make and promote the CPO (including the engagement of Section 203 of the 2016 Act by Appropriation or acquisition for planning purposes pursuant to s227 of the 1990 Act as appropriate) and subject to such authorisations make and promote the confirmation of the CPO having regard to the Programme and if the CPO is confirmed (subject to the requirements of this Deed) to compulsorily acquire the Additional Interests.

- 2.3 The Council will not be required to take any further step or action pursuant to Clause 2.2 or otherwise in accordance with this Deed if the Developer has not served the Developer's Notice; and further, if following service of the Developer's Notice:

- (a) Counsel has advised the Council that it is not a Deliverable CPO; or
- (b) the Developer fails to pay to the Council the Costs in accordance with this Deed (until such payment is received in full by the Council).

- 2.4 The Council shall:

- (a) identify the Designated Account into which all Costs will be paid. Any interest earned on the account shall belong to the Developer absolutely;
- (b) supply quarterly to the Developer the details of the entries in the Designated Account for the relevant month(s);
- (c) reply promptly to the Developer's written enquiries in relation to the Designated Account;
- (d) maintain a cost plan identifying the anticipated Costs and a cash flow forecast showing the anticipated dates of payment of such Costs in the cost plan and provide copies thereof to the Developer quarterly for approval by the Developer not less than 21 days before the date of issuing a Costs Demand pursuant to clause 2.4(e); and
- (e) issue the Costs Demand to the Developer on a quarterly or six monthly basis;

3 The Costs

- 3.1 Subject to the provisions of this Deed, the Developer agrees to pay to the Council in accordance with this Deed all of the Costs as the Council shall incur and to indemnify the Council against all of the Costs provided that the Developer shall have no liability for Acquisition Costs incurred, or resulting from any action taken by the Council before the

Developer's Notice has been served on the Council (save for the Pre-Existing Costs) unless otherwise agreed in writing by the parties.

3.2 The obligations on the Developer to pay any Costs pursuant to this Deed or indemnify the Council pursuant to this Deed shall be subject always to those Costs being reasonably and properly incurred (by the Council or relevant Third Party) and in accordance with this Deed and PROVIDED FURTHER THAT:

3.2.1 The Council's Internal Costs referred to in this Deed shall be only the reasonable costs of time expended and disbursements incurred:

- (a) by the Council's own staff, employees, agents and officers whose prior identity has first been notified to and the hourly rates of whom must have first been approved in writing by the Developer (such approval not to be unreasonably withheld or delayed together with any internal administrative costs (including costs of Shared Legal Services Wokingham Borough Council where acting for the Council); and
- (b) in accordance with a scope of services and work streams for such officers which have been previously approved by the Developer (such approval not to be unreasonably withheld or delayed)

and the cost of time so expended shall be calculated at hourly rates set out in Schedule [APPEND DETAIL OF HOURLY RATES] and the Council shall provide to the Developer for approval detail of any annual increases to such rates (such approval not to be unreasonably withheld or delayed)

3.2.2 The Council's External Costs referred to in this Deed shall include only the cost of time expended and disbursements incurred:

- (a) in respect of external consultants and/or Counsel whose prior identity has first been notified to and the hourly rates of whom must first have been approved in writing by the Developer);
- (b) in accordance with a scope of services and workstreams for such appointed external consultants or Counsel which has first been approved by the Developer in writing (such approval not to be unreasonably withheld or delayed).

3.3 The Developer shall have no liability for any Costs incurred, or resulting from any action taken by the Council before the written request by the Developer is made to the Council pursuant to Clause 9.1(b) and unless such costs have been approved in advance by the Developer.

3.4 Where the Council takes either of the steps in Clause 11.1(a) or 11.1(b) before there is agreement for it to do so at a meeting held under Clause 10.2, the Developer shall not be liable for any Costs arising from the taking of such step.

4 Payment of Costs

4.1 The Developer shall pay an amount equal to the Acquisition Costs payable to the relevant Third Party or Claimant not exceeding the Approved Expenditure by cleared funds no later than three Working Days prior to the proposed date of payment by the Council to the relevant Third Party or Claimant PROVIDED THAT the Developer has had a minimum of 15 Working Days written notice of any such payment and the Council's actions in negotiating the relevant payment have been taken in accordance with this Deed.

- 4.2 Within 28 days of receipt of a Costs Demand to pay the requested sum to the Council.
- 4.3 All Cost Demands shall include a written description of the work and written evidence of the Costs incurred or proposed to be incurred for which the payment is sought or the interest in land that has been acquired or is being acquired and where a Cost Demand for a previous six months has been under-estimated, the Council shall be permitted to recover any additional Costs from a previous six months as part of such Cost Demand or shall be permitted to issue additional Costs Demands prior to the expiry of the six month period the Cost Demand was anticipated to cover.
- 4.4 The Parties agree that a separate Costs Demand may be issued by the Council in advance of making the CPO such Costs Demand shall be for any Compensation identified in the Compensation Schedule being payable in relation to possible Blight Notices.
- 4.5 Interest at the rate of [2% (two percent)] above the HSBC Bank base lending rate for the time being in force will be payable on any Costs due under this Deed by the party in default from the date on which payment becomes due until the date upon which payment is made by the party in default.
- 4.6 If any Costs are recoverable from any third party, the Council will use reasonable endeavours to recover them (if practicable to do so) and sums recovered (if already paid by the Developer) shall be credited to the Designated Account and set against the next Cost Demand, or to the extent that they exceed the Costs demanded in the next following Cost Demand, reimbursed by the Council to the Developer within no more than 10 Working Days following receipt of any such sum.
- 4.7 The Council shall pay all monies received pursuant to a Costs Demand and received Acquisition Costs into the Designated Account on receipt and shall only use such monies for the purpose they are paid (unless otherwise agreed with the Developer).
- 4.8 The Developer is entitled at any time to obtain information about the balance held in the Designated Account and of any withdrawals from it;
- 4.9 The Council shall from time to time inform the Developer of those officers authorised by the Council to sign a mandate for withdrawal from the Designated Account if requested by the Developer.
- 4.10 If in the course of promotion of the CPO or of any litigation relating to the CPO the Council is the beneficiary of an award of costs against any third party then any such award paid to the Council shall (where entirely funded by the Developer pursuant to the provisions of this Deed) forthwith upon receipt be paid into the Designated Account and shall be treated in the same way as any other funds deposited in the Designated Account
- 4.11 In the event that either:
- 4.11.1 This Deed is determined; or
- 4.11.2 The CPO has been confirmed and implemented to the full extent required by the Developer then within 21 (twenty one) Working Days after written notice from on Party to the other confirming that fact the Council shall agree with the Developer how much money (if any) still needs to be paid out of the Designated Account to meet liabilities reasonably and properly incurred by that time or where further costs have been projected and are subject to future Costs Demands;

- 4.12 Within 14 (fourteen) Working Days after the agreement pursuant to clause 4.12 of any amount still needing to be paid out of the Designated Account the Council agrees to:
- 4.12.1 make the payments agreed as still being payable subject to sufficient funds being available in the Designated Account; and then
- 4.12.2 once the Council is satisfied there are no outstanding Acquisition Costs or CPO Costs to be incurred or paid the Council shall take such steps as shall be necessary to close the Designated Account and repay any remaining credit balance to the Developer.

5 Acquisitions by Private Treaty

- 5.1 The Developer shall:
- (a) use reasonable endeavours to acquire the Additional Interests by private treaty on the appropriate terms reasonably available at the relevant time having regard to the level of compensation likely to be awarded for the relevant interest pursuant to the Compensation Code and where appropriate consider and have regard to any requests for relocation within the Development (subject always to the Developer's commercial requirements and tenant mix for the Development);
 - (b) maintain and keep up to date a schedule of the progress of the negotiations to acquire the Additional Interests and supply every quarter a copy of the updated schedule to the Council;
 - (c) maintain and keep updated records of all correspondence and other contact with Third Parties having any Additional Interest and at the Council's reasonable request from time to time supply the Council with such detailed information as it may reasonably require in relation to any particular negotiation, including as requested copies of correspondence, file notes, attendance notes, and other documentation;
 - (d) from the date the CPO is made consult with the Council at regular intervals and pay due regard to reasonable representations made by the Council to the progress of the acquisition of the Additional Interests;
 - (e) upon entering into any agreements to acquire any Additional Interest supply a copy of the completed agreement to the Council;
 - (f) subject to Clause 7, upon receipt by the Developer of notification from the Council of a Blight Notice which is properly accepted as valid by the Council negotiate to agree the compensation.
- 5.2 The Council shall use reasonable endeavours to assist the Developer in acquiring the Additional Interests if requested.
- 5.3 Acknowledging that circumstances may arise where third parties will not negotiate or treat with the Developer, the Council shall do so as soon as reasonably practicable but only after having first received a written request from the Developer and a Costs Demands for such negotiation first being paid by the Developer.
- 5.4 In circumstances contemplated by clause 5.3 the Council must agree with the Developer the identity of those acting on behalf of the Council in negotiations and keep the Developer fully

and promptly informed of the progress of negotiations seek and have reasonable and proper regard to any representations from the Developer and seek the Developer's prior written approval of the terms (including the consideration payable) under any resultant acquisition.

6 Dealings in the Council's Land

- 6.1 The Council will not dispose of any interest or right owned or held by it in the Site or in any Additional Interest except to the Developer for as long as this Deed subsists (or other than in accordance with the Option Structure in relation to interests held or owned by the Council prior to the date of this Deed).
- 6.2 The Developer and the Council agree that at the sole discretion of the Developer any interest or right owned or held by the Developer in the Site or any Additional Interest may be transferred to and from the Council for the purposes of the overriding of easements and other third party rights subject to such terms of transfer as may be agreed between the Parties.
- 6.3 In relation to an interest acquired by the Council in the Additional Interests the Council shall not let, licence or otherwise permit any person to occupy any part of the Site or any Additional Interest or create any new interest in any property within the Site or any Additional Interest without the written consent of the Developer PROVIDED THAT it may grant leases or occupational rights in respect of the whole or any part or parts of the Acquired Land to any bona fide lessee or licensee (subject to any restrictions imposed in relation to the renewal of any business tenancy pursuant to the provisions of Part II of the Landlord and Tenant Act 1954):
- 6.3.1 The provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 (to the extent they would apply to the leases/occupation rights) have been properly excluded from the lease/occupation rights granted; and
- 6.3.2 That the grant of such leases or occupation rights will not prejudice the date of commencement of the Development or increase the costs thereof; and
- 6.3.3 The terms do not require any expenditure on the repair and condition of the premises; and
- 6.3.4 The terms do not allow any works to be undertaken that would increase the costs of demolition; and
- 6.3.5 Such leases/occupation rights are on such terms as do not impact on the possession date of any part of the site pursuant to the CPO; and
- 6.3.6 Such leases/occupation rights are granted for a fixed term of six month or less.
- 6.4 The Council shall seek to minimise all outgoings payable in respect of any Additional Interest acquired by it in accordance with the principles of good estate management.

7 Blight Notices

- 7.1 If a Blight Notice is served in respect of an interest in any part of any Additional Interest related to the promotion of the CPO for the Development then the Developer shall carry on negotiations with the relevant party to acquire any Additional Interest and this Clause 7 shall apply.
- 7.2 The Council shall:

- (a) as soon as reasonably practicable and in any event within 10 Working Days supply a copy of any Blight Notice to the Developer together with copies of any relevant supporting correspondence and documents and a statement certifying the rateable value of the relevant property within the rating list as at the date of the Blight Notice;
- (b) within 10 Working Days after receipt of the Blight Notice consult with the Developer concerning the Blight Notice and its implications (including the appropriate manner in which to respond to such Blight Notice so as to ensure that the Council can respond within the statutory time limit) including whether to serve a counter-notice in response;
- (c) within 15 Working Days after receipt of a Blight Notice, investigate the grounds for service of such Blight Notice and the value of the interest the subject of the Blight Notice (and the parties agree that the Selected Agent shall consider and advise on the value of the interest and the other compensation which may be payable to the owner of the interest concerned);
- (d) within 30 Working Days after receipt of a Blight Notice, serve a counter-notice in response (and provide to the Developer copies of all relevant correspondence and documentation) unless:
 - (i) it is agreed with the Developer that a counter-notice is not appropriate; or
 - (ii) Counsel has advised at least 3 working days before the expiry of the timescale that there is insufficient grounds for service of a counter notice or response notice;
- (e) keep the Developer fully informed as to the negotiations with the relevant owner and/or any steps which the Council proposes to take in connection with any Blight Notice (including adjustment or compromise of any Blight Notice claims) and give the Developer the opportunity to make representations on such steps in advance (to which the Council will have reasonable and proper regard) or agree the Developer shall undertake the negotiations with the relevant owner with the Developer keeping the Council fully updated on those negotiations;
- (f) use reasonable endeavours to minimise the liability in relation to any Blight Notice; and
- (g) not adjust or compromise any Blight Notice claims without providing a copy of the Blight Notice to the Developer and providing a reasonable opportunity for comment (to which the Council shall have reasonable and proper regard in dealing with such claims).

7.3 Either party shall be entitled to seek the opinion of Counsel as to the validity of the Blight Notice and whether any grounds exist for service of a counter-notice (to which the parties will have reasonable and proper regard).

7.4 If the Council does not serve a counter notice or a response notice pursuant to Clause 7.2(d) the Council and Developer will jointly appoint the Selected Agent to negotiate on behalf of the Council and the Developer the compensation payable and the Developer will deposit the Approved Expenditure with the Council.

7.5 The Council shall keep the Developer fully informed of any course of action pursued under this Clause 7 and of any proceedings in the Lands Tribunal and will invite the Developer to attend all consultations with Counsel appointed in respect of the same.

8 The RCO

8.1 The Council and Developer will regularly consult with each other in relation to the progress of the preparation for, making of, pursuing, confirmation and implementation of any RCO necessary for the purposes of the Development and each will supply the other, as soon as reasonably practicable, copies of all relevant documentation relating to any RCO for consultation and comment.

8.2 Where an RCO is deemed necessary the Developer shall submit the RCO application to the Secretary of State and both parties shall thereafter use their reasonable endeavours to promote and secure the confirmation of the RCO as soon as reasonably practicable and in so doing, the Parties shall keep each other fully informed at all times of the progress in the making of the RCO, objections, negotiations and communications with any such objector, the confirming body, the Highway Authority and the Planning Inspectorate.

8.3 The Council and the Developer shall use reasonable endeavours to cooperate in coordinating any CPO inquiry and RCO inquiry whether or not the inquiries are conjoined and will supply each other with copies of any relevant documentation received or issued in connection with any inquiry into the RCO.

9 Making the CPO

9.1 Subject to Counsel's confirmation of a Deliverable CPO the Council shall:

- (a) prior to the making of the CPO consult and have due regard to the views of the Developer on all documentation relating to the CPO including taking Counsel's advice to ensure the purpose of the CPO is sufficiently broadly so as to remove the risks envisaged by clause 11.2;
- (b) subject to Clause 2.3 being satisfied and the Developer having requested the following steps be taken and agreed the Costs arising under Clause 3.2.2 to:
 - (i) seek all appropriate Council authority required to make the CPO and acquire the Additional Interests;
 - (ii) carry out the referencing with all due diligence to determine the Additional Interests to be acquired by the CPO including drafting and serving of requisitions for information and upon securing all necessary Council authorities to make the CPO (subject to the parties to this Deed agreeing the form and extent of the CPO and the Compensation Schedule under Clause 12.2(b));
 - (iii) prepare drafts of the statement of reasons and any other documents notices or certificates which may be required in the making and promotion of the CPO and in relation to any such document shall consult the Developer and have reasonable and proper regard to its representations on the form of the documents; and

- (iv) undertake such assessments (including any assessment having regard to the Council's public sector equalities duty under the Equalities Act 2010) to support the making and promotion of the CPO;
 - (v) take all appropriate steps acting diligently and expeditiously to make promote and secure the confirmation of the CPO as soon as reasonably practicable (which may include confirming the CPO itself if that power is afforded to the Council by the Secretary of State);
 - (vi) subject to the Council resolving to make the CPO, make and submit the CPO to the Secretary of State for confirmation (or an Inspector acting on his behalf) as soon as reasonably practicable but not without the prior written approval of the Developer;
- (c) (except where there is a conflict of interest):
- (i) keep the Developer fully and promptly informed of the progress of the CPO and preparations for the Public Inquiry including providing the Developer with copies of all material written correspondence and minutes of meetings;
 - (ii) arrange joint consultations with the Council's Counsel in relation to the preparation of the case for any Public Inquiry (including the selection of witnesses and the scope of evidence)
 - (iii) provide an opportunity for the Developer to comment on and acting reasonably and promptly approve any joint instructions for the Council's Counsel
 - (iv) invite representatives of the Council and Developer to attend all joint consultations with Counsel
 - (v) ensure that a copy of any note or minute of any consultations with Counsel is made and copied to the Council and the Developer.
- (d) if objections are made to the CPO, as soon as reasonably practicable send to the Developer copies of all such objections and liaise with the Developer and otherwise use reasonable endeavours to help resolve such objections in consultation with the Developer (the Developer to have the lead in all negotiations with objectors);
- (e) not give any undertaking or assurance which relates to or may affect the design, operation, occupation, servicing, viability, cost, value or Programme for the Development to any objector to the CPO or any other Third Party or Claimant until it has first obtained the written approval of the Developer to that undertaking or assurance;
- (f) consult and co-operate (insofar as it is proper and reasonable to do so) and procure that its consultants and advisers will consult and co-operate (insofar as it is proper and reasonable to do so) with the Developer in its preparation for and conduct at any Public Inquiry including the preparation of supporting evidence, the procedural programme and strategy in relation thereto;
- (g) adduce all relevant and appropriate evidence at any Public Inquiry in particular relating (amongst other things) to matters of the public interest for the CPO and the

benefits of the Development as they relate to satisfying the relevant statutory and non-statutory tests;

- (h) keep the Developer fully informed at all times of the progress made under this Clause 9.1 including provision of copies of all relevant correspondence, notices and documents as soon as reasonably practicable;
- (i) prosecute any Public Inquiry with all due diligence and use all reasonable endeavours to obtain confirmation of the CPO;
- (j) use reasonable endeavours to secure the earliest practical date for any Public Inquiry or hearing required in connection with the CPO; and
- (k) not withdraw the CPO or exclude from the CPO any interest in land or otherwise amend the extent of the CPO without the prior written consent of the Developer.

