

Report to:	Cabinet	
Date:	15 June 2022	
Title:	The making of a Compulsory Purchase Order, a Side Roads Order, use of powers of appropriation and the exercise of powers related to statutory undertakers, telecommunications providers and rights of way in support of the delivery of Langarth Garden Village	
Portfolio Area:	Planning and Housing	
Divisions Affected:	All	
Local Member(s) briefed:	Y	
Relevant Scrutiny Committee: Economic Growth & Development		
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Approval and clearance obtained:		Y
Date next steps can be taken		25 June 2022
For Cabinet and delegated executive decisions only		
Key decision? (≥£500k in value or significant effect on communities in two or more electoral divisions)		Y
Published in advance on Cabinet Work Programme?		Y
Urgency Procedure(s) used if ‘N’ to Work Programme?		N

Exempt: Appendix 5 is not for publication by virtue of category 3 (Information relating to the financial or business affairs of any particular person (including the Council)).

Reason for exemption: Whilst there is a public interest in the use of public resources, Appendix 5 contains commercially sensitive financial information which if disclosed at this time could have a distortive impact on the ability to deliver the Garden Village.

Recommendations:

1. That authority be delegated to the Strategic Director for Sustainable Growth and Development, in consultation with the Portfolio Holder for Planning and Housing, the Portfolio Holder for Resources, the Monitoring Officer and the Section 151 Officer to:
 - a. continue efforts to secure by agreement all land and rights necessary or desirable to facilitate the delivery of Langarth Garden Village (including land and rights needed to deliver the Northern Access Road and other key infrastructure) (the “Scheme”);
 - b. authorise entry onto land to undertake surveys under section 172 Housing and Planning Act 2016 and/or other relevant powers;
 - c. finalise, make and submit to the Secretary of State for Levelling Up, Homes and Communities for confirmation a Compulsory Purchase Order (“CPO”) pursuant to Section 226(1)(a) and all other enabling powers, to be known as "The Cornwall Council (Langarth Garden Village, Threemilestone) Compulsory Purchase Order 2022", a draft of which is at Appendix 1 to the report, for the compulsory purchase of land and rights needed to facilitate the delivery of Langarth Garden Village as shown on the draft Order Map at Appendix 1 to the report;
 - d. finalise, and make and submit to the Secretary of State for Levelling Up, Homes and Communities for confirmation a Side Roads Order (“SRO”) pursuant to Sections 14 and 125 of the Highways Act 1980 and all other enabling powers, to be known as "The Cornwall Council ([insert classified road reference] (Northern Access Road) Classified Road) (Side Roads and Other Works) Order 2022"; a draft of the Side Roads Order is at Appendix 2 to the report;
 - e. take all necessary actions to secure the confirmation of the CPO, and SRO;
 - f. take all necessary actions to implement the CPO and SRO, and also to exercise relevant statutory powers in order to deliver the Scheme including powers pursuant to section 203 of the Housing and Planning Act 2016 and sections 236, 271 and 272 of the Town and Country Planning Act 1990;

- g. settle claims for compensation in respect of the acquisition of land or new rights, or the overriding or extinguishment of existing rights, interests or restrictions.
- 2. To resolve, where necessary in the absence of agreement, to exercise powers under sections 271 and 272 Town and Country Planning Act 1990 in relation to the extinguishment of rights of statutory undertakers and electronic communications code network operators.
- 3. To resolve, where necessary, to request the Secretary of State to exercise powers under section 251 Town and Country Planning Act 1990 (in accordance with regulation 15 of the Town and Country Planning Regulations 1992) to authorise the extinguishment of any public rights of way over land to be acquired or appropriated for the purposes of the Scheme.
- 4. To resolve to appropriate for planning purposes the land owned by the Council within the proposed redevelopment site shown on the plan at Appendix 4 pursuant to section 122 Local Government Act 1972 in order to facilitate the Scheme.

1 Executive Summary

- 1.1 Langarth Garden Village constitutes one of the two largest development areas in Cornwall by some margin (the only other one of comparable size being Nansledan at Newquay). The Council's commitment to the overall delivery and the provision of infrastructure at Langarth Garden Village is evidenced by its decision (in January 2019) to intervene with a package of investment totalling circa £165m, comprising £117.5m of its own reserves and borrowed funds and, £47.5m of grant from Government. The Council funding is based on a model that the funding will be repaid from the capital receipts generated from the eventual disposal of the land not required by the Council for Public infrastructure.
- 1.2 The Council's main focus in entering into the programme of activity, of which the matters in this report are a key part, is to ensure delivery of homes for the residents of Cornwall. The Council is seeking to use all its resources and powers as may be appropriate to the task to secure that aim in as proportionate and equitable a way as possible. The three key pillars of its intervention include:
- masterplanning the area and securing a new planning consent;

- seeking to acquire sufficient land and interests to ensure delivery by itself or others;
 - allocating money for forward funding of infrastructure (including the securing and administration of government funding).
- 1.3 The previous Cabinet decisions outlined in section 4 below, and the ensuing work associated with implementing those decisions, all point to a cogent, determined and well-resourced effort to achieve delivery of the Garden Village.
- 1.4 The new masterplan was prepared in conjunction with a community led stakeholder panel as a consequence of the decisions of Cabinet in December 2018 and full Council in January 2019 and endorsed by Cabinet in November 2020. A new planning decision based on this masterplan was issued on 5 April 2022 (hybrid planning permission ref PA20/09631) and there have been a number of other enabling consents in the meantime (such as for the energy centre – PA20/09599).
- 1.5 In terms of land and other interests, the Council has acquired a significant proportion of the site and it has done this to date through negotiation. This has provided control of land for key infrastructure or rights to infrastructure agreements such as electricity, water and foul drainage. A key characteristic of the development is a central corridor known as the Northern Access Road (“NAR”). There are residual sections of the corridor for that road which, at the time of writing this report, the Council has been unable to get control of through negotiation. As this report also sets out, notwithstanding the significance of acquisitions made to date, the terms of some acquisitions to date have been unable to fully resolve some remaining rights and interests which may impede delivery.
- 1.6 This report specifically addresses the Council’s intent to resolve any of these matters which remain outstanding by making a CPO, and, if the CPO is made, it is proposed that such an order would be pursuant to the Council’s powers under section 226(1)(a) of the Town and Country Planning Act 1990 and in accordance with guidance issued by the (then) Ministry of Housing, Communities & Local Government (July 2019).
- 1.7 This report further seeks the necessary approvals for the use of additional statutory powers needed in order to secure delivery of the Scheme including the making of a side roads order (SRO) pursuant to powers under the Highways Act 1980, the appropriation of land pursuant to s122 of the Local Government Act 1972 and (in the absence of express agreement) the exercise of powers under sections 271 and 272 Town and Country Planning Act 1990 in relation to the extinguishment of rights of statutory undertakers and electronic communications code operators.