9.2 The parties agree that where it is necessary to seek the opinion of Counsel, instruct Counsel or appoint witnesses to appear in connection with any Public Inquiry and/or in relation to any hearing of any body or court concerned in relation to any compensation payable or any other matter or thing arising out of or in connection with the CPO any such instruction or appointment shall be an instruction by the Council) (save where it relates to a matter which can appropriately be an instruction jointly by the Council and the Developer)).

9.3 The parties shall use reasonable endeavours to agree a strategy for any Public Inquiry including the nature of the evidence to be adduced at the Public Inquiry and the witness or witnesses to be instructed to present the evidence provided that where the parties are not able to agree on the identity of the witnesses the matter shall be referred to the Counsel instructed pursuant to Clause 9.2 for final determination.

9.4 The Developer will not object to the CPO and will (and will procure that its consultants will) give such support and assistance to the Council in the exercise of its compulsory purchase powers and in relation to the making confirmation and implementation of the CPO as may be reasonable including at its own expense (without limitation) giving or procuring the giving of supporting evidence (both written and in person) at any Public Inquiry and/or at any hearing of any body or court convened in relation to any compensation payable or any other matter or thing arising out of or in connection with the CPO and any RCO.

9.5 The Council shall not compulsorily acquire pursuant to the CPO or implement the CPO in respect of any of the Developer's Interests without the prior written agreement of the Developer (which may be withheld by the Developer in its absolute discretion).

10 Confirmation of the CPO

10.1 If the Secretary of State (or an Inspector appointed to act on his behalf) allows or directs the Council to confirm the CPO then the Council shall confirm the CPO and notify the Developer as soon as is reasonably practicable after receipt of the permission or direction from the Secretary of State.

10.2 Following confirmation of the CPO the Council shall supply to the Developer as soon as reasonably practicable after receipt:

- (a) a copy of the Secretary of State's relevant decision letter;

- (b) a copy of the CPO inspector's report; and
- (c) a copy of the CPO as confirmed and a copy of the CPO map;

and the Council and the Developer shall subject to any notification under Clause 10.3 meet within one month of the date of the notification in Clause 10.1 (unless otherwise agreed in writing) to discuss and agree the Developer's Vesting Strategy, this shall include (but not be limited to) the choice of procedure for implementing the CPO, strategy and process for implementing the CPO, timescales for making GVD's and/or issuing Notices to Treat and Notices to Enter and preferred vesting date (as applicable).

10.3 Following the confirmation of the CPO, in relation to any Additional Interests the Council shall as soon as practicable:

- (a) serve a notice of confirmation on all parties entitled to receive such notice;
- (b) publish the notice of confirmation in accordance with all relevant statutory provisions;
- (c) otherwise comply with the relevant statutory requirements in relation to the CPO so as to enable it to become operative as soon as reasonably practicable including updating its Local Land Charges Register;

and in each case provide copies of all relevant documentation to the Developer and act in accordance with the Vesting Strategy.

10.4 Without prejudice to Clauses 10.2 and 10.3, if the CPO is confirmed with modifications the Developer shall as soon as reasonably practicable (and in any event within 14 (fourteen) days from the date it is supplied the documents referred to in Clause 10.2) notify the Council in writing that it is satisfied that the CPO is an Acceptable CPO or that it is not so satisfied and set out its reasons if that is the case.

10.5 If the Secretary of State (or Inspector) declines to confirm the CPO or confirms the CPO with modifications and the Developer has notified the Council that it is not satisfied that the Confirmed CPO is an Acceptable CPO the Council and the Developer shall as soon as reasonably practicable consult with one another as to the appropriate manner in which to respond to such decision in order to facilitate the delivery of the Development (including whether it is reasonable to promote a new CPO).

10.6 If the Secretary of State does not confirm the CPO (in whole or in part) or modifies the CPO so that it is not an Acceptable CPO then unless otherwise agreed in writing between the parties the Developer and the Council will at the Developer's cost seek the written opinion of Counsel as to whether or not there is merit in challenging the Secretary of State's decision and if so, as to the manner on which such challenge should be mounted and, if not, as to the form and extent and strategy for promotion of a new CPO.

10.7 If Counsel advises that there is a 50% (fifty per cent) or better chance of a success by way of:

- (i) an appeal to the High Court against the Secretary of State's (or Inspector's) decision against non-confirmation or partial confirmation or an application for judicial review (which ever Counsel shall advise as being more appropriate in the circumstances); or
- (ii) (as the case maybe) such action as Counsel shall advise as being appropriate in the circumstances to resist such third party challenge;

the Council shall:

- (A) lodge such appeal or application for judicial review or (as the case maybe) take all such procedural steps and other action as Counsel shall advise in order to resist such third party challenge; and
- (B) supply copies of all relevant correspondence papers and other court documents to the Developer; and
- (C) liaise with and have due regard to (but without being bound by) the views of the Developer as to the manner of prosecution of the relevant appeal/application/court action; and
- (D) keep the Developer reasonably advised and up dated on the progress and results of the same;
- (E) and the costs incurred by the Council in connection with any action taken under this clause shall be CPO Costs provided that they have been approved by the Developer in writing in advance of being incurred by the Council.

10.8 If any challenge made to the Secretary of State's decision on the CPO pursuant to Clause 10.7 is unsuccessful then the parties shall consult one another as to whether it is reasonable to take any further steps to prepare and promote the CPO (or a new CPO) with each party being entitled in its absolute discretion to take no further steps provided that the costs incurred in making this decision shall only form part of the CPO Costs to the extent that the decision is agreed by the Developer.

10.9 If Counsel advises that there is less than a 50% (fifty per cent) chance of a successful challenge to the Secretary of State's decision on the CPO or if the Developer notifies the Council that it does not wish the Council to challenge the decision the Council may in its reasonable discretion elect to proceed with a challenge.

10.10 If the Council does elect to proceed with a challenge under Clause 10.9, it shall proceed with all due diligence and then:

- (a) if such challenge is unsuccessful all costs and fees incurred by the Council in making such an appeal or application shall not form part of the CPO Costs and shall be borne by the Council; and
- (b) if such a challenge is successful leaving intact an Acceptable CPO then the costs and fees reasonably and properly incurred and all compensation and other sums for which the Council becomes properly liable as a result shall form part of the CPO Costs PROVIDED THAT the Developer has been kept fully informed at all times as to progress including provision of copies of all relevant correspondence and documents and has been invited to attend meetings with witnesses and Counsel where relevant and has had the opportunity to make representations and comment and the Council has had reasonable and proper regard to any such input and has acted in accordance with the terms of this Deed.

10.11 The Council will inform the Developer as soon as reasonably practicable of any legal proceedings (including the granting of leave by the court to institute the same) against the

Council (including any reference to the Lands Tribunal) or the Secretary of State concerning the CPO and the following provisions will apply:

- (a) the Council shall as soon as reasonably practicable deliver copies of all proceedings, documents and correspondence received relating to such challenge to the Developer;
- (b) the parties will keep each other fully and regularly informed of all progress and likely liabilities and in relation to any costs or damages suffered or properly payable in any such challenge or proceedings;
- (c) the Council shall as soon as reasonably practicable instruct Counsel to advise on the merits of defending or contesting such challenge and if so, the manner in which such defence should be mounted;
- (d) if Counsel advises that there is a 50% or better chance of successfully defending or contesting such challenge, the Council shall (unless the Developer requires otherwise) take all procedural steps necessary to defend or contest such challenge, consult with the Developer on the appointment of Counsel and witnesses and keep the Developer fully informed at all times and the costs incurred by the Council in connection with the same shall be CPO Costs; and
- (e) If Counsel advises that there is a less than 50% chance of successfully defending or contesting such challenge, the Council may in its discretion elect to defend or contest the challenge but its costs in doing so if it is not successful shall not be CPO Costs. If the Council is successful in contesting or defending the challenge its reasonable and properly incurred costs shall be CPO Costs PROVIDED THAT the Developer has been kept fully informed at all times as to progress including provision of copies of all relevant correspondence and documents and has been invited to attend meetings with witnesses and Counsel where relevant and has had the opportunity to make representations and comment and the Council has had reasonable and proper regard to any such input and has acted in accordance with the terms of this Deed.

11 Acquisition by/vesting in the Council

11.1 Subject to Clause 11.2 and to agreement on the Compensation Schedule under Clause 12.2(c), and the Developer having first served a Drawdown Notice, the Council shall as soon as is reasonably practicable:

- (a) execute a GVD and (if required by the Developer) prepare and serve statutory notices to acquire title to any Additional Interest pursuant to the CPO and that GVD shall specify the timeframe within which the GVD is to take effect ; or
- (b) serve a Notice to Treat or Notice of Entry (as the case may be)

PROVIDED THAT the course of action shall only be as set out in the Drawdown Notice(s) served by the Developer from time to time during the lifetime of the CPO and PROVIDED FURTHER THAT:

the Developer has first deposited the Approved Expenditure for such Additional Interests in the Designated Account.

11.2 The Council shall only be able to reject a Drawdown Notice if:

- 11.2.1 there has been a material change in circumstances since the date of the confirmation of the CPO; and
- 11.2.2 because of the material change in circumstance:
- (a) there no longer remains a compelling case in the public interest for the acquisition of the Additional Interest; or
 - (b) the purposes for which the CPO had been made can no longer be realised.
- 11.3 The Council will provide to the Developer all relevant documentation relating to the acquisition of any Additional Interests.
- 11.4 As soon as reasonably practicable the Council will supply to the Developer copies of all title documents in respect of any interests and of the agreement for its acquisition.
- 11.5 As between each other the Developer and the Council will at all times during the negotiations for the acquisition of any interest in land:
- (a) fully consult, liaise and where necessary hold meetings with the other regarding the negotiations;
 - (b) when requested by the other supply copies of all material correspondence, telephone attendance notes, minutes of meetings, reports, heads of terms and any other documents and correspondence relating to the negotiations;
 - (c) afford a representative of the other the opportunity to attend any meetings with owners of any Additional Interest and give as much notice to the other as is reasonably practicable of any such meetings.
- 11.6 The Council hereby declares that any Additional Interest(s) Land or Acquired Land acquired by the Council pursuant to this Deed at the expense of the Developer shall be held by the Council in trust for the Developer absolutely provided that in the event of the termination of this Deed any property interests acquired by such date shall (subject to the requirement to settle any outstanding Acquisition Costs and CPO Costs in relation to the relevant interests) be transferred by the Council to the Developer at nil consideration.]
- 11.7 Following the acquisition by the Council of any Additional Interests or Acquired Land pursuant to this Deed the Council will:
- 11.7.1 provide all necessary information to the Developer as may be required to register the GVD and subsequent transfers with the Land Registry;
 - 11.7.2 update the Local Land Charges register as required;
 - 11.7.3 transfer all of the Council's interests in the Additional Interests and the Acquired Land acquired pursuant to this Deed to the Developer for £1 (one pound) immediately on request by the Developer and in doing so shall not attach to nor create in respect of the Additional Interests or Acquired Land any incumbrances on title.
- 11.8 The Council will, if requested by the Developer, issue a warrant to the Sheriff to deliver possession of any land in relation to which the Council is entitled to lawful possession in order to secure vacant possession of the same for the benefit of the Developer.

11.9 The Council will, if requested by the Developer, bring any proceedings necessary to secure and maintain possession of any land in relation to which the Council is entitled to lawful possession in order to secure and maintain vacant possession of the same for the benefit of the Developer and the Developer shall at its own expense use all reasonable endeavours to support the Council in this regard including the giving of evidence as to matters within the proper competence or knowledge of the Developer and attending and giving any proper and reasonable assistance in any judicial proceedings.

12 Acquisition Costs payable to Third Parties and Claimants

12.1 The Developer shall instruct the Selected Agents (subject to the approval of the Council) to conduct negotiations with Third Parties and Claimants for the acquisition of any Additional Interest or the settlement of compensation payable in respect of any Additional Interest following the making of any GVDs or the service of notices to treat or notices of entry or to conduct negotiations with Claimants for compensation otherwise payable to them.

12.2 The Council and the Developer shall jointly review (but not more frequently than at two monthly intervals) the Compensation Schedule:

- (a) at the request of either party;
- (b) immediately prior to the making of the CPO; and
- (c) before the Council is required to comply with Clause 11.1(a) or 11.1(b).

12.3 If the Council and the Developer are unable to agree on an entry in or omission from or alteration to the Compensation Schedule at any time, the same may be determined by the Expert at the request of either party having regard to the level of compensation which would be fixed by the Lands Tribunal were the disputed compensation to be referred to the Lands Tribunal and his recommendation shall then be adopted.

12.4 The Council shall consult the Developer and have regard to any comments made by it and seek the Developer's written approval before:

- (a) agreeing the amount of compensation with Third Parties and Claimants payable in respect of the acquisition of any Additional Interest or otherwise payable to a Claimant; or
- (b) making a reference to the Lands Tribunal or other alternative dispute resolution body including which of the Council or the Developer shall have conduct of the reference.

12.5 If the Developer does not approve any proposed amount of compensation payable to a Third Party or a Claimant pursuant to Clause 12.4(a) above, a referral shall be made to the Expert for final determination.

12.6 The Council shall, unless otherwise agreed with the Developer, refer any compensation claim by a Claimant to the Lands Tribunal if it has not been settled or previously referred to the Lands Tribunal within 24 months of entry onto the relevant land having been taken pursuant to the Confirmed CPO.

12.7 If the amount of compensation payable to a Third Party or a Claimant is referred to the Lands Tribunal the Council shall:

- (a) notify the Developer of such reference;

- (b) supply to the Developer all relevant advice, documentation, correspondence and reports received and issued by the Council in respect of the negotiation or action as the Developer shall reasonably require;
 - (c) consult with the Developer on the appointment of the solicitor and/or Counsel and the expert witnesses to represent the Council and the amount of any sealed offer to be made;
 - (d) pursue the negotiation of all claims diligently and expeditiously and keep the Developer fully informed of progress at all times;
 - (e) take into account all representations made by the Developer as to the progress and conduct of the negotiation or action and in relation to all submissions and any evidence to be submitted;
 - (f) appoint Counsel to present the Council's case at the Lands Tribunal and notify the Developer of and invite the attendance of the Developer at all consultations with Counsel.
- 12.8 The Developer may at the written request of the Council take over the negotiations for the settlement of the Acquisition Costs and conduct such reference in the name of the Council by notice in writing to the Council at any time not later than 10 Working Days after the Council notifies the Developer of such reference and shall thereafter consult the Council on the appointment of the solicitor and/or Counsel and the expert witnesses to represent the Council and the amount of any sealed offer to be made.
- 12.9 Where the Developer has taken over the negotiations for the settlement of the Acquisition Costs and the conduct of such reference, the Developer shall thereafter supply to the Council copies of all correspondence papers and documents as the Council shall reasonably require.
- 12.10 If the Council receives any application for an Advance Payment:
- (a) the Council will promptly notify the Developer of that application;
 - (b) the Council will consult with the Developer and take into account all representations made by Developer and have regard to the sum identified in the Compensation Schedule and the advice of the Selected Agent to agree the Advance Payment sum and both parties shall work together to comply with the statutory time limits for the payment of an Advance Payment;
 - (c) the Developer shall within 10 working days deposit the Advance Payment sum as Approved Expenditure into the Designated Account such sum as shall be agreed pursuant to Clause 12.10(b); and
 - (d) the Council shall pay the Advance Payment sum to the claimant.
- 12.11 Where the Developer has deposited the Approved Expenditure with the Council pursuant to any provision of this Deed and there is a reference to an Expert pursuant to Clause 15 or to the Lands Tribunal by Third Parties or Claimant or pursuant to clause to Clause 12.10 as an Advance Payment, if the Expert or Lands Tribunal determine the compensation payable to the Third Parties or Claimant:

- 12.11.1 is greater than the Approved Expenditure (the Excess) the Developer shall pay such Excess to the Council within 10 working days of such determination or such lesser period as may be determined by the Lands Tribunal as notified in writing by the Council; or
- 12.11.2 is less than the Approved Expenditure or any Advance Payment that has been paid to a Claimant then the Council shall either within 10 working days return the excess monies to the Developer or where the Advance Payment has been made shall use all reasonable endeavours to recover the surplus from the Claimant and shall return it to the Developer within 10 working days of its recovery.
- 12.12 Within 10 Working Days of receipt of the Council's written notice pursuant to clause 12.11 the Developer shall deposit the sum identified as the Approved Expenditure in the Designated Account.

13 Role of the Selected Agent

- 13.1 The Developer shall require that the Selected Agent shall undertake the following (subject first to the approval of the Council of the terms of the Selected Agent's appointment):
- 13.1.1 provide the Letter of Reliance in favour of the Council;
- 13.1.2 prepare and keep updated the Compensation Schedule; and
- 13.1.3 to conduct negotiations with Third Parties and Claimants for compensation otherwise payable to them.
- 13.1.4 any private treaty negotiations for the Additional Interest;
- 13.1.5 any investigations and negotiations in respect of Blight Notices pursuant to Clause 7; and
- 13.1.6 any negotiations in respect of claims for Advanced Payment.

14 Option Structure

- 14.1 The Developer may at any time following the service of a Developer's Notice (provided it has not been rejected pursuant to Clause 11.2) or, where applicable, the date of a decision pursuant to Clause 17 that a rejected Developer's Notice is acceptable and prior to commencement of the Development (and provided the requirements of Section 203 of the 2016 Act have been met) serve notice on the Council requiring it to enter into the "sale and leaseback agreement" which forms part of the Option Structure. Within 10 (ten) Working Days of service of such notice the Developer and the Council shall enter into such sale and leaseback agreement.
- 14.2 If the option in the sale and leaseback agreement is exercised and the Council acquires any of the Developer's Interests and/or the Acquired Land pursuant to Clause 5.3 in accordance with the arrangements set out in and the agreements forming part of the Option Structure, all such interests shall be acquired for "planning purposes" (within the meaning of section 203 of the 2016 Act).
- 14.3 The Developer shall indemnify and keep indemnified the Council on a full indemnity basis against all demands liabilities actions claims proceedings costs losses and expenses arising out of or in connection with:
- (a) the Option Structure (including any SDLT payable);

- (b) the entry by the Council into the various documents that are required by the Option Structure;
- (c) the ownership by the Council of any part of the Developer's Interests and/or the Acquired Land pursuant to the Option Structure; and
- (d) the exercise by the Council of its powers pursuant to section 203 of the 2016 Act and in accordance with clauses 14.1 and 14.2 of this Deed.

15 Cessation of Deed

15.1 Subject to Clause 15.2, the relevant party shall be entitled to serve written notice upon the other to determine this Deed :

- (a) If the parties agree;
- (b) If the Conditions have not been met by the Longstop Date;
- (c) If any Confirmed CPO is not an Acceptable CPO (unless the Developer has agreed to pursue a new CPO); or
- (d) If either the Council or the Developer is in material breach of their obligations under this Deed and the other party has given at least 20 Working Days' notice of that material breach and the breach has not been remedied within a reasonable period as specified in such notice;

15.2 If Deed is determined under Clause 15.1, this Deed shall (subject to below mentioned) cease to have effect save that the Developer and the Council agree subject to Clause 15.4 that at all times:

- (a) the Developer will remain liable for any Costs which have been incurred in accordance with this Deed by the Council prior to that date or any Costs that they are legally obliged to incur thereafter;
- (b) the Developer will remain liable for any Costs which have been reasonably and properly incurred by the Council in withdrawing the CPO and in connection with that withdrawal (which for the removal of doubt shall constitute CPO Costs for the purposes of this Deed); and
- (c) the provisions of Clause 14.2 (and such provisions of this Deed as are necessary to give effect thereto) shall survive such termination.

15.3 If this Deed is terminated the Council shall take all reasonable steps to minimise the Costs for which the Developer shall be responsible in this Deed.

15.4 If any Costs which have been reimbursed by the Developer are overpaid, the Developer shall be entitled at its election to the benefit of any lawful refund either as a lump sum or as a credit against further payments due in respect of any Costs and without prejudice to the generality of the foregoing, the Developer shall be entitled to receive any surplus Advance Payment.

16 Notices

16.1 Any notice or other written communication to be served or given to or upon any party to this Deed to the other shall be in writing and shall be sent to the other at the address provided for

above in relation to the Council and for the Developer at ARELI Real Estate Limited, 35-39 Maddox Street, London W1S 2PP (marked for the attention of Will Robinson) with a copy to Bryan Cave Leighton Paisner LLP, The White Building, 1-4 Cumberland Place, Southampton SO15 2NP (ref: VWAI/2ZK/2042540.000063) or such substitute address as may from time to time have been notified to the other in advance by that party

16.2 A notice may be served by:

- (a) delivery to the notice address; or
- (b) registered or recorded delivery post.

16.3 Any notice served will be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

17 Expert Determination

17.1 Any dispute or difference arising between the parties other than matters of legal construction or where it is specifically provided by this Deed to the contrary, shall be referred to and determined by an independent person ("the Expert") if so required by either of the parties by notice to the other party

17.2 The Expert shall have been professionally qualified for not less than ten years and shall have substantial recent experience in respect of the subject matter of the dispute or difference and shall be a specialist in relation to such subject matter.

17.3 The Expert shall be appointed by agreement between the parties or, failing such agreement within 10 Working Days of the notice referred to in Clause 17.1 shall be appointed on the application of either of the parties by such one of the following persons as the parties shall agree to be appropriate having regard to the nature of the dispute or difference in question:

17.3.1 the Chairman for the time being of the Bar Council;

17.3.2 the President for the time being of the Royal Institute of British Architects;

17.3.3 the President for the time being of the Royal Institution of Chartered Surveyors;

17.3.4 the President for the time being of the Institute of Chartered Accountants in England and Wales; or

17.3.5 the President for the time being of the Law Society;

or, in any such case, his duly appointed deputy or any other person authorised by him to make appointments on his behalf.

17.4 If within 15 Working Days after service of the notice referred to in Clause 17.1 the parties have been unable to agree which of the persons referred to in Clause 17.3 is appropriate to appoint the Expert, the Expert will be appointed, on the application of either of the parties by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf.

17.5 Whenever the Expert is to be appointed under this Clause he shall act as an expert and not as an arbitrator and the following provisions shall have effect:

- 17.5.1 save in the case of manifest error the Expert's decision shall be final and binding upon the parties;
- 17.5.2 the Expert shall consider, inter alia, but shall not be bound by, any written representations on behalf of the parties made within such time limits as he shall specify, which time limits shall be as short as he shall consider practicable in the circumstances;
- 17.5.3 the Expert shall make available to each party copies of the other party's representations and allow the other party to make further written representations thereon to which Clause 17.5.2 shall apply.
- 17.5.4 upon receipt of any such representations the Expert shall forthwith inspect the property if necessary and give notice of his instructions, if any, to the parties and, if he shall so require, invite them or their advisers to attend his inspection and to make oral representations thereat;
- 17.5.5 the Expert shall as quickly as possible thereafter notify the parties in writing of his determination of the dispute or difference referred to him;
- 17.5.6 the parties shall use all reasonable endeavours to procure that the Expert shall give his decision with reasons as speedily as possible; and
- 17.5.7 the costs of appointing the Expert and his costs and disbursements in connection with his duties under this Deed shall be shared between the parties in such proportions as the Expert shall determine or in the absence of such determination equally between them.
- 17.6 If the Expert shall die or be or become unwilling or incapable of acting or in the reasonable opinion of either party shall delay his determination avoidably or if for any other reason he shall not deliver his decision, either party shall be entitled to apply to the President for the time being of the relevant professional institution to discharge the expert and appoint another in his place.

18 VAT

- 18.1 Subject to Clause 17.2, all payments to be made (and other consideration to be provided) under this Deed shall be exclusive of VAT (if applicable). If VAT is properly chargeable in respect of the matters giving rise to such payments (or other consideration) an amount in respect of VAT will be added to such payment or other consideration and paid in addition by the recipient of the supply on receipt of a valid VAT invoice.
- 18.2 Where an amount in respect of VAT is incurred by the Council in respect of the Costs under this Deed, the Developer shall (within 20 Working Days of receipt of a copy of the VAT invoice received by the Council) pay to the Council an amount equal to such VAT (subject to Clause 17.3) to the extent that it is not otherwise recoverable by the Council.
- 18.3 The Council shall use all reasonable endeavours to recover any VAT incurred in respect of the Costs. If any amount in respect of VAT is charged to the Council in addition to the Acquisition Costs for the relevant interest in the Acquired Land or any Additional Interest by the relevant holder of the land or interest in respect of their disposal of that land or interest to the Council (whether by reason of an option to tax that land or interest or otherwise), the Council shall take all reasonable steps to determine this at the earliest possible time. The Developer shall not be required to make a payment under Clause 18.2 to the extent that such amount in respect of VAT is not recoverable by the Council as a result of the Council not

having validly exercised an option to tax in relation to that land or interest pursuant to paragraph 2 of Schedule 10 of the Value Added Tax Act 1994.

19 Council's Powers as Local Planning Authority

Nothing in or implied in this Deed will fetter the Council's exercise of its rights and powers and performance of its duties and obligations in the exercise of its functions as a local planning authority.

20 Contracts (Rights of Third Parties) Act 1999

Nothing in this Deed creates any rights in favour of any person not a party to this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

21 Jurisdiction

This agreement and any dispute which may arise in connection with it shall be governed by English law.

22 Council's Legal Costs

The Developer will pay to the Council on the date hereof the Council's reasonable legal and surveyors' costs and charges properly incurred in the preparation, negotiation and completion of this Deed and the Pre-Existing Costs.

23 Assignment

23.1 The Developer shall not assign, transfer, novate or part with or deal with in any other way whatsoever this Deed) save as permitted by this Clause 23.

23.2 The Developer may assign the benefit of this Deed

23.2.1 By way of security to any person providing finance for the Development provided that:

- (a) a summary of the terms of the security (but excluding any confidential financial information) is supplied to the Council prior to such assignment; and
- (b) written notice of the assignment is given to the Council;

and for the avoidance of doubt this shall include assignment by way of security to a security trustee for the party providing the finance.

23.2.2 On a sale of the Developer's Interests to a successor in title to the Developer, subject to such successor first entering into a deed of covenant with the Council on terms acceptable to the Council (acting reasonably) in which the successor in title covenants with the Council to comply with the obligations on the part of Developer (to the extent relevant) in this Agreement and the Council first being satisfied and confirming its consent in writing (acting reasonably and without undue delay) such successor has the financial resources available to comply with the obligations of the Developer under this Deed..

23.3 Notwithstanding the provisions of Clause 23.2 above, the Developer may in addition assign, transfer or novate this Deed to any party which the Council is satisfied and confirms the same in writing to the Developer (acting reasonably and without undue delay) has sufficient financial

standing to be able to comply with the Developer's outstanding obligations under this Deed and of the role such party will have in relation to the delivery of the Development.

- 23.4 The Council shall promptly, following request from the Developer (and subject to being satisfied as to the requirements specified in clauses 23.2.3 and 23.3 as applicable), enter into a deed of covenant with a chargee specified in Clause 23.2.1 or any part who provides a deed of covenant to confirm that the Council will comply with all of its obligations within this Deed.

24 Good Faith

- 24.1 The parties hereby acknowledge a duty of good faith to each other in relation to all matters arising under this Deed.
- 24.2 The parties shall act prudently in relation to their respective rights and interests in the Site from time to time having regard to their mutual desire to secure the assembly of the Site in accordance with the terms of this Deed.
- 24.3 The Council covenants with the Developer to observe and perform its obligations in this Deed using its best endeavours to remedy any non-performance and mitigate any losses to the Developer arising out of any breach by the Council of its obligations under this Deed and to recompense in full the Developer for any loss reasonably and properly incurred or suffered by the Developer as a result of the failure of the Council to perform its obligations having regard to the duty of the Developer to mitigate any such loss and for the avoidance of doubt this clause shall not fetter in any way the Developer's legal rights or remedies available through statute, at common law or in equity.

25 Confidentiality

- 25.1 The parties shall (and shall use reasonable endeavours to procure that their respective servants, agents and advisers shall) keep in strict confidence the financial and other commercial terms of this Deed and all documents and other information supplied to or received from any party to this Deed pursuant to the provisions of this Deed.
- 25.2 Clause 25.1 shall not apply to the extent that any party is obliged by UK law or EU legislation or by The Stock Exchange to disclose any of the same [or to the extent that such information and/or documents is/are already or is/are required to be in the public domain (other than through the actions of the Parties to this Deed)]

In witness whereof the parties to this Deed or their duly authorised representatives have hereunto set their hands and seals the day and year before written.

Schedule 1 – Letter of Reliance

DRAFT

The Common Seal of)
Royal Borough of Windsor and)
Maidenhead)
was hereunto affixed in the)
presence of:

Authorised Signatory

Authorised Signatory

Executed as a Deed by
Denhead S.À R.L.,
a company in Luxembourg,
acting by:

Denhead S.À R.L.

Signature of the company

who, in accordance with the laws of that
territory, is acting under the authority of the
company

Signature of the authorised
signatory

Appendix 1 – Plan

DRAFT

Appendix 2

Option Structure

Sale and Leaseback Agreement

DRAFT

Appendix B – Draft Statement of Reason

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**THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD
(NICHOLSONS SHOPPING CENTRE AND SURROUNDING AREA AT
HIGH STREET, QUEEN STREET AND KING STREET, MAIDENHEAD)
COMPULSORY PURCHASE ORDER 2021**

**TOWN AND COUNTRY PLANNING ACT 1990
AND
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976
AND
THE ACQUISITION OF LAND ACT 1981**

**STATEMENT OF REASONS
FOR MAKING THE ORDER**

Contents

SECTION	PAGE
1 INTRODUCTION	4
2 ENABLING POWER	6
3 DESCRIPTION AND LOCATION OF THE ORDER LAND	6
4 THE NEED FOR REGENERATION.....	9
5 THE PROPOSALS FOR THE DEVELOPMENT	10
6 THE PURPOSE FOR MAKING THE ORDER.....	13
7 THE PLANNING FRAMEWORK IN RESPECT OF THE ORDER LAND	13
8 JUSTIFICATION FOR THE USE OF COMPULSORY PURCHASE POWERS	23
9 NEGOTIATIONS WITH THOSE OWNING INTERESTS IN THE ORDER LAND.....	32
10 OTHER MATTERS	33
11 CONCLUSION	36
12 CONCLUSION	37
13 ADDITIONAL INFORMATION.....	37
14 LIST OF DOCUMENTS IN THE EVENT OF AN INQUIRY.....	37

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1 INTRODUCTION

- 1.1 On the [input date] the Royal Borough of Windsor and Maidenhead (“**the Council**” or “**the Acquiring Authority**”) made the Royal Borough of Windsor and Maidenhead (Nicholsons Shopping Centre and surrounding area at High Street, Queen Street and King Street, Maidenhead) Compulsory Purchase Order 2021 (“**the Order**”) pursuant to Section 226(1) (a) of the Town and Country Planning Act 1990 (“**TCPA 1990**”), the Acquisition of Land Act 1981 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976. On the 26th February 2020 the Council resolved to use the Council’s compulsory purchase powers to bring forward the redevelopment of the Nicholsons Shopping Centre. Subsequent to this, the Council’s Cabinet resolved to make the Order on [input date].
- 1.2 The Order has been submitted to the Secretary of State for Housing, Communities and Local Government for confirmation.
- 1.3 This document is the Statement of Reasons for the Order, the purpose of which is to set out the reasons for making the Order. This Statement of Reasons has been prepared in compliance with both paragraphs 21 and 154 of the Ministry of Housing, Communities and Local Government’s Guidance on Compulsory Purchase Process and The Crichel Down Rules (July 2019) (“**the CPO Guidance**”).
- 1.4 This statement is not a statement under Rule 7 of the Compulsory Purchase by Non-ministerial Acquiring Authorities (Inquiries Procedure) Rules 2007 and the Acquiring Authority reserves the right to alter or expand it as necessary for the purposes of Rule 7.
- 1.5 In this document the land included within the Order is referred to as “**the Order Land**”.
- 1.6 The purpose in making the Order is to facilitate the delivery of the redevelopment of the Nicholsons Shopping Centre. The existing Nicholsons Shopping Centre is an enclosed shopping centre located in a central position within Maidenhead Town Centre. Developed in parts since the 1960s, the shopping centre provides 55 retail units (17,000 sq. m.) with associated service yard and multi-storey car park. Whilst still reasonably well-occupied, the shopping centre has a number of issues which make it no longer fit for purpose.
- 1.7 The Council is seeking to assemble Order Land to facilitate the mixed-use development comprising a mixture of employment, residential, retail, leisure, community and elderly care homes in the heart of Maidenhead town centre, together with improvements to the public realm and open space (“**the Scheme**”). The Scheme aims to create an exemplar mixed-use development which will contribute to a vibrant and sustainable town centre and distinguish Maidenhead from the surrounding towns helping to ensure that it is the destination of choice for the local population.