1.8 Practically, the collective result of the recommendations in this report would be to:

- secure the remaining parts of the corridor for the Northern Access Road;
- ensure key links and access routes are preserved or created to and from existing third party properties where these are severed by the Northern Access Road; and
- address any outstanding rights and interests that may impede delivery.

1.9 Given the importance of the decision to make a CPO and its effect on third parties, it is preferable in terms of openness and transparency that, so far as possible, any decision on compulsory purchase is debated and taken at a meeting of the Council's Cabinet which is conducted in public.

1.10 This report refers to, and should be read in conjunction, with:

Appendix 1 – draft CPO maps and draft CPO schedule

Appendix 2 – draft SRO maps and draft SRO schedules

Appendix 3 – draft Statement of Reasons

Appendix 4 – Land to be appropriated for development of Scheme

Appendix 5 – confidential financial statement - exempt

Appendix 6 – Cornwall Development and Decision Wheel Assessment

1.11 There are some limited elements of text from the Statement of Reasons that are also duplicated and incorporated in this covering report to ensure that the report itself provides a balanced and rounded overview of issues for Cabinet.

2 Purpose of Report and key information

2.1 Historically, the land within the boundary of what is now known as Langarth Garden Village (defined by reference to the hybrid planning permission reference PA20/09631 and previous decisions listed in section 4 below) was held in multiple and complex land ownerships and subject to multiple competing and conflicting planning consents granted between 2010 and 2016. The disparate nature of those consents, combined with the multiple land ownerships and duplication of non-residential land uses, meant that delivery of the policies in the Cornwall Local Plan (adopted in 2016) and the Truro and Kenwyn Joint Neighbourhood Plan (made in 2016) was impeded. As set out in the Executive summary above, the Council has proactively and competently set out to address the delivery gap through a well-funded and well-resourced

strategy, but there are some remaining elements it now needs to pursue via other powers if negotiations cannot otherwise achieve the outcomes. In particular, the Council is confident that it has sufficient funds and authority based on previous decisions to progress, and that through its own arms-length companies, or other procurement routes available to it, the means and expertise to deliver the scheme as conceived.

- 2.2 Section 4 more fully sets out previous decisions around the programme as a whole but of particular relevance to the matters in this present report it is important to highlight that in November 2020, Cabinet resolved that the Strategic Director for Economic Growth and Development (whose title has now changed to the Strategic Director for Sustainable Growth and Development) be given delegated authority to:

- “(a) Continue efforts to acquire by agreement all land and rights needed to implement the Northern Access Road and any other development or infrastructure required to facilitate the delivery of Langarth Garden Village and to concurrently take all necessary steps to prepare for the making of a Compulsory Purchase Order; and
- (b) In the event that all required land and rights needed to implement the Northern Access Road and any other development or infrastructure required to facilitate the delivery of Langarth Garden Village have not been acquired by agreement within a timescale necessary to facilitate the Council's programme, to prepare and present a further report to Cabinet to enable Cabinet to consider and approve the case for making a Compulsory Purchase Order in respect of any of the said required land and rights, with a view to any such Compulsory Purchase Order being made and submitted to the Secretary of State for confirmation as soon as possible after Cabinet's decision to make the Order.”

- 2.3 The purpose of this report is to follow this through where issues remain unresolved despite the Council's best efforts, and to seek approval for the making of a CPO and SRO and appropriations of other rights and interests, with a view to any CPO and SRO being made and submitted to the relevant Secretary of State for confirmation as soon as possible after Cabinet's decision in order to facilitate delivery of the Scheme. There are other matters of appropriation and interaction with statutory undertakers and telecommunication code operators that also need to be addressed as set out in the recommendations.

- 2.4 The key information relating to these issues is as follows:

- a) Compulsory Purchase Order

- i) The acquisition of land required to deliver the key elements of the Scheme provides the Council with the necessary control, over land and programme, to successfully deliver the Scheme without delay and without relying upon outstanding third party commercial imperatives.
 - ii) Reliance on compulsory purchase or appropriation forms a key element of the approach to land acquisition employed by the Council in order to facilitate the delivery of the Scheme as a last resort where the Council has been unable to acquire required land or interests by agreement.
 - iii) The Council has successfully acquired a significant proportion of the land required to deliver the Scheme by agreement (representing 68% of the development by housing units, both anticipated school sites, 75% of the NAR corridor, land and contracts for the energy centre, land to provide the majority of the area of the Suitable Alternative Natural Greenspace (SANG), and the site for the Park and Ride extension).
 - iv) There remain key land interests, including those needed to deliver sections of the NAR and other key site wide infrastructure, where, despite reasonable efforts, it has not been possible to acquire the interest through agreement with existing landowners. This report recommends the authorisation of the CPO to secure the relevant land and rights (including where relevant) the surrender of any relevant adverse interests required to deliver key sections of the Scheme that remain in third party ownership. The exercise of its compulsory purchase powers remains a last resort and efforts will continue to attempt to secure the necessary land and rights by agreement. The use of compulsory purchase powers is considered prudent and necessary here to ensure that the Council is able to deliver the vision for the Langarth Garden Village in accordance with its programme which takes into account conditions set out in the HIF funding agreements to prove control of the land for the delivery of the NAR prior to release of funding by Homes England.
 - v) Once the CPO has been made, it will be submitted to the Secretary of State for Levelling Up, Communities and Housing who will then consider any objections to the CPO before deciding whether or not the CPO should be confirmed. The CPO can only be implemented once confirmed by the Secretary of State.
- b) Side Roads Order