- 1.8 The Scheme provides an opportunity to address the deficiencies of the existing shopping centre, deliver forms of development and accommodation which meet prevailing occupier and local residents' needs, introduce a greater range of uses into the town centre to improve vitality, and re-establish the connections with the surrounding streets which was lost when the shopping centre was developed in the 1960s.
- 1.9 To achieve these objectives a significant level of land assembly needs to be completed. The Order is required to secure those interests in the Order Land not already held by the Council or Denhead S.A.R.L. ('the Developer'), as well as new rights which are required to enable construction. The securing of third party interests and new rights over the Order Land (and the effect of the acquisition on adverse rights affecting it) will ensure that the Scheme can be delivered together with the benefits that this will bring.
- 1.10 This Statement of Reasons explains the reasons for making the Order. The considerations that are to be taken into account by the Secretary of State in deciding whether or not to confirm a compulsory purchase order are addressed using the following structure:
- (i) Power under which the Order has been made
 - (ii) The Order Land & interests to be acquired
 - (iii) The need for regeneration
 - (iv) The Proposals for Redevelopment
 - (v) The purpose for making the Order
 - (vi) The Planning Framework in respect of the Order Land
 - (vii) Relevant Corporate Policies
 - (viii) Justification for the use of Compulsory Purchase powers
 - (a) Consistency with the planning framework for the area
 - (b) Well-being benefits
 - (c) Financial viability/funding
 - (d) Alternatives
 - (e) No impediments to delivery
 - (f) Reasonable steps to acquire land by agreement
 - (g) Compelling case in the public interest
 - (ix) Legal and Other regards
 - (a) Human rights
 - (b) Consultation

- (c) Related Orders
- (d) Conservation Areas and Listed Buildings
- (e) Public sector equality duty
- (x) Conclusions

2 ENABLING POWER

- 2.1 The Council is exercising its powers pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 to acquire land compulsorily for "development and other planning purposes" on the basis that the acquisition of land will facilitate the carrying out of development, re-development or improvement on or in relation to that land. The Council in exercising its power under section 226(1) has had regard to Section 226(1A) which provides that this power must not be exercised unless the Council think that the development, re-development or improvements are likely to contribute to the promotion of the economic, social or environmental well-being of its area.
- 2.2 The Council considers that the use of section 226(1)(a) is appropriate having regard to the aims sought to be achieved by the redevelopment of the Order Land. The Council is satisfied that the use of the powers contained in section 226(1)(a) will contribute to the development, redevelopment or improvement of the Order Land. The Council is further satisfied that the redevelopment of the Order Land will contribute to improve the economic and social well-being of Maidenhead Town Centre through an enhanced residential, office, retail and leisure offering, and additional employment opportunities. The redevelopment of the Order Land will also contribute to the environmental and social wellbeing of the area as a consequence of the public realm improvements facilitated by the redevelopment of the Order Land. Full details of the benefits of the redevelopment of the Order Land for the Council's area are at Section 9 below.
- 2.3 Under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 the Council has the power to compulsorily acquire new rights over land. The rights which are sought are specified in the Schedule to the Order and summarised in Section 3 below.

3 DESCRIPTION AND LOCATION OF THE ORDER LAND

3.1 Extent and Nature of Rights

- 3.1.1 The Order Map shows the freehold and leasehold interests to be acquired compulsorily as well as the extent of new rights to be secured. The Order Map has been carefully delineated to ensure the land and interests to be acquired are only what is required to facilitate the delivery of the Scheme.

3.2 Interests To Be Acquired

- 3.2.1 The interests to be acquired within the Order Land can be categorised as follows:

- (i). **Leasehold interests of retail units within the existing Nicholsons Shopping Centre** – the majority of the Order Land is the existing Nicholsons Shopping Centre. Whilst the Developer, who is also the current owner of the shopping centre, has been managing the shopping centre to allow it to secure vacant possession of the majority of units in conjunction with its development programme, there are a number of units which are let on leases which have more than 18 months (as at December 2020) left to run and therefore would inhibit delivery of the Scheme. Reflecting that the majority of units within the shopping centre are let, so to ensure that the Scheme can proceed, the entirety of the shopping centre has been included in the Order. As noted at 5.4 below, the Development would retain the existing Nicholson Tower office building and so this is not included within the Order Lands, save for the acquisition of new rights so to allow works to take place to external parts of the building as part of the demolition of the existing shopping centre.
- (ii). **Leasehold interests in the existing Nicholsons Multi-Storey Car Park and adjoining retail units (39 – 51 King Street)** – the Council is the freeholder of the existing multi-storey car park and the adjoining retail units. The retail units are predominantly vacant, with Shopmobility occupying a unit on the ground floor of the car park. There is also a leasehold interest relating to the first and third floor of the car park extension which sits above the service deck. The existing multi-storey car park and service deck is to be demolished and therefore the Order covers this area to ensure all necessary interests in land can be acquired.
- (iii). **Leasehold interest in Siena Court, Broadway** – Siena Court, a four-storey office block located to the south of the Nicholsons Shopping Centre, is owned by the Council and presently operated by Regus as serviced offices on a lease which expires after the target date for commencing development. Vacant possession of Siena Court is required so to allow for the demolition of the building and construction of the new multi-storey car park.
- (iv). **Freehold interests in land at Brock Lane / Bankside** – to the east of the existing shopping centre is a narrow public highway (Brock Lane) and an access path (Bankside) which extends along the rear of the shopping centre and 10-12 Queen Street. Part of Brock Lane (plots 76, 79AA and 79AB) are in third party ownership, as well as the extent of Bankside (plots 74, 75 and 76B). The Order includes these parcels of land so public realm improvements works can be undertaken with the responsibility of future management and maintenance resting with the Developer following stopping up of the highway. The Development would maintain access to neighbouring properties over this land through the planning permission.

3.3 **New Rights**

- 3.3.1 As well as securing the land necessary to deliver the Scheme, new rights are also necessary to allow the Scheme to be constructed. These new rights are being created under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the affected parts of the Order Land are shown coloured blue on the Order Map.

3.3.2 The new rights are described in greater detail in the Schedule of Rights accompanying the Order. In summary, these generally relate to crane oversailing, access for construction works, the ability to erect scaffolding on land, the right to reposition plant, and new access rights over land so to maintain access to neighbouring properties during the construction process.

3.3.3 More specifically, new rights are sought over Nicholson Tower so to allow works to be undertaken to the frontage of the property. At present, the entrance to Nicholson Tower is situated within the shopping centre and as part of the demolition programme there will be a need to detach those parts of the existing shopping centre which presently connect with Nicholson Tower, as well as thereafter make good and improve the frontage.

3.4 **Extinguishment of and interference with rights**

3.4.1 The Order would also result in

- Extinguishment of all private rights of way in the Order Land (under Section 236 TCPA 1990). The affected interests are likely to be those properties within the shopping centre and on the High Street which have rights to use the service deck for deliveries and parking of vehicles. Replacement rights will be provided in respect of the new service yard and car park; and
- A change to the remedy available in relation to interference with easement-type rights (such as rights to light), because the Order would engage Section 203 of the Housing and Planning Act 2016 such that the only remedy for the interference with affected rights would be damages assessed under Section 10 of the Compulsory Purchase Act 1965. Section 12 (2A) of the Acquisition of Land Act 1981 identifies a "qualifying person" in relation to land comprised in an order as being "a person the acquiring authority thinks is likely to be entitled to make a relevant claim if the order is confirmed and the compulsory purchase takes place". Section 12 (2B) goes on to state that a "relevant claim" is a claim for compensation under Section 10 of the Compulsory Purchase Act 1965. The potentially affected interests are likely to those noted accordingly in Table 2 of draft Order Schedule. These properties lie outside of the boundary of the Order Land and are not subject to any form of acquisition, nor is any new right being sought in respect of these properties. Given it is the entirety of the development required to deliver the Scheme, as built, which may give rise to a claim for compensation, column (4) of Table 2, has been referenced to refer to "All Plots".

The inclusion of these properties is not an acknowledgement or acceptance that compensation is payable. Rather, these properties are being included in the Schedule given the requirements of S12 (2A) of the Order Land Acquisition Act 1981.

3.5 The individual plot boundaries and numbers shown on the Order Plan correspond with the Schedule to the Order. This schedule has been prepared based upon information gathering through the Land

Registry title documents, site inspections, enquiries [*and the responses to the notices issued under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976*].

4 THE NEED FOR REGENERATION

- 4.1 The existing Nicholsons Shopping Centre is an enclosed shopping centre located in a central position within Maidenhead Town Centre. Occupying 3.01 hectares (ha) the shopping centre is framed by the High Street to the north, Queen Street to the east, Broadway to the south and King Street to the west. Maidenhead Railway Station is located to the south-west of the shopping centre and is within a five minute walk.
- 4.2 The surrounding area is dominated by retail and employment uses. The High Street, Queen Street and, to a lesser extent, King Street each focus on ground floor retail uses. Immediately to the south of the site, is 'the Landing' site which has planning consent (ref: 18/01576/FULL) for a gateway development with a mix of retail, community, leisure and commercial uses at ground level and 454 residential units in a development comprising 6 buildings ranging from 6 to 16 storeys in height.¹
- 4.3 The existing shopping centre, which has been developed in parts since the 1960s, provides 55 retail units (17,000 sq. m.) with associated service yard and multi-storey car park. Whilst still reasonably well-occupied, demand for retail space within the shopping centre over the last ten years has diminished significantly and this trend has continued, notwithstanding that the shopping centre forms part of the primary retail offer in an affluent town centre. Unrelated to the redevelopment proposals, and not solely prompted by the impact on the retail sector caused by Covid-19, as has been the case in shopping centres across the UK, retailers have been voluntarily vacating the shopping centre due to poor trading performance, as a result of changing consumer shopping patterns, notably due to the growth of online sales. Understandably, the impact is circular: if the retail offer is diminished then shoppers choose to visit other towns, which further reduces trading levels, resulting in a further reduction in retail offer as retailers exit for other viable town centres.
- 4.4 The shopping centre has a number of issues which makes it no longer fit for purpose. These include:
- (i) a poor quality enclosed environment;
 - (ii) units that are generally too large;
 - (iii) a standard retail format of deep plans and regular shaped units resulting in lack of suitability for a significant proportion of occupiers;
 - (iv) no sense of place, or spaces to meet and relax;

¹ 13,007 sq. m. office, and 3,846 sq. m. of other mixed uses including retail, community and leisure

- (v) the enclosed shopping centre resulting in high maintenance costs, and in turn, service charges for occupiers;
- (vi) a lack of pedestrian connectivity to Broadway and King Street;
- (vii) a multi-storey car park which creates a poor sense of arrival on King Street and a vehicular entrance that forms a barrier to pedestrian movement.

4.5 Despite its central location within the town centre, lying between the railway station and the high street, the shopping centre by virtue of being closed out of retailing hours constrains pedestrian connectivity across the town centre, particularly in a north-south direction.

4.6 The role of town centres is evolving evermore quickly. Town Centres across the UK have been in decline for a number of years, with retailers and restaurants ceasing trading on a daily basis. To survive, and indeed thrive, town centres have to respond to the changing lifestyle, shopping needs and desires of the population. This means creating places and spaces where people want to spend time, surrounded by a curated offer that provides a range of independent shops, opportunities for artisans, as well as also providing a place for larger format stores. Town centres need to be flexible and affordable to allow businesses to establish, be sustained and grow.

4.7 There is also a recognised need to drive a mix of uses within town centres, particularly in respect of residential accommodation and more flexible business space. Maidenhead is a well-established office location for large corporate occupiers, sitting at the western end of the M4 Corridor and benefitting from its proximity to Heathrow Airport. The redevelopment of the shopping centre allows for the office accommodation within the town centre to be further enhanced, positioning new, high quality office space within the heart of the town centre.

4.8 In respect of residential, like most town centres historically the residential offer has been limited but this has begun to change over recent years with more residential development being brought forward, promoting town centre living, across a range of typologies, including market sales, build to rent and senior living, which in turn promotes healthier more sustainable town centres and the creation of strong communities.

4.9 The proposed redevelopment of the Nicholsons Shopping Centre provides an opportunity to address the deficiencies of the existing shopping centre, deliver forms of development and accommodation which meet prevailing occupier and local residents' needs and re-establish the connections with the surrounding streets which was lost when the shopping centre was developed in the 1960s.

5 THE PROPOSALS FOR THE DEVELOPMENT

5.1 The Scheme is being advanced under a hybrid planning application (ref: 20/01251/OUT) for a comprehensive mixed-use redevelopment for the following, known as the Nicholson Quarter Development (**NQD**) :

1. **Outline planning permission (with all matters reserved)** for four buildings that range in height, with the highest being 88.7m AOD and the lowest being 66.2m AOD, on the site for a comprehensive mixed-use redevelopment comprising:
 - Business Use (Class B1) - up to 29,700 m2 (GEA);
 - Residential Institution (Class C2) - up to 29,400 m2 (GEA);
 - Flexible Retail, financial and professional services, restaurants and cafes, drinking establishments, hot food takeaways, non-residential institutions and assembly and leisure (Class A1 / A2 / A3 / A4 / A5 / D1 / D2) - up to 4,400 m2 (GEA);
 - Parking, refuse, bike storage and plant space - up to 13,600 m2 (GEA);
 - Formation of new pedestrian and vehicular access;
 - Means of access and circulation and car parking within the site; and
 - Provision of new public space and landscaping.

2. **Full planning permission** for the demolition of the majority of buildings on site, construction of two residential buildings comprising 25 storeys, and part 10/part 15 storeys and a landscaped podium (Class C3), construction of a 4 storey office building (Class B1), flexible retail, financial and professional services, restaurant and cafes, drinking establishments, and hot food takeaways uses (Class A1 / A2 / A3 / A4 / A5) and the provision of a new public realm, and the erection of a multi-storey car park.”

(the Development).

5.2 The Development can be summarised as follows (all floor areas quoted are Gross Internal Area):

	Detailed	Outline	Total
Development Zones	2, 4 & 5	1, 3 & 6	
Retail (A1-A5, D1, D2)	3,542 sq. m.	4,100 sq. m.	7,642 sq. m.
Office (B1)	1,288 sq. m.	27,900 sq. m.	29,188 sq. m.
Flexible Use	719 sq. m.	-	719 sq. m.
Residential Units (C3)	346 units	-	346
Senior Living Units (C2)	-	Up to 307	Up to 307
Car Parking	Multi-Storey delivering 885 car parking spaces	434	1,319

Cycles Spaces	803		803
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5.3 The Development will provide a mix of residential units sizes as summarised in the table below:

	No. of Units	%
Studios	53	15.32%
One Bedroom (2P)	86	25.86%
Two Bedroom (3P)	68	19.65%
Two Bedroom (4P)	106	30.64%
Three Bedroom (5P)	22	6.36%
Three Bedroom (6P)	11	3.18%

5.4 Nicholson Tower, an office building located at the eastern end of Nicholson Lane and accessed via the shopping mall is, retained within the Development. Access will be maintained throughout the construction process.

5.5 Central to the masterplanning of the NQD is permeability and connectivity. The Development, which will deliver a mix of workspace, homes, shops and public space, is designed around a sequence of open streets and spaces that connect and knit into the town. The NQD will repair the connections lost when the shopping centre was developed in the 1960s, enabling north-south and east-west movement in a legible manner.

5.6 A key objective of the Development is the creation of a scheme which supports both the daytime and evening economies. Flexibility in uses and tenant mix is promoted: the aim is to replace outdated and inefficient retail and office buildings on the site and provide new, flexible, modern floorspace to meet the demands of Maidenhead and wider Berkshire. In order to create a vibrant and sustainable town centre community the NQD has been specifically designed to incorporate a varied mix of uses including offices, retail and restaurant and a mix of both private sales and senior living residential.

5.7 The change in offer which would be achieved by the Development also extends to delivering an efficient servicing solution which integrates with the public realm rather than dominating it. The existing Nicholsons Shopping Centre is dominated by large scale servicing accommodating larger vehicles. The concept for the Development is of streets and spaces where delivery is to be from the front of the units. No dedicated delivery or service access is proposed to the rear of the units.

5.8 Delivery bays will be provided in locations to the periphery of the quarter on The Broadway and Nicholsons Lane, with trolleys utilised to deliver to the units from these locations. Additional bollard

controlled servicing access will be provided from King Street along Moffatt Street through Brock Lane to Queen Street. This will enable drop off delivery to the front of the units for smaller vehicles. It is proposed that no vehicles are permitted to utilise this route from 10:00-06:00.

5.9 *[details of resolution to grant will be added following any resolution]*

6 THE PURPOSE FOR MAKING THE ORDER

6.1 The Council is seeking to assemble the Order Land to facilitate the redevelopment of the Nicholsons Shopping Centre to deliver a mixed-use development comprising a mixture of employment, residential, retail, leisure, community and senior living units in the heart of Maidenhead town centre, together with improvements to the public realm and open space ('the Scheme').

6.2 The purpose of the Order is therefore to acquire all interests in land not in the Council's or the Developer's ownership, where agreement cannot be reached, in order to achieve delivery of the Scheme. The Order will also create new rights (as detailed in paragraph [3.3]) and facilitate interference with adverse rights where necessary (as detailed in paragraph [3.4]).

6.3 As outlined in the CPO Guidance acquiring authorities should seek to acquire the interests of property and land owners by agreement, relying on compulsory purchase as last resort. Negotiations have been pursued with those affected by the Order with a good level of success: agreement has been reached with a number of the shopping centre tenants which have allowed them to continue in occupation until the redevelopment commences. However, some parties have elected not to engage in negotiations or are seeking sums which have not allowed an agreement to be reached. All reasonable efforts will be made by the Council and Developer going forward to acquire property through negotiation and agreement. Nevertheless, it is clear that an Order is required to ensure that there is sufficient certainty that regeneration can come forward as envisioned by the Council, the Developer community and key stakeholders.

6.4 By making the Order, the Scheme can be delivered as intended and will contribute to achieving a number of key Council priorities and objectives as will be outlined in following sections.

7 THE PLANNING FRAMEWORK IN RESPECT OF THE ORDER LAND

7.1 For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2014, the statutory Development Plan covering the Order Land comprises:

- (i) Royal Borough of Windsor and Maidenhead Local Plan (June 2003)
- (ii) Maidenhead Town Centre Area Action Plan (September 2011)

7.2 Relevant material considerations include:

- (i) National Planning Policy Framework (June 2019)

(ii) Borough Local Plan 2013-2033 Submission Version Incorporating proposed changes (October 2019)

7.3 **Adopted Local Plan (June 2003) ('ALP')**

7.3.1 The ALP Proposals Map identifies the Nicholsons Shopping Centre as forming part of the Primary Shopping Core to which ALP Policy MTC8 applied. The Nicholsons Multi-Storey Car Park ('MSCP') is identified as Development Site M1 to which ALP Policy MTC7 applied.

7.3.2 However, both MTC7 and MTC8 are not saved policy, with relevant policies relating to Maidenhead Town Centre being replaced by the Maidenhead Town Centre Area Action Plan.

7.4 **Maidenhead Town Centre Area Action Plan ('TCAAP') (September 2011)**

7.4.1 The MTCAAP provides updated designations to the ALP Proposals Map, with Nicholsons Shopping Centre identified as being within the Primary Shopping Area and the retail units within the shopping Centre being designated as 'Primary Frontages'. The Nicholsons MSCP is no longer identified as a Development Site but, together with part of the shopping centre and the 'Landing site' forms part of the Broadway Opportunity Area.

7.4.2 In respect of the Town Centre Economy, the MTCAAP sets out two objectives

1. Quicken the pace of urban development and promote economic growth by providing additional retail that supports and enhances the town centre's existing retail offer; promoting office development that reinforces Maidenhead's role as an attractive business centre; encouraging high quality tourism and hotel facilities; and creating an evening economy through improved restaurant, café and night time uses along High Street, Queen Street and King Street, as well as in the Opportunity Areas.
2. Promote mixed use development by ensuring Opportunity Areas are developed as comprehensive mixed use schemes; and by promoting town centre land uses that effectively complement and integrate to create a vibrant, stimulating and sustainable town centre environment.

7.4.3 Policy MTC7 provides:

"Maidenhead town centre will be the principal location for retail development. The town centre's retail role will be maintained and enhanced through the protection of retail activity within the Primary Shopping Area and the delivery of a major comprehensive retail led development in the Area for Major Retail Led Development (also see Policy OA1: Broadway Opportunity Area). New development should broaden the range of shopping opportunities and improve Maidenhead's image as a sustainable and high quality shopping destination.

Development will be required to:

1. *Protect and enhance retail activity within the designated Primary Shopping Area;*
2. *Focus new retail development within the Primary Shopping Area and the Area for Major Retail Led Development;*
3. *Ensure effective integration between the Primary Shopping Area, the Area for Major Retail Led Development, and frontages elsewhere.”*

7.4.4 In respect of primary shopping frontages, Policy MTC7² states:

“Within primary frontages, as illustrated on the proposals map, the retail character will be maintained and enhanced. Proposals therein for change of use or redevelopment from shops (Class A1) to other uses will only be permitted where they would:

1. *be appropriate to the character and function of the area; and*
2. *not result in adverse impacts on existing uses within the frontage; and*
3. *not result in the loss of a prominent shop unit within the primary frontages”*

7.4.5 The supportive text recognises the importance of retail to draw people into the town centre and stimulate the local economy. It also identifies that *“despite the presence of several national retailers, the town centre has experienced a gradual decline over recent years. Survey information suggests that many residents are dissatisfied with the range and quality of shops and, as a result, shop elsewhere....Securing the town centre as a desirable place to shop and spend time is fundamental to its rejuvenation and the improvement of the town’s image and character”*.

7.4.6 It further comments that *“Maidenhead has been losing trade to other centres and out of centre locations. To maintain and enhance overall vitality and viability, and to perform its role as a major centre within its catchment area, there is a need for major new retail led development in the town centre”*.

7.4.7 The MTCAAP designates the land to the south of Nicholsons Shopping Centre (the Landing site) for a comprehensive major retail led development to deliver up to 25,000 sq. m. of retail accommodation:

“Development of this land will support and enhance the main shopping area and facilitate better links both to the existing shopping core, and to the railway station. In order to maximise benefits for retail trade and the wider town centre, any scheme should include a mix of types and sizes of retail unit, so as to complement and extend the existing range of retail opportunities. In particular, the opportunity should be taken to include a range of larger units than are available at present, together with an anchor variety or department store³”.

² MTC7 is proposed to be superseded by Policy TR3 of BLP

³ Para 4.5 MTCAAP

7.4.8 This ambition is further articulated in Policy OA14: Broadway Opportunity Area which advances that a comprehensive retail led mixed use regeneration scheme comprising the following should be brought forward:

- 25,000 sq. m. of retail floorspace (gross);
- 190 residential dwellings (gross);
- 6,000 sq. m. of office floorspace (gross);
- Complementary leisure provision, particularly café and restaurant uses;
- Replacement multi-storey car park.

7.4.9 The following development and design principles of particular relevance and importance to the redevelopment of this area include:

- Strengthening and enhancement of the town centre's overall retail offer;
- A mix of uses that complement the existing primary shopping area;
- Innovative and distinctive architecture reflective of its gateway location;
- Effective integration with existing shopping areas through strong and direct pedestrian connections to the Nicholson's Centre, King Street and Queen Street;
- Enhanced linkages between the railway station and the existing retail network;
- High quality, appealing retail environment with active frontages at ground level, both internally and externally, to King Street, Queen Street and Broadway;
- Incorporation of new central high quality public spaces;
- Promotion of access by walking and cycling and reduction in the dominance of vehicles;
- Vehicular access and servicing off Broadway and Queen Street.

7.4.10 Redevelopment of the Broadway Opportunity Area is seen as integral to the successful implementation of the TCAAP's spatial strategy and realisation of the overarching vision for the town centre. The MTCAAP states that in order to deliver the required comprehensive approach set out in this policy and reasoned justification, if necessary and, where there is a compelling case in the public interest, the council will consider the use of its compulsory purchase powers.

7.4.11 In respect of housing, Policy MTC12⁵ states that new housing development will be supported throughout the town centre, with Opportunity Areas expected to make a significant contribution to housing. All proposals will be expected to contribute to a sustainable mix and choice of housing with higher density housing appropriate in suitable locations.

7.4.12 The MTCAAP recognises⁶ that town centres are becoming increasingly more important as a place to live and that this is to be welcomed as it adds vitality and some feeling of ownership of the streets and spaces. Whilst new homes will be built across the Royal Borough, Maidenhead town centre has

⁴ Policy A1 is proposed to be superseded by BLP HO1 and ED2

⁵ Proposed to be superseded by BLP Policy HO1

⁶ Para 5.2

the potential to accommodate around 800 new homes within the Opportunity Areas. Past consultation shows strong support for continuing the existing approach of intensification of urban areas to help protect the Green Belt and to reflect their general sustainability. Maidenhead town centre is seen in particular as a location where high density housing development can be supported.

- 7.4.13 Whilst flats are likely to make up the majority of new housing across the town centre, the MTCAAP⁷ provides that developments should provide a mix of dwelling size and avoid being dominated by one-bedroom units. In terms of affordable housing, the council currently seeks to achieve a 30% proportion of the total units provided on developments involving a net increase of 15 or more dwellings through Local Plan Policy H3.
- 7.4.14 The MTCAAP acknowledges that accessibility is key to a successful town centre. It reports that whilst Maidenhead's town centre is generally easy to get to, there are several aspects / barriers which restrict ease of access. The rejuvenation provides the opportunity to overcome these barriers to make the town centre more accessible particularly by walking, cycling and public transport.
- 7.4.15 Policy MTC148 provides that accessibility to the town centre will be optimised for all modes of travel, with a specific focus on creating a safe and comfortable environment for pedestrians and cyclists and improving access by public transport. Development should where appropriate:
- Provide improved pedestrian and cyclist connections to and through the town centre;
 - Enhance accessibility by bus;
 - Facilitate better integration between transport modes, particularly train, bus and taxi;
 - Optimise traffic flows and circulation, including the use of signage, to minimise congestion;
 - Provide adequate parking facilities, including disabled parking spaces, motorcycle parking and cycle parking, and provision of electric vehicle charging points.
- 7.4.16 Policy IMP1 states that the council will use its powers of compulsory acquisition, where applicable and where there is a compelling case in the public interest, to bring forward the rejuvenation of Maidenhead town centre.
- 7.4.17 The MTCAAP acknowledges that whilst some sites could be developed independently of one another, in some areas it is preferable for landowners, occupiers and developers to work together to unlock the potential and achieve a better solution. The council will work with landowners and developers to assist the process of rejuvenating the town centre and the delivery of the MTCAAP. Where there is a need for site assembly, and this is not forthcoming through private treaty and negotiation, the council will consider using its compulsory purchase powers where there is a compelling case in the public interest. In such circumstances, it will be necessary for the promoter of the comprehensive development to demonstrate their ability to deliver the scheme⁹.

⁷ Para 5.3

⁸ Proposed to be superseded by BLP Policy IF2

⁹ Para 8.8 MTCAAP

7.5 Borough Local Plan 2013-2033 Submission Version Incorporating proposed changes (October 2019) ('BLPSV')

- 7.5.1 The Borough Local Plan 2013-2033: Submission Version (BLPSV) was submitted to the Secretary of State for Housing, Communities and Local Government for independent examination in January 2018. Following the initial stage of hearings, the Planning Inspector advised the Council that further work was needed in order for the examination to continue. In November 2019, the Council published proposed changes to the BLPSV which it originally submitted for examination and consulted for six weeks.
- 7.5.2 The BLP Proposed Changes Plan and representations made during the consultation period have been sent to the Planning Inspector for consideration. The stage 2 Hearings took place in October/November 2020. The draft Borough Local Plan has not yet been through the second examination in public, but there were no specific objections raised to the policies directly relevant to the Scheme and so there are unlikely to be significant amendments to those draft policies. These policies therefore carry reduced weight in the decision making process compared to the plan once adopted but as above are a relevant consideration in terms of the strategic direction of RBWM. The relevant draft policies have therefore been considered below.
- 7.5.3 The draft BLPSV designates the Nicholson's Shopping Centre as forming part of the Primary Shopping Area with all of the retail units identified as a Primary Shopping Frontage. The Nicholson's MSCP is designated a mixed use development site.
- 7.5.4 Draft Policy TR1 identifies Maidenhead as one of two town centres within the borough (the other being Windsor) and records that these centres will be the preferred location for the development of main town centre uses. Development proposals for main town centre uses including retail development, leisure, entertainment facilities, offices and arts, cultural and tourism development will be supported in accordance with the hierarchy, provided they are appropriate in terms of their scale and design, and are well-related to the centre.
- 7.5.5 The BLPSV, which has been informed by retail studies, recognises that a successful retail sector is key to securing a vital and viable town centre and that a key method of supporting the retail sector is through securing a mix of uses within town centres to maximise the likelihood of linked trips, which have the effect of increasing the amount of time spent in the centres and the likelihood of a higher spend per trip.¹⁰
- 7.5.6 The BLPSV seeks to maintain the dominance of retail units within the Primary shopping area and on designated primary shopping frontages. It recognises that non-retail uses support the town centre function and that restaurants, pubs and cinemas will be appropriate across a town centre to enhance the vitality and viability of a centre, but seeks to have a greater concentrations of these uses in

¹⁰ Para 9.4.1 BLPSV

secondary frontages with food and beverage outlets being complementary in the primary shopping area¹¹.

7.5.7 Residential use is regarded by the BLPSV as being particularly helpful within town centres as it increases vitality, provides custom for town centre businesses and increases natural surveillance. Residential use at ground floor level are regarded as not appropriate within retail frontages as it can create a dead space without visual interest or appeal. However, the residential use of upper floors forms a valuable part of the mix of uses that supports a successful town centre¹².

7.5.8 The BLPSV recognises that since the adoption of the MTCAAP, a wider range of uses, including retail and non-retail floorspace may be more appropriate in the town centre and that there are currently significant numbers of empty units within the town centre at Maidenhead, although the numbers are declining. Reflecting the change in demand for retail accommodation the proposed development of the Broadway Opportunity Area will not deliver the anticipated quantum of retail floor space.¹³

7.5.9 Revised Policy TR3 provides that:

- Development proposals should promote and enhance the role of Maidenhead town centre and its vitality and viability. The retail role of Maidenhead will be supported and development proposals for the regeneration of sites for town centre uses and those that protect, enhance or diversify retail activity, within the primary shopping area will be supported.
- Primary frontages, defined on the Policies Map, should include a high proportion of retail uses. Development proposals for non-retail uses within primary frontages will be permitted where they would enhance vitality and viability, be appropriate to the character and function of the area and retain prominent shop units within the primary frontage.

7.5.10 BLPSV Policy HO1 provides that The Borough Local Plan will provide for at least 14,240 new dwellings in the plan period up to 2033. The Spatial Strategy sets out that development will be focussed on existing urban areas, primarily Maidenhead, but also Windsor and Ascot.

7.5.11 The Nicholson Centre is identified as an allocated housing site (AL1) with an estimated capacity of 500 residential units. The Site Allocation Proforma for the Nicholson Centre site details its allocation for a mixed use development providing retail, community, 22,000 sq. m. of employment space and approximately 500 residential units and a public square.

7.5.12 Development of the site will be required to:

- Be of exceptional design and a main focal point in terms of placemaking and town centre functions;

¹¹ Para 9.5.2 and 9.5.3 BLPSV

¹² Para 9.5.7 BLPSV

¹³ Para 9.8.4, 9.8.5 and 9.8.6 BLP

- Act as the primary retail focus for Maidenhead providing high quality primary retailing frontages with a dominance of A1 uses;
- Create a highly permeable network of attractive human scale streets that are highly connected to surrounding streets and adjoining developments;
- Provide a network of high quality pedestrian and cycle routes across the site and linked into surrounding areas and routes;
- Ensure that the development is well-served by public bus routes / demand responsive transport / other innovative public transport solutions, with appropriate provision for new bus stop infrastructure, such that the bus is an attractive alternative to the private car for local journeys. This will include provision of bus stops adjacent to the main frontages of the site and attractive way marking from Maidenhead Railway Station;
- Provide storage and parking for cycles and scooters along with electric car charging points;
- Be strongly connected in visual terms into the High Street with a visually prominent route through from the High Street through the site to the intersection of King Street and Broadway;
- Create a generous green infrastructure network on the site at both ground and upper levels to facilitate biodiversity enhancement, leisure and improved health and wellbeing for visitors, workers and residents;
- Plant large growing trees along the western side of the site, including on the junction of King Street and Nicolson's Lane and at the junction of King Street and Broadway corner;
- Provide mixed uses at ground floor levels throughout the development;
- Provision of public social spaces at upper levels in the form of an exceptional quality roof garden;
- Provide an exemplar quality designed public square at ground floor level to act as the focus for streets, pedestrian and cycling routes and the network of green infrastructure. The square will be expected to be fronted by high quality buildings housing a mix of retail, community and employment uses at ground floor level. The square will be human scale and a social space providing a favourable micro climate for outdoor leisure throughout much of the year. Blue infrastructure and public art will be expected to provide a focus for the square;
- Contribute to the vitality, enclosure and enhancement of all surrounding streets, particularly the High Street, King Street and Broadway;
- Provide high quality attractive and animated frontages to Queen Lane and Brock Lane;
- Respond positively and sensitively to the character and scale of heritage assets in the surrounding area;
- Be designed sensitively to consider the privacy and amenity of neighbouring residential properties;
- Maintain a human scale frontage to the High Street;
- Provide at least 30% affordable housing;
- Provide 5% of units for custom build opportunities;
- Address surface water flooding issues;

- Consider flood risk as part of a Flood Risk Assessment as the site is bigger than one hectare;
- Demonstrate the sustainable management of surface water runoff through the use of SuDS in line with policy and best practice; any proposed surface water discharge should be limited to greenfield runoff rates where feasible.