- i) The SRO is to provide for the stopping up and improvement of highways which connect with the new classified road (including the NAR) to be delivered as part of the Scheme, for the construction of new highways, the stopping up of private means of access to premises, the provision of new means of access to them and other associated works including alterations to public rights of way.
 - ii) Without the SRO, it will not be possible to make the necessary changes to the local highway network to enable the implementation and delivery of the Scheme, including the NAR. The SRO is therefore integral to the ability to deliver the Scheme.
 - iii) Should the Council make the SRO, is proposed that the order be made pursuant to the Council's powers in sections 14 and 125 of the Highways Act 1980 and in accordance with guidance issued by the Department for Transport (Circular 1/97).
 - iv) Once the SRO has been made, it will be submitted to the Secretary of State for Transport who will then consider any objections to the SRO before deciding whether or not the SRO should be confirmed. The SRO can only be implemented once confirmed by the Secretary of State.
- c) Appropriation of land for the purposes of facilitating the Scheme
 - i) The majority of the land acquired by the Council within the boundary of the Scheme was acquired for the purposes of the development. Section 203 of the Housing and Planning Act 2016 (the 2016 Act) therefore applies to such land (subject to satisfaction of the relevant statutory conditions).
 - ii) However, part of the area of land shown on Appendix 4 was originally acquired for the purpose of an alternative form of development to that now proposed as part of the Scheme. Therefore prior to undertaking the Scheme on this land it is necessary for the Council to appropriate the land for the purposes of the proposed development. It should be noted that a consequence of the appropriation will be that section 203 of the 2016 Act will apply to the land as if it had originally been acquired for the purpose of delivering the Scheme.
- d) Section 271 and 272 of the Town and Country Planning Act 1990
 - i) Statutory undertakers are excluded from the general provisions of section 236 of the 1990 Act under which all private rights of way and rights of maintaining apparatus on land are automatically

overridden upon compulsory acquisition of the land, triggering an entitlement to claim compensation. The Council will in the first instance seek to reach agreement with any statutory undertakers or electronic communication code operators to agree for the removal or diversion of any apparatus impeding the delivery of the Scheme. There is also a procedure under the electronic communications code which enables rights under the code to be terminated (although the procedure is cumbersome and time consuming). However, Sections 271 and 272 provide an alternative procedure for resolving conflicts between statutory undertakers and acquiring authorities, where the undertaker has apparatus or rights relating to land which has been acquired (by agreement or via the CPO) for, or appropriated to, planning purposes.

- ii) The Council may serve a notice on the statutory undertakers or electronic communication code operators either:
 - stating that the rights of the statutory undertakers or electronic communication code operators in connection with such land will be extinguished after the period specified in the notice (being a period of not less than 28 days); or
 - requiring the removal of any apparatus before the expiration of the period specified in the notice.
- iii) The Council must first be satisfied that such action is necessary in order to carry out the development for which the land was acquired or appropriated, here the Scheme. Compensation will be payable to the statutory undertaker or electronics communication code operator.
- iv) The statutory undertakers or electronic communication code operators may (within 28 days of receipt of the section 271 or section 272 notice) serve a counter-notice stating that they object to the notice and specifying the grounds for their objection.
- v) If the statutory undertakers or electronic communication code operators do not serve a counter-notice, all rights of way and all rights as to apparatus referred to in the section 271 or section 272 notice are extinguished at the end of the notice period and the apparatus may be removed by the Council.
- vi) If the statutory undertakers or electronic communication code operators do serve a counter-notice then the Council may choose whether to either withdraw the notice; or refer the notice to the Secretary of State and to the appropriate Minister for the particular

statutory undertaking in question for an order embodying the terms of the notice. The Secretary of State and Minister will consider objections from the statutory undertaker before making the order.

e) Section 251 and rights of way

- i) While the powers referred to above apply to private rights over the Council's land that has been either acquired or appropriated for planning purposes, they do not apply to public rights of way.
- ii) Section 251 of the Town and Country Planning Act 1990 instead applies and which allows the Secretary of State to order that any public right of way over the land which has been acquired or appropriated by a local authority for planning purposes to be extinguished if he is satisfied:
 - (a) that an alternative right of way has been or will be provided; or
 - (b) that the provision of an alternative right of way is not required.
- iii) The proposed approach is considered to be proportionate and reasonable as the development itself will be providing for alternative rights of way where this is necessary or desirable. Resolving to use this power at this stage ensures that there is a comprehensive approach to the powers being adopted to develop the Garden Village.

3 Benefits for Customers/Residents

- 3.1 Paragraph 12 of the CPO Guidance published by Government ("Guidance on Compulsory Purchase Process and the Crichel Down Rules" (July 2019)), and referred to throughout this report and more specifically in the Statement of Reasons at Appendix 3, provides that the Council must only make a CPO where there is a compelling case in the public interest and that it must be sure that the purposes for which the order is made justify interfering with the human rights of those with an interest in the affected land.
- 3.2 The purpose of the Council in making the CPO is to secure the acquisition of all relevant interests in the land needed to implement the NAR and the other associated infrastructure and development required to facilitate the delivery of the comprehensive mixed use, master-planned, landscape-led community to be known as Langarth Garden Village.
- 3.3 The overall intent and the benefits of the Scheme are set out throughout this report, and in the earlier decisions referenced in section 4, and in the documents associated with the hybrid planning consent for PA20/09631, and

together demonstrate that there is a compelling case in the public interest for making the CPO. Further assessment of the compelling case in the public interest for making the CPO and the associated justification for interfering with the human rights of those with an interest in the affected land are set out in section 8 of the Statement of Reasons at Appendix 3 to this report.

- 3.4 Both the CPO and SRO are required to deliver the Langarth Garden Village Scheme. The benefits for customers and residents of the proposed CPO and SRO and the exercise of the other powers sought to be relied on are therefore those same benefits as will be realised through the delivery of the Scheme.
- 3.5 Like many such schemes and urban extensions, the history of Langarth and its development is complex, contested and emergent in its character. It was consented as a series of individual developments in the absence of an up-to-date Local Plan for Cornwall, although growth to the west of Truro had been clearly signalled in preceding local and regional policy documents (including the former Cornwall Structure Plan of 2004, the un-adopted Regional Spatial Strategy of 2008, and the Carrick District Local Development Framework). Growth to the west of Truro (as defined by what is now the Langarth Garden Village site) has since been incorporated into policies in the adopted Cornwall Local Plan and the Truro and Kenwyn Neighbourhood Development Plan. The Council has allowed ample time over the last decade to allow the private sector to instigate their original consents. That has not happened, despite the proactive and successful application of the Council to secure significant (£47m) of HIF monies to deliver the NAR. The cumulative effects of the decisions recorded in section 4 below set out a clear story of the Council deciding to intervene to ensure a) delivery and b) quality of delivery (as defined in the Statement of Reasons at Appendix 3 and the Planning Statement in support of the overarching hybrid application PA20/09631). The Council's intervention has taken the form of it using a combination of its tools both under its powers as a Local Planning Authority and its capacity within its executive functions to strategically plan for the growth inherent in the previous consents, and ensure delivery through sourcing of significant grant funding, and using its own capital to assemble, coordinate and enable the early delivery of infrastructure in a way that the normal development process could not achieve. The CPO, SRO and use of the other powers and appropriation set out in this report are the culmination of the Council seeking to ensure that, without prejudice to the role of the private sector, it can continue to ensure delivery in accordance with the settled vision for the scheme.

4 Relevant Previous Decisions

- 4.1 This report builds upon the information provided to Cabinet in the below reports:

- a) Report to Cabinet on 15 November 2017 for approval of an increase of £70million to the Council's capital programme to continue with the development of a number of schemes including Langarth Farm and West Langarth; discussions to buy land parcels to provide homes within the Housing Development Programme and provide a possible extra care scheme; and the NAR.
<https://democracy.cornwall.gov.uk/ieDecisionDetails.aspx?AIId=67278>
- b) Report to Cabinet on 2 May 2018 for approval in principle to the Council taking a significant strategic leadership and delivery role in developments at Threemilestone north of the A390 by way of a programme of specific and selective interventions.
<https://democracy.cornwall.gov.uk/ieDecisionDetails.aspx?AIId=71166>
- c) Report to Cabinet on 20 June 2018 for approval for the acquisition of 154 plots of land plus further land for public infrastructure at Langarth Farm. This decision was ratified by Full Council on 10 July 2018.
<https://democracy.cornwall.gov.uk/ieDecisionDetails.aspx?AIId=72581> and <https://democracy.cornwall.gov.uk/mgAi.aspx?ID=73535>
- d) Report to Cabinet dated 18 December 2018 to the Council that the capital programme be increased by £159.047m in respect of this programme of interventions and the use of £7.627m from the Economic Development Match Fund, which was subsequently ratified by Council on 22 January 2019.
<https://democracy.cornwall.gov.uk/ieListDocuments.aspx?CIId=577&MIId=8303&Ver=4> and <https://democracy.cornwall.gov.uk/ieListDocuments.aspx?CIId=584&MIId=8343&Ver=4>
- e) Report to Cabinet on 21 November 2019, following which Cabinet resolved that the Strategic Director for Economic Growth and Development be given delegated authority to complete the acquisition of the land identified in the exempt report and to give effect to the NAR and other infrastructure as set out in the exempt report, in consultation with the Portfolio Holder for Homes, the Portfolio Holder for Culture, Economy and Planning, the Monitoring Officer and Section 151 Officer. This included delegated authority to take such steps as are necessary to address any issues arising from those transactions, including the exercise of powers of compulsory purchase.
<https://democracy.cornwall.gov.uk/documents/g8914/Public%20reports%20pack%2013th-Nov-2019%2010.00%20Cabinet.pdf?T=10>
- f) Report to Cabinet on 4 November 2020 pursuant to which Cabinet resolved to endorse the Langarth Garden Village masterplan

(Masterplan), approve the strategic outline case for a stewardship model for the Scheme, approve the commitment of expenditure towards the community centre, playing field and public realm improvements at Threemilestone, and the new primary school to form part of the Scheme, acquire additional land required for the implementation of the Scheme set out in an exempt report and a series of delegations to the Strategic Director for Economic Growth and Development (now Sustainable Growth and Development) to implement the scheme and resolve issues arising withing given parameters. This report included references to the parts of Langarth Garden Village known as Langarth Phases 1,2, 3, 4 and 5.

<https://democracy.cornwall.gov.uk/ieListDocuments.aspx?CId=577&MId=9549&Ver=4>

- g) Report to Cabinet on 15 December 2021 following which Cabinet resolved that the Community Infrastructure Levy monies collected from the development of the Scheme be retained and applied to infrastructure in the geographical areas of Truro, Kenwyn, Chacewater, Kea and St Clements.

<https://democracy.cornwall.gov.uk/ieListDocuments.aspx?CId=577&MId=10079&Ver=4>.

4.2 The actions and activity which have been achieved as a result of these decisions comprise:

- a) Detailed planning permission for the construction of the interim link road to enable early construction access from the A390 to the Scheme land has been approved (PA20/00009)
- b) Detailed planning permission for Langarth Garden Village energy centre has been approved (PA20/09599)
- c) Hybrid planning permission (land in outline and road in detail) for the Scheme has been approved (PA20/09631);
- d) Listed building consent for the removal and relocation of a milestone to facilitate junction works in connection with the Scheme has been approved (PA20/09610)
- e) Acquisition by the Council of land required to achieve the delivery of the Scheme known as 'Langarth Farm' ("Langarth Farm") Phases 3, 4 and 5;
- f) Acquisition by the Council of land required to achieve the delivery of the scheme, known as 'Governs Farm' ("Governs Farm");

- g) Acquisition by the Council of land required to achieve the delivery of the scheme, known as 'East Langarth' ("East Langarth");
- h) Acquisition by the Council of land required to achieve the delivery of the scheme, known as 'The Willows' ("The Willows");
- i) Acquisition of title, rights and interests in some of the unregistered lanes and other parcels from neighbouring landowners and the successful registration of possessory title to some of those parcels to facilitate the delivery of the Scheme;
- j) The release of covenants affecting part of the land known as the 'Park and Ride' ("Park and Ride") to enable the development of the energy centre for the Scheme;
- k) The release of specific restrictive covenants and other obligations and the surrender of specific rights affecting land known as the 'Busgate' ("Busgate") and a general release of covenants and obligations affecting the majority of the Council's holdings at Langarth Garden Village (with specific exceptions) to facilitate the delivery of the Scheme;
- l) The release of covenants affecting the land known as the 'Stadium For Cornwall' ("Stadium") and the 'Park and Ride Extension' ("Park and Ride Extension") to facilitate their development;
- m) The surrender and release of an option agreement with various covenants and obligations affecting Langarth Farm Phases 1 and 2;
- n) The surrender of a potential farm business tenancy and/or agricultural holdings act tenancy and ancillary rights affecting Langarth Farm Phases 3, 4 and 5 and its replacement with a grazing licence to assist with land and environmental management, biodiversity and meeting planning requirements to facilitate the delivery of the Scheme;
- o) The surrender of three protected business tenancies affecting part of Govers Farm and their replacement with contracted out leases to facilitate the delivery of the Scheme;
- p) The surrender of a potential farm business tenancy and ancillary rights affecting land at Govers Farm and its replacement with a grazing licence to facilitate the delivery of the Scheme;
- q) The grant of a new farm business tenancy affecting land at Govers Farm to assist with land and environmental management, biodiversity

and meeting planning requirements to facilitate the delivery of the Scheme;

- r) The settlement and release of overage obligations and positive obligations affecting land known as 'Biondi Field' to facilitate the development of the primary junction and access for the Scheme.