7.5.13 BLPSV Policy HO3 seeks a minimum affordable housing requirement of 30% on sites delivering more than 10 additional dwellings with the tenure mix to be dealt with on a site-by-site basis. In assessing a site's capacity to deliver affordable housing the financial viability of developing the site is to be considered. In exceptional circumstances, where the provision of affordable housing in accordance with Policy HO3 is demonstrated as not economically viable, the Council will seek to negotiate alternative provision.

7.6 National Planning Policy Framework (2019)

7.6.1 The NPPF published in February 2019 is a revision of the National Planning Policy Framework published in March 2012. The NPPF has been updated to incorporate proposals previously consulted on in the Housing White Paper and the 'Planning for right homes in the right places' consultation.

7.6.2 The NPPF sets out the Government's planning policies for England and how these should be applied. Its purpose is to provide a framework within which locally-prepared plans for housing and other development can be produced. The NPPF continues to not form part of the Development Plan, but as it must be taken into account in the preparation of development plans, it is a material consideration in planning decisions.

7.6.3 The NPPF maintains the presumption in favour of sustainable development at its heart, setting out the three overarching objectives of the planning system:

- (i) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- (ii) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- (iii) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change, including moving to a low carbon economy.

7.6.4 In respect of the delivery of a sufficient supply of new homes, the NPPF states that to support the Government's objective of significantly boosting the supply of new homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay (Paragraph 59).

7.6.5 The NPPF acknowledges that inadequate housing can be a potential barrier to investment and that planning policies should address this (paragraph 81).

7.6.6 Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaption. The NPPF states (paragraph 85) that planning policies should promote their long-term vitality and viability of town centres by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, and allow a suitable mix of uses (including housing). The NPPF highlights that planning policies should recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites.

7.6.7 Paragraph 91 provides that planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

- a) promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
- b) are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas; and
- c) enable and support healthy lifestyles, especially where this would address identified local health and wellbeing needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

7.6.8 The NPPF states that:

“planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and

healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land" (paragraph 117)

7.6.9 Paragraph 118 provides that policies and decision should promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively, with paragraph 123 advising that developments should make optimal use of the potential of each site.

7.6.10 The NPPF states that planning policies and decisions should support the creation of high quality buildings and places (paragraph 124) and in paragraph 127 that developments should:

- (i) function well and add to the overall quality of an area;
- (ii) be visually attractive as a result of good architecture, layout and effective landscaping
- (iii) be sympathetic to local character and history, including the surrounding built environment and landscape setting;
- (iv) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- (v) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- (vi) create places that are safe, inclusive and accessible, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

8 JUSTIFICATION FOR THE USE OF COMPULSORY PURCHASE POWERS

8.1 The Council considers that there is a compelling case in the public interest for the making of the Order.

8.2 The principle of the Scheme is supported by both national planning policy and emerging local policy. The Council's Maidenhead Area Development Management Panel resolved to grant planning permission on the [insert date] and a s.106 agreement is in the process of being concluded. The Council considers the Scheme will make a positive contribution to the promotion of achievement of the economic, social and environmental wellbeing of the area.

8.3 Single ownership and control of the Order Land is required to enable the Scheme to proceed. The Council is satisfied that the Developer has made reasonable attempts to acquire outstanding interests

by private agreement. The Council and Developer has attempted, and will continue to attempt, to purchase the outstanding interests by private agreement. However, given the number of third party interests identified in the Schedule to the Order, the Council considers it unlikely that the Council will be able to acquire all of these interests by agreement within a reasonable time period. The exercise of compulsory purchase powers will enable redevelopment to take place at an earlier date by providing certainty in respect of site assembly.

8.4 The Council has considered the need to include each parcel of land and each new right in the Order Land and is satisfied that these interests are required for the delivery of the Scheme.

8.5 In respect of an Order made under s.226 TCPA 1990, paragraphs 13, 15 and 106 of the CPO Guidance identifies the following issues be considered:

- (a) whether the purpose for which the land is being acquired fits with the adopted planning framework for the area or where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework;
- (b) the extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, and/or social, and/or improvement of environmental well-being of the Council's area.
- (c) the potential financial viability of the Scheme, general funding intentions and the timing of available funding and that there is a reasonable prospect of the Scheme going ahead;
- (d) whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means.

8.6 Each of these matters is addressed in turn.

8.7 **Whether the purpose for which the land is being acquired fits with the adopted planning framework for the area**

8.7.1 The Development Plan is dated, reflecting that the adoption of the BLPSV has, in part, taken longer due to the need for alterations during the examination process. Consequently, the Local Plan and the MTCAAP both promote the expansion of comparison retail in Maidenhead Town Centre through the redevelopment of the Landing Site and the Nicholson MSCP to provide for retail expansion in the order of 25,000 sq. m. Changes in the retail market since the adoption of the Local Plan (2003) and the MTCAAP (2011) no longer make retail expansion focused on comparison goods retail either viable or a productive use of land, a point recognised by the BLPSV. This is also illustrated in the Landing Site securing consent for 454 residential units, 13,007 sq. m. of office space, and 3,846 sq. m. of other mixed uses including retail, community and leisure.

- 8.7.2 The BLPSV 2017 submitted version did not advance a different policy for the Nicholson's Shopping Centre to that of the MTCAAP: it continued to be identified as falling within the Primary Shopping Area with all of the retail units identified as a Primary Shopping Frontage. The site had no designation as providing a key redevelopment opportunity within the town centre.
- 8.7.3 The BLPSV Incorporating proposed changes, which was submitted in October 2019, proposes a significant change in policy approach to the shopping centre, designating it as an allocated housing site (AL1) and setting out detailed objectives for any redevelopment. The emergence of this policy is informed by the updated Retail Town Centre Study (2019) which identified that Maidenhead Town Centre will have a theoretical oversupply of comparison goods floorspace in 2024 and that there is limited capacity for additional floorspace by 2029 (about 900 sq. m. net), before rising to about 1,150 sq. m. net by 2033 and about 1,200 sq. m. net by 2036 if forecast trends occur.
- 8.7.4 These quantitative findings are mirrored in the qualitative assessment with the Retail Study Update (2019) recording that whilst the Nicholson's Shopping Centre has a range of major and multiple retailers, it comprises a number of vacancies (particularly at its eastern end). The Retail Study Update states:
- “given its location in the heart of the town centre with good connectivity to Maidenhead railway station, we consider this site represents a prime opportunity for substantial improvement or redevelopment. Suitable proposals for the centre would include a mix of uses including ground floor retail, leisure (including food & beverage) and community space, with ground floor and upper floor residential uses. There is also scope for office uses (subject to demand). Notwithstanding the existing level of vacancies within the centre, we consider that any scheme is unlikely to result in a substantial net increase of A1 retail floorspace (given the structural changes in the retail sector and the growing significance of nonA1 uses in supporting the vitality and viability of town centres). The improvement or redevelopment of the centre would, however, generate notable qualitative benefits; such as attracting new occupiers, enhancing the consumer experience, and improving the town centre as a place to live and work.”*
- 8.7.5 The updated BLPSV designates the Nicholson's Shopping Centre as providing an opportunity for a mixed use development providing retail, community, 22,000 sq. m. of employment space and approximately 500 residential units and a public square. The proposed scheme, if consented, delivers 638 residential units (346 residential and 292 Senior Living) and 35,219 sq. m. of employment floor space (7,469 sq. m. of retail; 27,750 sq. m. of offices).
- 8.7.6 Paragraph 5.6.12 of the BLPSV details the objectives sought from the redevelopment and it is clear that the proposed scheme delivers upon these: the scheme is of an exceptional design; maintains a high quality retail environment with a focus on a mix of retail uses and animated frontages at ground floor level; significantly improves permeability through the site and connectivity with other parts of the

town centre; delivers modern car and cycle parking; provides a significant increase to public open space; and is sensitive to the conservation area and neighbouring residential properties.

8.7.7 [The resolution to grant permission for the Development illustrates that the Scheme accords with the planning framework of the area. [reference Officer's Report]].

8.8 The extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, and/or social, and/or improvement of environmental well-being of the Council's area

8.8.1 The existing Nicholsons Shopping Centre is underperforming. The MTCAAP, prepared in 2011, cited resident surveys reporting that many residents were dissatisfied with the range and quality of shops in Maidenhead town centre and as a result shop elsewhere. The shopping centre has continued to underperform since this date, reflecting the change in shopping habits towards online retail and also the downward cycle that can envelope a shopping centre when retailers exit, customers become dissatisfied at the retail offer, elect to shop elsewhere, which then further impacts the range and quality of the retail offer as more retailers exit or choose not to move into the centre. Unconnected to the redevelopment proposals, retailers continue to close units within the shopping centre reflecting the changes and pressures of the retail market. As identified by the 2019 Retail Study, Maidenhead has a theoretical oversupply of retail accommodation.

8.8.2 The NQD will represent a significant investment in the area, the benefits of which will be considerable to the economic, social and environmental wellbeing of the Borough. The key benefits of the scheme are:

- Bringing forward much needed regeneration in a highly sustainable location on previously developed brownfield land, replacing a failing covered shopping centre and building on the district role of Maidenhead and the introduction of Crossrail to the town;
- Significant investment in Maidenhead representing a vote of confidence and encouraging ongoing growth and investment, fulfilling aspirations for the town centre to become a place to live, work and play;
- Delivering modern retail accommodation, sized and configured to meet the needs of existing and forecast operators and users, specifically those living in, working in and visiting Maidenhead, complimenting and enhancing the rest of the town centre. This will result in promoting Maidenhead and bringing new retailers to the town;
- Delivery on the need for much needed new homes, providing a range of apartment types and sizes in a centrally located sustainable town centre location, meeting identified need and assisting in meeting RBWM's housing targets;

- Provision of high-quality senior living accommodation in a central, highly accessible location, close to important existing and new amenities, which is well suited to meeting identified needs for senior living accommodation;
- Providing significant new high quality landscaping and public realm, including a new public town square for those living in, working in and visiting Maidenhead and introducing new pedestrian routes and permeability improvements through Maidenhead town centre linking the town centre, station and surrounding public parks;
- Re-provision of a new and improved town centre car park, serving Maidenhead's existing and proposed retail and services offer and incorporating cycle parking and electric vehicle charging to promote more sustainable modes of travel as well as introducing new public transport infrastructure to increase accessibility;
- Provision of a new museum and community centre, celebrating Maidenhead's history and diversity;
- Creation or accommodation of approximately 2,700 new jobs across a variety of uses with considerably more jobs created during the construction and fit out period, and significant economic benefits associated with these new opportunities;
- Building upon the highly accessible location with an existing and planned excellent level of public transport, pedestrian and cycle accessibility and introducing design measures including site layout, design and management to encourage enhanced accessibility and inclusivity and a sustainable scheme;
- Delivering modern, energy and carbon efficient accommodation which meets current design and building control standards. The development will utilise green roofs to encourage ecological diversity and provide a sense of wellbeing.

8.8.3 The Development includes the following sustainability measures:

- The use of low and zero carbon technology within the site in the form of heat pumps, PV panels and minimum 'A' rated appliances so to reduce energy use within the site;
- The targeting of all office space above 500 sq. m. being delivered to a BREEAM rating of Excellent under the 2018 regulations;
- Delivering water use efficiency through utilising low water use sanitary ware and leak detection devices;
- The inclusive of biodiverse roofs, wildlife friendly planting and climbing plants against the wall of the multi-storey car park;

- Facilities to store 803 bicycles to help promote cycling;
- Increasing the number of trees across the site from 4 to 173;
- Installing 125 electric vehicle charging points.

8.8.4 The Development is also intended to provide an excellent quality of design that integrates with and improves the existing urban fabric of the town. The Design South East Design Review Panel has been engaged with during the application process and has stated::

“The applicant and design team are commended for their aspiration for a major town centre scheme in Maidenhead.”

“The proposal has achieved a comfortable sense of scale, height and massing that builds up to the landmark tower at the south of the site.”

“The overall layout is sensible, providing well-resolved and connected spaces that promote permeability throughout”

“The proposal for finer grain development at the north east of the site, named ‘The Yards’, is an interesting concept that works well with the more formal structure of the rest of the development”.

8.8.5 Overall it is clear that the Development is capable of delivering tangible benefits that will contribute to the achievement of the promotion and improvement of the economic, social, and environmental well-being of the Council's area in line with the Scheme objectives. The intensification of development on a sustainable, previously developed and centrally located site together with the introduction of a mix of uses will help re-establish the function of the town centre and allow it to sustain itself as a viable town centre into the future.

8.9 **The potential financial viability of the Scheme, general funding intentions and the timing of available funding and that there is a reasonable prospect of the Scheme going ahead**

8.9.1 The Nicholsons Shopping Centre is a covered mall constructed in the 1970s, providing 55 shop units that no longer meets the requirement of modern retail formats. The Shopping Centre was acquired from Administration by the Developer, in March 2019 for £25m. The property was purchased with the intention of redevelopment, with the Centre no longer able to fulfil its role as a viable retail destination, as evidenced by the fall in value from the sale in 2007 for £85m, followed by a sale in 2015 for £37m and thereafter for £25m in March 2019. The fall in value is reflective of the lack of occupier demand for accommodation, which has resulted in falling rental values and greater investor risk. Despite the fall in rental levels, the centre is not considered a viable trading location by a number of high street national retailers due to expected trading performance.

- 8.9.2 Since the purchase in March 2019, seven occupiers have vacated the centre at their choice and Tesco, an anchor store, vacated in September 2020. Of those tenants remaining in occupation there are a number that are in occupation on a concessionary rent basis. High Streets across the UK have been in decline for several years and this has been further accelerated by Covid-19. The decline of the Nicholson's Shopping Centre is apparent and if the redevelopment were not to proceed it would not be possible to attract occupiers into the Centre on viable financial terms.
- 8.9.3 It was in recognition of the need for intervention and the re-purposing of the shopping centre so it could achieve its full potential that the Developer purchased the shopping centre.
- 8.9.4 The Developer is a collaboration between Tikehau Capital and Areli Real Estate. Tikehau Capital are an asset management and investment group which has c. £9 Billion of real estate assets under management across Europe. The business invests in various asset classes, including real estate, and a key emerging element of its portfolio is investing in UK shopping centres such as the Nicholson's Shopping Centre, Maidenhead and the Walnuts Shopping Centre, Orpington which offer regeneration opportunities to deliver long-term placemaking.
- 8.9.5 Areli Real Estate is a UK based urban regeneration specialist which works as an operating partner to Tikehau Capital on its redevelopment portfolio in the UK. Areli Real Estate was formed in 2018 to focus specifically upon mixed use, urban regeneration and placemaking, particularly in struggling high streets and town centres which require investment. Whilst a relatively new company, Areli's team has a collective wealth of experience in delivering complex, mixed-use development schemes and the team have secured planning consents for c.40 million sq. ft. of mixed-use development projects. including:
- Battersea Power Station, London – one of London's most challenging redevelopment schemes and at 10 million sq ft, Battersea Power Station remains Central London's largest ever planning permission and created a whole new community providing new homes, shops, bars and restaurants, public realm and new offices, including Apple's 500,000 sq ft UK HQ.
 - Gunwharf Quays, Portsmouth – a redevelopment of a 33 acre derelict naval base to provide a mixed-use development of offices, residential. retail, restaurants, leisure and hotel accommodation
 - Hounslow High Street Quarter, London – a development of c.527 residential units and 10,000 sq. m. of commercial accommodation including a multi-screen cinema, retail and leisure accommodation, located in the centre of Hounslow Town Centre.
- 8.9.6 Areli Real Estate are currently responsible for the delivery of c.10,000 residential units and 3.5 million sq ft of commercial floorspace, across a number of schemes in Greater London and the South East

- 8.9.7 The Developer is committed to the redevelopment of the Nicholsons Shopping Centre. It was with this intention that it purchased the property in 2018 and why it has committed significant funds in the region of c.£4M to advancing the redevelopment in respect of planning, design and other professional fees.
- 8.9.8 The proposed development will be delivered on a phased basis with the Developer taking a long term approach to the investment and deliverability of the scheme. The Developer is confident that the underlying economic and property fundamentals are robust and that the scheme can be delivered within a reasonable timescale, allowing for a sufficient level of return.
- 8.9.9 The returns generated from the development also need to be contrasted against the depreciating value of the asset if there is no intervention: the significant changes in the retail market, which are forecast to be expedited following the Covid-19 pandemic and the further shift in shoppers behaviour towards online shopping, means that the underlying value of the shopping centre and the rental returns that can be generated may be further eroded. In short, in order to secure longevity of value for its asset the Developer has a vested interest in carrying out the Development. The full application elements of the Development (if permitted) will allow the Developer to commence development once the necessary land assembly has taken place. The anticipated programme for delivering the development is summarised below:

[To be Updated]	Start	End
Enabling and Demolition Works	July 2021	February 2022
MSCP (Zone 4),	March 2022	September 2023
Residential (Zone 5)	March 2022	January 2024
Commercial (Zone 2)	March 2022	September 2023
Commercial (Zone 3)	August 2022	January 2024
Commercial (Zone 1)	February 2023	February 2025
Residential (Zone 6)	August 2023	March 2026

- 8.9.10 A Stopping Up Order is required for some small areas of public highway that fall in close proximity to the existing shopping centre as noted at [11.3] under s.247 TCPA 1990 to facilitate the Development. The extent of the highway being stopped up was considered in the context of the planning application

and the Council considers that it will be able to demonstrate a strong case for the confirmation of the Stopping Up Order.