4.3 Paragraph 13 of the CPO Guidance provides that the Council must be able to show that it has a clear idea of how it intends to use the land which it is proposing to acquire and that all the necessary resources are likely to be available to achieve that end within a reasonable time frame. In answer to this, the planning application for the Scheme was considered by Planning Committee on 16 December 2021 and the decision notice was issued on 5 April 2022. The planning permission provides detailed consent for the NAR with the remainder of the Scheme permitted in outline. The planning permission adopts the approach taken by the Masterplan approved by the Council on 4 November 2020. Further details of the Scheme and the associated planning permission demonstrating the Council's clear intentions for the use of the land to be acquired are set out within section 8 of the Statement of Reasons at Appendix 3 to this report.

5 Consultation and Engagement

- 5.1 A comprehensive engagement strategy has commenced and is being maintained. Its reach is both internally within the Council and externally with the public, affected land owners, Parish Councils, partners, developers and potential supply chain. The following link leads you to the Langarth Garden Village Website (www.langarth.co.uk) which records the engagement undertaken to date. Most recently this has included: (i) public consultation on the hybrid planning application for the Scheme prior to the local planning authority's decision on 16 December 2021 to resolve to approve the application subject to completion of a section 106 agreement and (ii) a series of community engagement events held in November 2021 in Threemilestone, Shortlanesend, Chacewater and Truro to allow all those affected by or interested in the Scheme to see the latest plans and speak to members of the project team.
- 5.2 Should the Council resolve to make the CPO and SRO then there will follow a statutory consultation period of a minimum of 21 days (for the CPO) and 6 weeks (for the SRO) to allow all those affected by the decision to make comments to the relevant Secretary of State (the Minister for Levelling Up, Communities and Housing for the CPO and the Minister for Transport for the

SRO) before they make their respective decisions on whether or not to confirm each of the orders.

- 5.3 Paragraph 2 of the CPO Guidance provides that the Council is expected to demonstrate that it has taken reasonable steps to acquire all of the land and rights and surrender and release all adverse interests included in the CPO by agreement. However, the CPO Guidance also acknowledges the benefits of preparing and making a compulsory purchase order in parallel with undertaking negotiations with affected parties, to avoid losing valuable time, build working relationships with affected parties and to make the acquiring authority's intentions clear from the outset.
- 5.4 Therefore, negotiations to acquire land and rights and surrender and release all adverse interests by agreement will not cease should the Council resolve to make the CPO. Instead, they will continue all the way through the process with a view to seeking to acquire land and rights and surrender and release all adverse interests by agreement rather than using compulsory purchase powers where this is possible based on reasonable valuation principles and within a timescale necessary to facilitate the Council's programme.
- 5.5 Land reference agents Ardent Management have been instructed by the Council to compile a detailed schedule of the identified third-party land interests within the CPO. Negotiations with owners of the land and rights required has been conducted on the Council's behalf by a firm of Chartered Surveyors, JLL, with officer support where appropriate. The Council has prepared a land acquisition strategy setting out how it will approach to the acquisition of all land and rights and surrender and release all adverse interests required for the Scheme.
- 5.6 The land included within the CPO has been separated into a variety of plots. The Council has successfully acquired the freehold interest in the majority of these and acquired rights and surrendered, released or varied various rights, interests and obligations where these have been necessary or desirable to facilitate the Langarth Garden Village. These are further detailed in the Statement of Reasons at Appendix 3. The Statement of Reasons as appended is in draft form and although substantially complete may evolve where further information is received through land referencing enquiries.
- 5.7 Discussions have commenced with Royal Cornwall Hospitals National Health Service Trust regarding the construction of Stage 5 of the NAR including the agreement of RCHT to the dedication of the existing access road as public highway.
- 5.8 Discussions have also taken place (and continue) with the Trustees of Threemilestone Fishing Club to surrender and release certain rights and

interests and grant the Council new rights and interest for the delivery of drainage infrastructure and generally facilitate the delivery of the Scheme.

- 5.9 There are a relatively small number of identified ownerships of freehold interests in the plots over which interests or rights are yet to be acquired. The Council is engaging with each of these owners and offers to acquire the land or rights by agreement have or will be made to each based on expert valuations undertaken by JLL. The ongoing land referencing process may reveal further detail of potential interests which will be followed up in a similar manner. The Cabinet has previously resolved (November 2020) to delegate authority to the Strategic Director for Economic Growth and Development (in consultation with relevant Members and officers) to permit the acquisition of such land and other interests.
- 5.10 While negotiations have taken place, to date it has not been possible to reach agreement with all those affected by the CPO. It is therefore appropriate, as the CPO Guidance advises, to progress the CPO as well as advancing negotiations as far as possible. The Council and will continue negotiations to acquire the land and rights and surrender and release all relevant adverse interests by agreement throughout the CPO process.
- 5.11 Attempts to conclude negotiations for all outstanding land and rights and surrender and release of all adverse interests, covenants and obligations required for the construction and operation of the NAR and associated development and infrastructure and land required for the delivery of the Scheme will continue.
- 5.12 Further details of the efforts made by the Council to acquire by agreement the land and rights and surrender and release of all adverse interests, covenants and obligations within the CPO are set out in section 9 of the Statement of Reasons at Appendix 3 to this report.
- 5.13 Once the CPO and SRO are made by the Council, they will then be publicised in accordance with the legislation. In the event that objections are received in relation to one or both of the Orders, it is likely that the relevant Secretaries of State will require a public local inquiry to be held so that the Orders and any objections to them can be considered by an Inspector. Either the Inspector or the relevant Secretaries of State for each of the Orders will make the final determination upon whether or not to confirm the Orders (and if to confirm the Orders, whether with or without modifications).

6 Financial Implications of the proposed course of action/decision

- 6.1 The total existing budget for the total LGV scheme is £165m that is funded from Council borrowing (£109.5m), Council reserves (£8m) and Government

HIF grant (£47.5m). The existing financial model is based on the Council funding (£117.5m) being repaid plus the cost of financing the borrowing from the capital receipts generated from the eventual disposal of the land not required by the Council for Public infrastructure.

- 6.2 Further details of the specific detailed costs relating to the acquisition of land and delivery set out in this report are set out in section 10 of the Statement of Reasons at Appendix 3 to this report and in the confidential financial statement at Appendix 5.
- 6.3 There are three separate issues
 - a) Overall financial envelope – as addressed in the decisions Cabinet in December 2018, full Council in January 2019, and Cabinet in November 2019 and November 2020
 - b) Authority and delegations to enter into agreements, commit funds and resolve such issues as arise in pursuit of delivery of the scheme, particularly as set out in the recommendations of Cabinet in November 2020.
 - c) Overall delivery strategy within the existing financial envelope (or as may be amended in the future) – as set out in section 10 of the Statement of Reasons at Appendix 3 to this report
- 6.4 This report is not seeking to change the financial parameters set out in the November 2020 Cabinet report and there remain sufficient uncommitted funds to make the compensation necessary under the powers that this report seeks to rely on for the land it identifies as being required, and the authority to commit these funds was granted by way of the November 2020 Cabinet decisions. It will however mean that the existing approved budget becomes virtually fully committed on existing activity, funding of activity not yet committed but required to deliver the Council's master developer liabilities will have to wait until either existing land is disposed of or the Council agrees to increase its peak debt borrowing (which will create a revenue budget pressure in servicing the borrowing).
- 6.5 Furthermore, this report seeks to mitigate the delivery risk of not being able to complete the NAR as anticipated in order to draw down the grant funds from Government. Although the conditions of this funding are phased and allow staged implementation, delivery of an incomplete road would not address the wider strategic transport issues which the new planning consent envisages or unlock the wider benefits of the Scheme.
- 6.6 Paragraph 14 of the CPO Guidance provides that the Council should be able to provide substantive information of the sources of funding available for both

acquiring the land and implementing the Scheme and that the funding will be available early in the process. To this end, the Council has approved £117.50m of Council investment (funded from borrowing and reserves) for the development and this has been supplemented by £47.5m of Homes England Housing Infrastructure Funding (HIF).

7 Legal/Governance Implications of the proposed course of action/decision

7.1 The Council has the power pursuant to section 226 of the Town and Country Planning Act 1990 to compulsorily acquire any land within its area where it thinks:

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

provided that it thinks that the development, re-development or improvement referred to are likely to contribute to the achievement of any one or more of the objects of promotion or improvement of the economic, social or environmental well-being of the area and subject to authorisation by the Secretary of State.

7.2 Compulsory purchase is described as a draconian power because it interferes with the human rights of those with an interest in the land. The test which is applied in domestic law is that a CPO should only be made if there is "a compelling case in the public interest". An assessment of the compelling case in the public interest for making the CPO is set out in section 8 of the Statement of Reasons at Appendix 3 to this report and a summary of public benefits is set out in section 3 above.

7.3 Both the Council and the Secretary of State will need to be satisfied that the public interest in facilitating the delivery of the Scheme, including the NAR and associated infrastructure, is sufficient to justify the interference with the rights of affected parties and that any exercise of compulsory purchase powers would be proportionate. The CPO therefore prioritises the acquisition of land required to deliver:

- a) the NAR;
- b) other land required to deliver strategic infrastructure required to deliver the Scheme including that required for access;

- c) small areas of unregistered land (highways and non-highways land) required for delivery of the Scheme where it has not been possible to confirm landownership and as a result, there is little to no prospect of the land being acquired by agreement; and
- d) areas of land already within the Council's ownership but where there remain third party interests excluded from the title (e.g. mines and minerals) and it is necessary that these are acquired in order to secure the future delivery of the Scheme.

- 7.4 It is important that any report recommending the making of a CPO and any decision on the report takes account of all relevant considerations including, on the one hand, the benefits of the Scheme (including the economic, social and environmental well-being of the area) and on the other, the impact on affected owners and occupiers of the land.
- 7.5 In deciding whether or not to make the CPO, the Council should have regard to the Government's policy guidance on compulsory purchase. Cabinet should therefore consider the land and rights needed to facilitate implementation of the Scheme (including the NAR and related development and infrastructure), the efforts to acquire such land and rights by agreement, the deliverability of the development to be undertaken on both the land to be included within the CPO as well as the wider Scheme including the planning, viability and funding position, any possible alternatives to compulsory purchase, the human rights and equalities implications of the proposals and all other relevant factors. Each of these factors is considered in full in the draft Statement of Reasons provided at Appendix 3 to this report and are further summarised at sections 3 and 9 of this Cabinet report.
- 7.6 In respect of potential acquisitions of land by agreement, section 227 of the Town and Country Planning Act 1990 provides the Council with powers equivalent to those described in paragraph 7.1 above, subject to the same requirements other than the need for the Secretary of State's authorisation. The Council additionally has a statutory power under section 120 Local Government Act to acquire land for any of its functions, one of these being the statutory power under section 14 of the Education Act 1996 to ensure sufficient primary and secondary schools are available in its area.
- 7.7 The Council has power to dispose of land which it holds for planning purposes under section 233 of the Town and Country Planning Act 1990 and power to dispose of land held for most other purposes under section 123 of the Local Government Act 1972. A disposal under section 233 should be on terms which are "expedient" to secure certain planning purposes. Both disposal powers are subject to the requirement to obtain "best consideration reasonably obtainable" unless the Secretary of State has given consent to the

disposal or the Council is granting or assigning only a short lease (seven years or less).

- 7.8 There is a need to progress the delivery of the NAR in a timely way in order to comply with the obligations of the funding agreement that the Council has entered into with Homes England.
- 7.9 The CPO does not include all of the area of land within the Scheme boundary. Certain parcels of land within the Scheme boundary are not proposed to be included in the CPO at this stage, allowing the existing landowners of these parcels the opportunity to bring forward development of these plots in accordance with the hybrid planning permission for the Scheme, and with the benefit of upfront delivery of the facilitating site wide infrastructure.
- 7.10 On the basis that the exercise of the Council's powers of compulsory purchase (if authorised by the Secretary of State's confirmation of the CPO) would be used to acquire land only where acquisition by agreement is not possible within the requisite timescales, Cabinet is recommended to approve that the Council makes a CPO as the most appropriate way of securing the land required to deliver those elements that are critical to ensuring the wider delivery of the Scheme.
- 7.11 In addition to the CPO, the scheme design for the NAR also has implications for the existing highways and side roads and requires the making of an SRO. The SRO needs to be made to authorise the stopping up, alteration, creation and improvement of highways which will connect with the A390 and the NAR (which will be new classified road to be delivered as part of the Scheme), and also to authorise the construction of new highways, the stopping up of private means of access to premises, the provision of new private means of access to premises and other associated works, including alterations to public rights of way. Details of these changes are shown on the draft SRO plans in Appendix 2.
- 7.12 Any compulsory purchase activity will be used as a last resort. Affected landowners and third party interest holders are being offered financial compensation in accordance with compulsory purchase legislation and guidance to acquire their land and surrender their interests by agreement. No residents or businesses will be required to relocate as a result of the making, confirmation or implementation of the CPO or SRO.