8.9.11 The Council considers there are no impediments to the delivery of the Scheme.

8.10 **Whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means within a reasonable timeframe.**

8.10.1 In light of the number of existing tenants with whom agreement needs to be reached for the variation of their lease, together with the extent of land over which new rights are required in order to allow the development to be constructed, it is considered that the only sure way of securing development of the Scheme within a reasonable time period is for a Compulsory Purchase Order to be made.

8.10.2 Single ownership and control of the Order Land is necessary to enable the Scheme to proceed. Given the number of third party interests identified in the Schedule to the Order it is unlikely that the Council or the Developer will be able to acquire all of the necessary interests by agreement within a reasonable timescale.

8.10.3 The Council has therefore made the Order to ensure that the significant benefits of the Scheme can be brought forward in a reasonable timescale. Whilst the Council's approach is to negotiate the purchase of all interests wherever possible by agreement, given the fragmented nature of the Order Land, confirmation of the Order is required in order to use compulsory purchase powers where necessary.

8.10.4 Whilst alternative locations for development exist within Maidenhead, this site, as evidenced by its inclusion within the BLPSV, is important in respect of the delivering social, economic and environmental improvements to the town centre. The opportunities for the town centre presented by the proposed redevelopment of the site are considerable.

8.10.5 The site is unique in its ability to improve accessibility and permeability through the town centre through the creation of a new public access connecting the train station to the south-west and the High Street to the north. Whilst delivering development on other sites contributes to housing numbers, this site has been recognised as an important contributor to meeting the Council's vision for the town centre.

8.10.6 The Developer is the main freeholder/long leaseholder of the majority of the development site and is therefore well placed to bring forward the Development in a comprehensive and coherent manner, delivering the social, economic and environmental benefits anticipated by the planning policy objectives. Part of the development site is owned by the Council and a separate commercial agreement has been entered into with Denhead to allow the land to be made available as part of the Development.

- 8.10.7 Consideration has been given as to whether the scheme could be delivered in the absence of the acquisition of the interests outside of the Council and Developer's control. In the Council's opinion this is impossible: the redevelopment of the shopping centre requires the demolition of the majority of the existing shopping centre which in turn requires vacant possession, crane oversailing rights are required over a significant number of properties to allow for construction, and access rights and rights of use interfered with.
- 8.10.8 The support of a CPO and the use of the Council's appropriation powers will be required to deliver the Scheme. Without this it is very likely that the Scheme objectives may never be achieved.

9 NEGOTIATIONS WITH THOSE OWNING INTERESTS IN THE ORDER LAND

- 9.1 The Nicholsons Shopping Centre comprises 55 retail units and 3 concession stands. Since Areli Real Estate purchased the centre in March 2019, it has actively engaged with tenants through its letting agents (Jackson Criss) to secure, where required, variations to leases so to provide increased flexibility in respect of securing vacant possession so the redevelopment can be progressed. The strategy employed has been a successful one, agreements have been reached with a number of tenants but it is also noteworthy that some tenants are vacating accommodation on their own volition, exercising break options on account of poor trading performance unrelated to the proposed redevelopment of the centre.
- 9.2 At present there are 7 tenants who occupy retail accommodation with whom an agreement has not been completed to vary their lease terms. Negotiations are ongoing, led by Jackson Criss where there is an existing relationship, or where it is clear that negotiations will centre on compensation entitlement under the compensation code, Newsteer Real Estate Advisors. In accordance with paragraph 2 of the CPO guidance, financial terms discussed have been based on the compensation entitlement of the tenant if the property was acquired under a confirmed Compulsory Purchase Order. Where requested, assistance has also been offered to occupiers in sourcing suitable relocation properties.
- 9.3 There are a number of tenancies in which an in-principle agreement has been reached with the occupier and is with the respective legal advisers to formalise. Whilst there is constructive dialogue with most occupiers who have not yet agreed lease terms, in some instances there is a notable difference of opinion as to the level of payment due to secure varied lease terms. In other instances, retailers have not yet proactively engaged despite appointing surveyors to lead discussions.
- 9.4 There are number of properties that have the benefit of rights across the Nicholson's Shopping Centre, including rights of servicing, car parking and refuse, with discussions active with all parties to extinguish the existing rights and provide both temporary and permanent rights through legal Undertakings and Deed of Easements.
- 9.5 Discussions will continue with the owners of the relevant interests who are willing to modify their lease terms or sell their interest by agreement. However, it is recognised that there is no guarantee that

these attempts will be successful and accordingly, without the Order, there is no certain prospect of the Scheme proceeding.

- 9.6 The use of the Council's compulsory purchase powers is therefore necessary to ensure that vacant possession of the retail accommodation can be secured within a reasonable timescale and allow the proposed redevelopment to proceed.

10 OTHER MATTERS

10.1 Human rights

- 10.1.1 The Human Rights 1998 came into force on the 2 October 2000. This incorporated the European Convention on Human Rights into English Law. Human Rights must be considered by acquiring authorities when considering utilising compulsory purchase powers. As outlined in the Human Rights Act, public authorities are prohibited from acting in a way which is incompatible with the European Convention in Human Rights.
- 10.1.2 The Council has duly considered the rights of property owners under Article 1 of the First Protocol of the Convention, which provides for the peaceful enjoyment of possessions. Article 1 further provides that no one shall be deprived of possessions except as provided for by law or where it is in the public interest. It is considered that the Order will strike a fair balance between the private loss of property and the public interest in securing the implementation of the Scheme.
- 10.1.3 Article 6 of the Convention provides that everyone is entitled to a fair and public hearing in the determination of their civil rights and obligations. It is considered that the statutory procedures, which give the right to object and provide for judicial review, are sufficient to satisfy the requirements of this Article.
- 10.1.4 The Council has also considered the rights contained in Article 8 of the Convention. This provides that everyone has the right to respect for their private and family life and that there shall be no interference by a public authority with the exercise of this right except in accordance with the law, where there is a legitimate aim and where it is fair and proportionate in the public interest. It is considered that any interference caused by the Order will fall within these exceptions having regard to the public benefit which will accrue from the Scheme.
- 10.1.5 The Council have been conscious of the need to strike a balance between the rights of the individual and the interest of the public. The Council acknowledge that the effect of the Order will be to dispossess persons of their rights in the Order Land, but the Council has concluded that there is a wider compelling case in the public interest for the acquisition of the land as this will bring benefits to both residents and businesses of the borough that could not be achieved by agreement or without the exercise of compulsory purchase order making powers.

10.1.6 In considered Human Rights the Council has decided that in light of the significant public benefit that would arise from the Scheme and the nature of the Order Land, it is in the interest of the wider community to make the Order over and above the interests of any individuals affected. Any interference with the Convention rights is considered to be justified in order to secure the economic, social, physical and environmental regeneration that the Scheme will bring. Appropriate compensation will be available to those entitled to claim it under the relevant statutory provisions.

10.1.7 This compulsory purchase order follows existing legislative provision in respect of the making and confirming of Compulsory Purchase Order and the payment of compensation and, as such the Council considers these to be compatible with the convention.

10.2 **Consultation**

10.2.1 The Developer has been committed to public engagement from the outset of the development process and as summarised below a significant level of engagement has been undertaken:

- a Community Planning Weekend (CPW) was held between 22 and 26 March 2019, including presentations, exhibitions, walkabouts, dialogue workshops and hands-on planning design groups to consider the issues;
- The CPW team summarised the outcomes of the workshops and discussions and drew up an illustrative vision which was presented back to the community at a Report Back event on 26 March 2019;
- The Developer's consultancy team took part in the Council's Community Drop-in days, providing an update on emerging proposals as part of a wider town engagement event (13th September 2019);
- A Community Stakeholder Update Exhibition to preview the emerging proposals to invited local key stakeholders was held on 10 October 2019;
- A Community Update Exhibition was held on 11 and 12 October 2019 to review the emerging proposals with the local community;
- The Developer took part in the Maidenhead United FC Business Networking Event on 29 October 2019 to discuss the emerging proposals with local businesses;
- Presented updates on the emerging proposals to the Disability & Inclusion Forum on 6 January 2020 and 11 September 2020
- Following submission of the planning application, in May 2020, leaflets outlining the proposals were distributed to 27,500 households, together with the creation of a project

website and app. To date 1,600 responses have been received with 82% supportive of the application.

10.3 **Related Orders**

10.3.1 A stopping up order will be required in respect of four small areas of public highway at the following locations:

- (i) A small parcel of adopted highway relating to the footpath adjacent to 51 King Street where the new development extends into the existing footpath;
- (ii) A small part of the adopted highway at Nicholson Lane where the footprint of a new building sits within the road;
- (iii) A slither of public adopted highway located to the north of the shopping centre's entrance between 75 – 77 High Street on account of the new development moderately extending forward;
- (iv) A small triangular parcel of land at the junction between Brock Lane and Bankside.

10.3.2 Each of these areas is a small parcel of land which once stopped up will not interfere with access to neighbouring properties. The Order will be advanced under s.247 TCPA 1990 to facilitate the Development. The extent of the highway being stopped up was considered in the context of the planning application and the Council considers that it will be able to demonstrate a strong case for the confirmation of the Stopping Up Order.

10.4 **Conservation area and listed buildings**

10.4.1 There are no listed buildings or Scheduled Ancient Monuments within the Order Land. The Order Land also falls outside the Conservation Area. There is a nil return certificate for protected assets.

10.5 **Public Sector Equalities duty**

10.5.1 In formulating and promoting the Order, the Council has had regard to its statutory duties and obligations under the Equality Act 2010 and in particular its obligations under Sections 149 and 150 of the said Act in taking into account the differential impact the Order will have on various groups of persons with different characteristics.

10.5.2 An Equalities Impact Assessment has been undertaken. The assessment has not identified any adverse equalities impacts from exercising the Council's CPO powers in order to facilitate the development scheme.

11 CONCLUSION

- 11.1 The CPO Guidance sets out guidance for acquiring authorities regarding the making and confirmation of CPOs. This includes key policy tests which the Secretary of State will expect to be satisfied before a CPO is confirmed.
- 11.2 The Order is made under It is s.226(1)(a) TCPA 1990 on the basis that a CPO is required to facilitate the redevelopment of the Order Land; the Council is satisfied that acquisition of the Order Land will result in economic, environmental and social wellbeing benefits both for the immediate environs of the Order Land and more widely the Borough. It is considered that the tests to be considered by the Secretary of State when deciding whether to confirm the Order are fully satisfied.
- 11.3 In respect of the Planning Framework test (Test 1), the BLPSV introduces planning policy in respect of the Nicholsons Shopping Centre which reflects the changes in the retail market and the changing requirements of town centres to ensure their vitality and viability. Whilst reduced weight can be applied to the BLPSV as it is still going through the examination and adoption process, it is clear that the MTCAAP is outdated in respect of its policy towards the shopping centre, advocating a significant extension to the retail provision rather than a re-purposing of existing retail accommodation to meet current requirements. This is illustrated by the Retail Study Update (2019) reporting that Maidenhead town centre has an immediate overprovision of comparison retail space.
- 11.4 It is clear that the proposed scheme delivers upon the majority of planning objectives for the site: the scheme is of an exceptional design; maintains a high quality retail environment with a focus on a mix of retail uses and animated frontages at ground floor level; significantly improves permeability through the site and connectivity with other parts of the town centre; delivers modern car and cycle parking; provides an significant increase to public open space; and is sensitive to the conservation area and neighbouring residential properties. [The Local Planning Authority's resolution to grant permission also demonstrates that the scheme aligns with the planning framework].
- 11.5 The Scheme delivers significant Economic, Social and Environmental Wellbeing benefits (Test 2) and The NQD will deliver significant improvements to the town centre, helping to ensure its future viability and vitality.
- 11.6 As to the third consideration (other means of achieving the Council's purpose in acquiring the land), the purposes for which the land is to be acquired could not be achieved by any alternative means. All of the Order Land is required for the proposed development. The regeneration of the Order Land will not be achieved without the use of compulsory purchase powers, but the powers will only be used where the required land and interests cannot be acquired by negotiation. As such, the use of compulsory purchase powers is proportionate.

- 11.7 The Developer has the necessary expertise to deliver the Development proposals. It is already a key freehold owner of part of the Order Land, acquired with the intention to enhance its asset based on a long-term approach to investment.
- 11.7.1 The site is unique in its ability to deliver a significant change to the town centre. A poorly performing shopping centre will be replaced with a significant quantum of development, introducing differing forms of development into the heart of the town centre which will improve the viability and vitality of the town centre. The design of the new development will improve accessibility and permeability through the town centre through the creation of a new public access connecting the train station to the south-west and the High Street to the north. Whilst delivering development on other sites contributes to housing numbers, this site has been recognised as an important contributor to meeting the Council's vision for the town centre.
- 11.8 Paragraph 13 of the CPO Guidance advises that it will be difficult to show conclusively that the compulsory acquisition of land is justified in the public interest if the acquiring authority cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale. The Developer is committed to delivering the Scheme; it purchased the shopping centre with the ambition of redevelopment, has spent significant sums advancing design, planning and land assembly, and has a long-term objective to realising the redevelopment of the site. It is confident that the underlying economic and property fundamentals are robust and that the scheme can be delivered within a reasonable timescale, allowing for a sufficient level of return.
- 11.9 Whilst affected parties have been engaged and negotiations are ongoing, it is clear that unless the Order is confirmed, the Council would be unlikely to be able to assemble the land and interests needed within a reasonable timescale. Therefore, unless the Order is confirmed, the process of land assembly will inevitably delay the delivery and progression of the Scheme.
- 11.10 Accordingly, the Council considers that the tests to be applied when considering whether to confirm a CPO made under section 226(1)(a) TCPA 1990 are met, the criteria in the CPO Guidance is satisfied and that there is a compelling case in the public interest for the confirmation of the Order.

12 CONCLUSION

For the reasons explained above, the Council therefore considers there to be a compelling case in the public interest for the confirmation of the Order.

13 ADDITIONAL INFORMATION

- 13.1 Information about the Scheme and copies of the CPO documents are available at the Council's website [\[add reference\]](#)

14 LIST OF DOCUMENTS IN THE EVENT OF AN INQUIRY

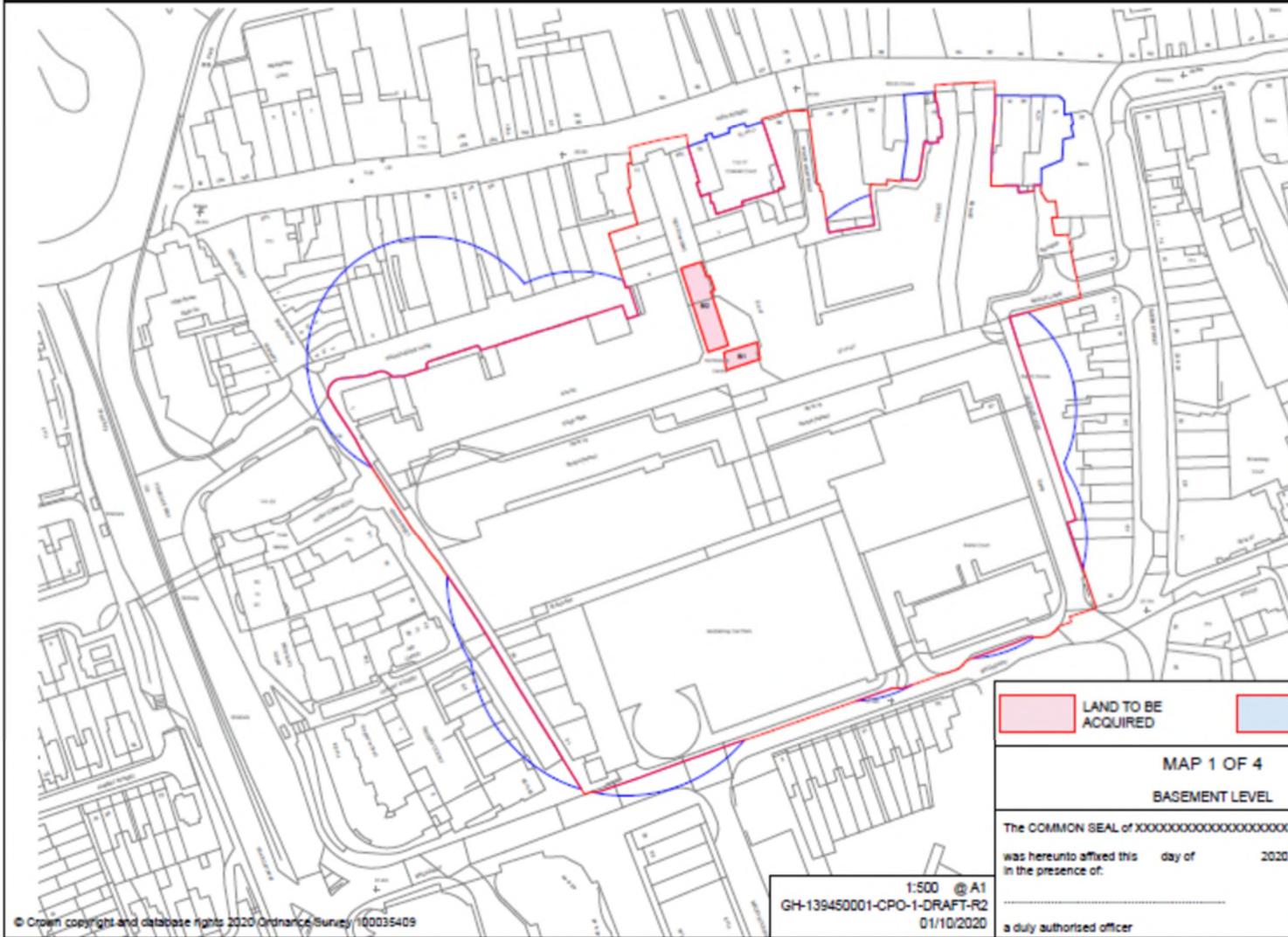
14.1 In the event of a public inquiry, the Council would intend to refer to or put in evidence the following documents

No	Document Name
1	Guidance on Compulsory purchase process and The Criche Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion" issued by the Department for Communities and Local Government (July 2019)
2	Royal Borough of Windsor and Maidenhead Local Plan (June 2003)
3	Maidenhead Town Centre Area Action Plan (September 2011)
4	Borough Local Plan 2013-2033 Submission Version Incorporating proposed changes (October 2019)
5	National Planning Policy Framework (NPPF) (July 2019)

14.2 The Council reserves the right to introduce such additional documents as may be relevant to any public inquiry in respect of the Order and will endeavour to notify the public inquiry and any statutory third parties of any such documents as soon as possible prior to the opening of such public inquiry

Appendix C – Plans of Interests to be Acquired

MAP REFERRED TO IN THE XXXXXXXXXXXXXXXXXXXXXXXX (XXXXXXXXXXXX)
COMPULSORY PURCHASE ORDER 2020



LAND TO BE ACQUIRED NEW RIGHTS TO BE ACQUIRED

MAP 1 OF 4

BASEMENT LEVEL

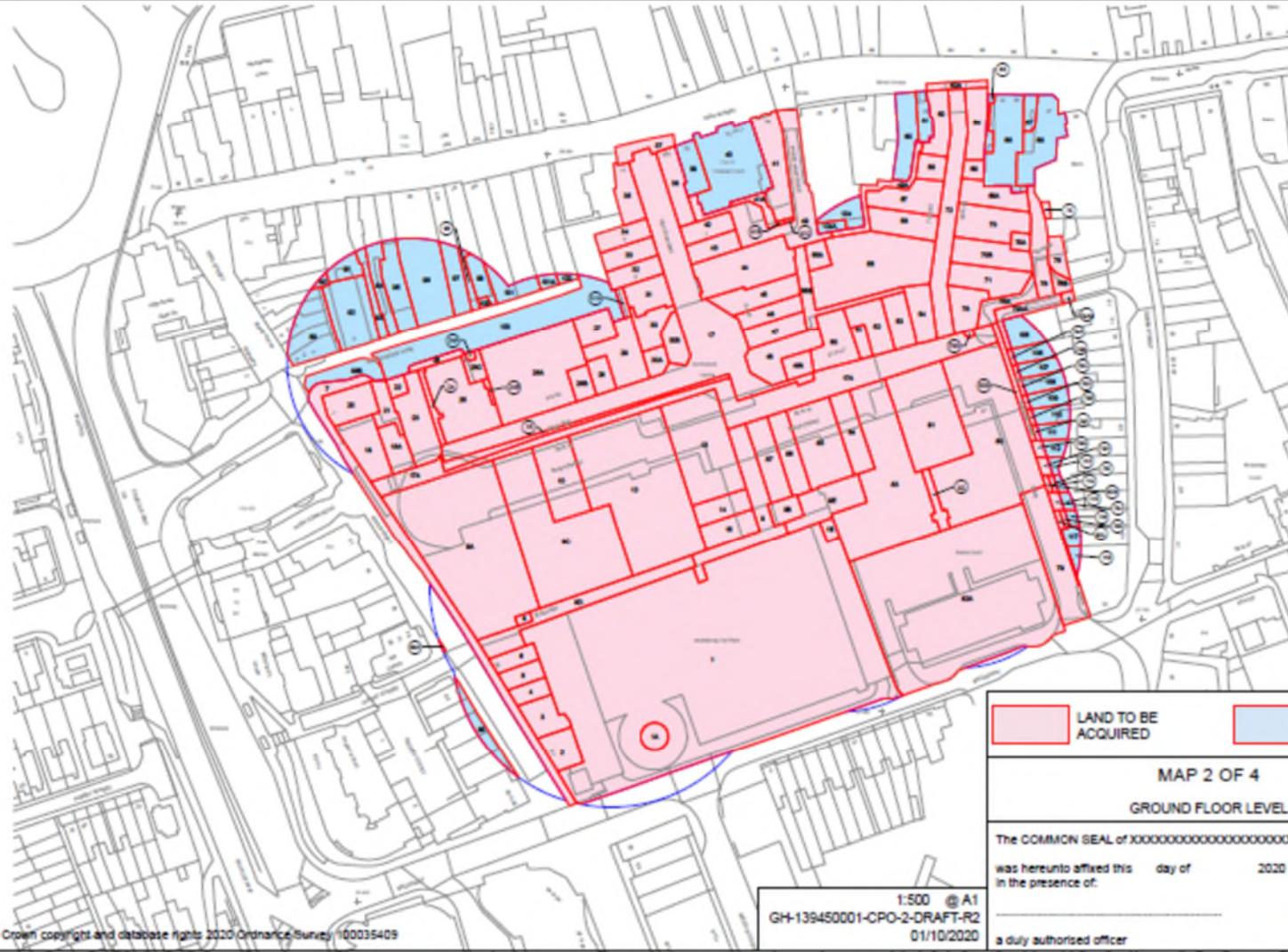
The COMMON SEAL of XXXXXXXXXXXXXXXXXXXXXXXX
was hereunto affixed this day of 2020
in the presence of:

1:500 @ A1
GH-139450001-CPO-1-DRAFT-R2
01/10/2020

a duly authorised officer



MAP REFERRED TO IN THE XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX)
COMPULSORY PURCHASE ORDER 2020



LAND TO BE ACQUIRED NEW RIGHTS TO BE ACQUIRED

MAP 2 OF 4
GROUND FLOOR LEVEL

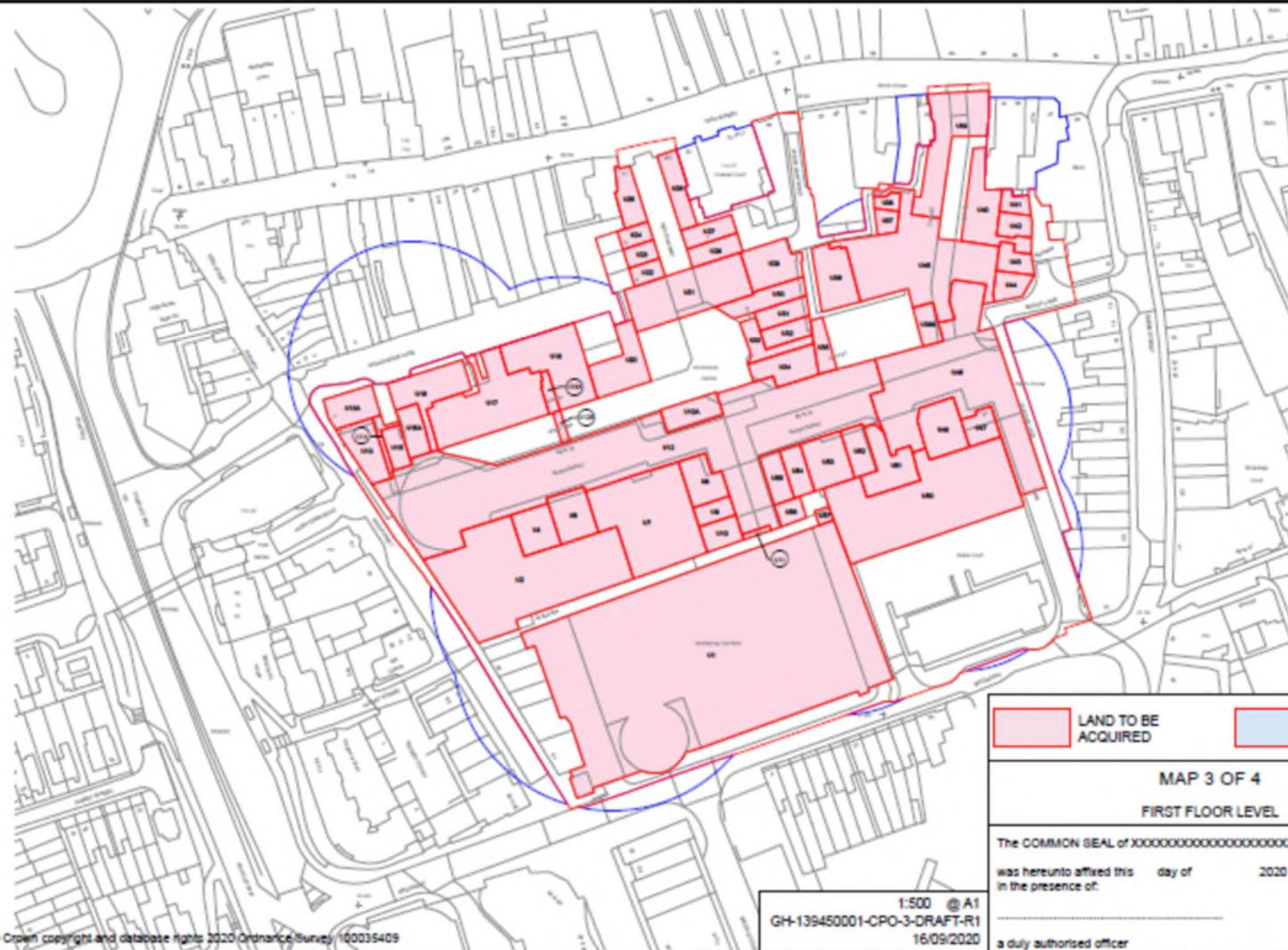
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in the presence of:

DRAFT

1:500 @ A1
GH-139450001-CPO-2-DRAFT-R2
01/10/2020

a duly authorized officer

MAP REFERRED TO IN THE XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX)
COMPULSORY PURCHASE ORDER 2020



LAND TO BE ACQUIRED NEW RIGHTS TO BE ACQUIRED

MAP 3 OF 4
FIRST FLOOR LEVEL

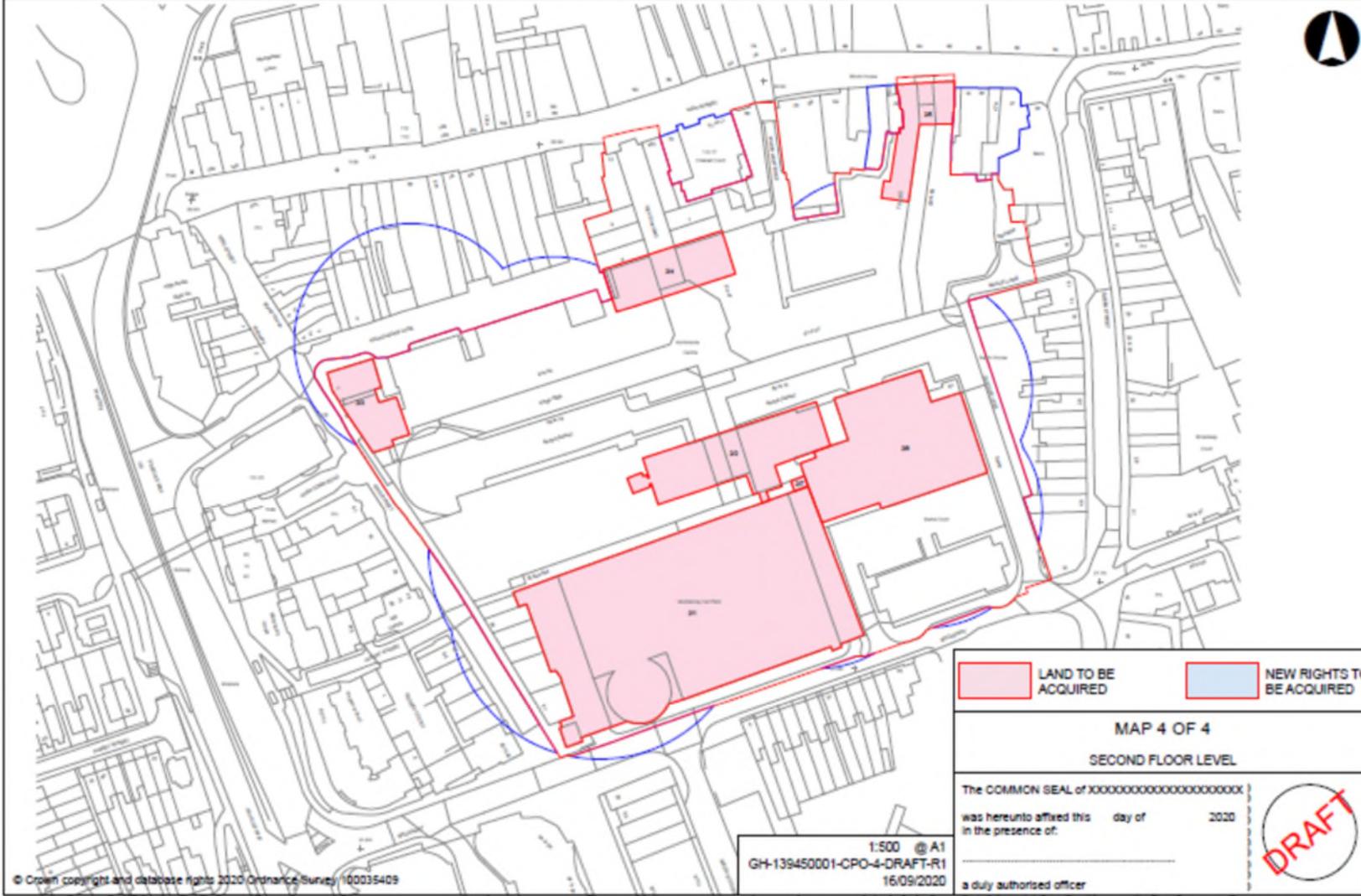
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was hereunto affixed this day of 2020
in the presence of:

a duly authorised officer



1:500 @ A1
GH-139450001-CPO-3-DRAFT-R1
16/09/2020

MAP REFERRED TO IN THE XXXXXXXXXXXXXXXXXXXX (XXXXXXXXXX)
COMPULSORY PURCHASE ORDER 2020



LAND TO BE ACQUIRED NEW RIGHTS TO BE ACQUIRED

MAP 4 OF 4
SECOND FLOOR LEVEL

The COMMON SEAL of XXXXXXXXXXXXXXXXXXXX
was hereunto affixed this day of 2020
in the presence of:

DRAFT

1:500 @ A1
GH-139450001-CPO-4-DRAFT-R1
16/09/2020

a duly authorised officer