Other matters not dealt with elsewhere in this report:

- 7.13 Paragraph 15 of the CPO Guidance requires the Council to show that the development of the Scheme is unlikely to be blocked by any physical or legal impediments to implementation e.g. the need for further key infrastructure works or the need for planning permission.

- 7.14 Planning permission for the Scheme (in outline but with full details for the NAR) together with listed building consent to relocate the listed milestone was granted on 5 April 2022 while permission for the energy centre was granted on 21 January 2021. The necessary highways orders to deliver the required highways infrastructure for the Scheme will be achieved through the making and confirmation of the SRO.
- 7.15 Pre-application advice has been sought in connection with the delivery of SANG at Govers and the access to Govers Park and applications for the approval of reserved matters are due to be submitted to the local planning authority for this part of the Scheme shortly
- 7.16 Further assessment of the orders and consents required to deliver the Scheme are set out in section 10 of the Statement of Reasons at Appendix 3 to this report.

Additional requirements where CPO is made pursuant to section 226(1)(a) of the 1990 Act

- 7.17 Where, as here, the CPO is to be made using the Council's powers under section 226(1) of the 1990 Act, paragraph 106 of the CPO Guidance sets out four additional specific matters to be considered by the Secretary of State before confirming the CPO.

Compliance with Local Plan

Issue 1: whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.

- 7.18 The Cornwall Local Plan (November 2016) sets out a range of policies for development up to 2030 across the whole county, including some specific parameters (e.g. housing allocation) for Truro and Threemilestone. The Truro & Kenwyn Neighbourhood Plan (November 2016) has taken that framework a stage forward, setting a land use framework to manage the delivery of housing and other development in the plan area and has relied upon the development at Langarth to meet much of the area's apportioned housing needs. The emerging Truro & Kenwyn Neighbourhood Plan Review document builds on this planning history and contains a specific allocation for Langarth. The proposals for Langarth Garden Village are intended to unlock the stalled delivery of the housing commitments identified in the Local Plan and reflected in the Neighbourhood Plan and to thus support the strategic objectives of the development plan.

- 7.19 Further assessment of how the purpose for which the land is to be acquired fits with the adopted Local Plan is set out in sections 2 and 6 of the Statement of Reasons at Appendix 3 to this report.

Economic, social or environmental well-being of the area

Issue 2: the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.

- 7.20 Delivery of the Scheme will unlock a new landscape led development of up to 3550 dwellings plus 200 extra care units and 50 units of student/health worker accommodation. The Scheme will secure affordable housing at policy level. In addition it will create five new local centres including retail, offices, restaurants and cafes, health and community facilities, a local care health centre, a blue light centre for emergency services and up to two primary schools together with associated areas of open space, renewable energy provision and energy centre and 600 extra spaces at the Park and Ride and Park and Ride Extension. The Scheme will deliver jobs in construction, retail, community services, the care industry and hospitality as well as home working opportunities.
- 7.21 Further assessment of the extent to which the purpose of the CPO contributes to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area is set out in sections 6 and 8 of the Statement of Reasons at Appendix 3 to this report.

Alternatives to the use of compulsory purchase powers

Issue 3: whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.

- 7.22 This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.
- 7.23 The Scheme has been developed following a master-planned approach which considered a range of alternative options for the siting of the key infrastructure. A key constraint to the location of the various elements of the Scheme (including the NAR) is the existing site topography with ground slopes ranging between 5% and 20%. The site has the benefit of a range of permissions promoted by the former landowners and developers and existing owners of that part of the site that is not within the Council's ownership. However, as identified above, the existing consents represent an accumulation of competing land uses (they were mostly retail led), failed to

adopt the necessary sitewide approach to the design and delivery of key infrastructure and represent an imbalanced approach to overall design and delivery of development.

Financial viability of the Scheme

Issue 4: the potential financial viability of the scheme for which the land is being acquired.

- 7.24 A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the relevant scheme will proceed.
- 7.25 Viability has always been a key part of the assessment of the scheme, and the Council has been able to take a long term view to ensure that delivery is in accordance with policy and the principles of development set by the adopted master-plan. An agreement for the funding of the cost of land acquisition and construction of the NAR and associated infrastructure has now been completed with Homes England.
- 7.26 Further assessment of the funding and viability of the development to be undertaken on the land within the CPO together with the wider Scheme is set out in section 10 of the Statement of Reasons at Appendix 3 to this report.

Key issues relevant to the consideration of the SRO

- 7.27 An SRO will also be required for the stopping up and improvement of highways which connect with the new classified road to be delivered as part of the Scheme, for the construction of new highways, the stopping up of private means of access to premises, the provision of new means of access to them, and other associated works, including alterations to Public Rights of Way.
- 7.28 The Council, in preparing and making the SRO, has had regard to the advice contained in the Department of Transport Circular 1/97 "Highways Act 1980: Orders Under Section 14 of the Highways Act 1980 and Opposed Orders Under Section 124 of that Act". In updating the decision wheel as set out at section 9 of this report, the Council has had regard to the equalities impacts of a decision to make and implement the SRO.
- 7.29 If made by the Council, the SRO will be submitted to the Secretary of State for Transport who will consider any objections to the SRO before deciding whether or not to confirm the order. Where a CPO and SRO are made together it is common for objections to be considered by a single inspector at a conjoined public inquiry.

- 7.30 Further details of the proposed SRO are set out in the Statement of Reasons attached at Appendix 3 to this report together with the draft of the SRO and associated plans at Appendix 2.

Key issues relevant to the use of Section 203 of the Housing and Planning Act 2016

- 7.31 The effect of section 203 of the Housing and Planning Act 2016 is to override existing restrictive covenants and third party rights over land that has been acquired or appropriated by the Council for the purposes of development. All land within the boundary of the site and which was acquired for the purpose of delivering the Scheme will therefore already have the potential to benefit from section 203 provided that the statutory conditions to section 203 are also met. Where section 203 applies, should delivery of the Scheme interfere with third party restrictive covenants or rights over the land, those third parties with the benefit of such restrictive covenants or other rights will be able to submit a claim for compensation (pursuant to section 204 of the 2016 Act) against the party that undertook the development, but will not be able to prevent the development from coming forward. Note that if the developer does not pay the compensation, the Council must do so and the need for contractual provisions to indemnify the Council against this risk should be considered at the point of entering into any form of agreement for the disposal or development of any parcel of land within the boundary of the Scheme to which section 203 applies.
- 7.32 This same position regarding section 203 will apply to any land acquired by the Council pursuant to the CPO or appropriated by the Council for planning purposes pursuant to section 122 of the Local Government Act 1972. The impact on those with the benefit of existing restrictive covenants and third party rights over the land and that will be overridden through the development of the Scheme has been considered through the updating of the decision wheel. Further details of the results of the decision wheel are set out at section 9 of this report and the issues are also reflected in sections 8, 12 and 13 of the Statement of Reasons provided at Appendix 3 to this report.
- 7.33 Compensation under section 204 is generally based on the reduction in the value of the claimant's land (rather than any "ransom value").
- 7.34 A reasonable allowance has been included within the overall budget to cover the potential liability for claims for compensation pursuant to section 204 of the 2016 Act.

Key issues relevant to the decision to appropriate land for the purposes of the Scheme

- 7.35 The land in the Council's ownership within the Scheme boundary predominantly comprises land acquired for the purposes of developing the Scheme. Section 203 of the 2016 Act therefore applies to this land as set out elsewhere above. However, there have been changes to the development proposals during the period of the Council's land acquisitions. The Council therefore proposes to appropriate all of its existing land interests within the Scheme boundary for the purposes of the Scheme.
- 7.36 Practice and case law indicate that there is nothing to prevent a local authority from "re-appropriating" its land for a different planning purpose to that originally proposed. It is therefore proposed that the Council resolves to appropriate the land shown on the plan at Appendix 4 for the purposes of delivering the Scheme. The general power of appropriation under section 122 LGA 1972 applies.
- 7.37 There are two basic statutory requirements for the appropriation of land under section 122 of the LGA 1972:
- a) the land is no longer required for the purpose for which it is held immediately before the appropriation; and
 - b) the Council would (in principle) have power to acquire land by agreement for the "new" purpose.
- 7.38 In respect of the first of the above requirements, the Council must give specific consideration to the question of whether the land proposed for appropriation (as shown in Appendix 4) continues to be required for its existing purposes and in doing so, it must consider the comparative needs in the public interest for the existing use and the proposed new use. If the Council is satisfied that there is a greater need in the local public interest for the Scheme as opposed to the current uses of the land that condition would be satisfied. Here, the land is currently undeveloped and is not put to any active use. It is required to be developed in accordance with the hybrid permission in order to facilitate delivery of the Scheme and is to be appropriated for that purpose.
- 7.39 In respect of the second requirement, the Council would (if it did not already own the land) have power to acquire the land shown in Appendix 4 for planning purposes by agreement under section 227 of the T&CPA 1990 in order to facilitate the Scheme. Both requirements are considered to be satisfied with respect to the Council's interests in that part of the site shown on the plan at Appendix 4.
- 7.40 In addition to the specific requirements of section 122, case law indicates that where third parties are known to have rights which may be affected by the appropriation, a local authority should not use its powers unless it has good

reason to believe that the interference with their rights is necessary. The Human Rights implications of the proposals are referred to in section [9] below and section 13 of the Statement of Reasons at Appendix 3. The Council has sought, where possible, to identify those with existing rights over the land that will be impacted by the appropriation through the land referencing process. The impact on those with the benefit of existing restrictive covenants and third party rights over the land and that will be overridden through the development of the Scheme has additionally been considered through the updating of the decision wheel. Further details of the results of the decision wheel are set out at section 9 of this report and in the Statement of Reasons provided at Appendix 3 to this report.

8 Risk Implications of the proposed course of action/decision

- 8.1 Acquisition of those remaining third party land and rights and the surrender of the remaining adverse interests required to facilitate delivery of the Scheme, together with the appropriation of the land at Appendix 4 for planning purposes and securing the necessary ability to make required changes to the local highways network, are key to ensuring that the Council is able to drive forward the vision for Langarth Garden Village and to deliver the economic, social and environmental benefits of the Scheme.
- 8.2 The principal legal risks of proceeding to make the CPO and SRO, together with appropriating those land interests held by the Council and that are not already held for the purposes of securing the development of the Scheme, are reviewed below.
- 8.3 There is a risk that the relevant Secretary of State decides not to confirm the CPO or SRO resulting in abortive costs and an adverse impact on public confidence in the Council's vision for the Langarth Garden Village. The risk of challenge is mitigated as the Council has secured specialist legal, highways and valuation support to advise on the preparation of the CPO and SRO.
- 8.4 There is a risk that the Council's decision to make the CPO and SRO or to appropriate the land shown at Appendix 4 is challenged by way of judicial review or that the relevant Secretary of State's decision to confirm either the CPO or SRO is subject to a legal challenge. This would again lead to abortive costs together with an adverse impact on the programme for delivery of the Scheme. The risk of challenge is mitigated as the Council has secured specialist legal support to advise on these complex legal processes.
- 8.5 Where land is acquired pursuant to the CPO, or rights are overridden or extinguished through the operation of section 203 of the Housing and Planning Act 2016 or sections 236, 271 or 272 of the Town and Country Planning Act 1990, the Council will be required to pay compensation based on principles established through statute and case law (commonly referred to as

the “Compensation Code”). The exact amount of compensation payable will not be known until the affected party has submitted its claim for compensation following the acquisition and is subject to determination by the Upper Tribunal (Lands Chamber) if agreement on the sum payable cannot be reached between the Council and the relevant claimant. This risk is mitigated, as far as is reasonably possible at this stage, by the Council securing specialist valuers to advise on the likely quantum of the compensation settlements.

- 8.6 A key risk is management of the programme of activities required in support of exercising the powers. To that end it is important to record that programme here. This is an update to the programme set out in the report to the 4 November 2020 Cabinet meeting and takes account of the changes to programme for obtaining planning permission for the Scheme. Key (assumed or estimated) dates are as follows:

19 May 2022 – anticipated date for expiry of the 6 week judicial review period for the hybrid planning permission.

15 June 2022 - Report on progress of acquisition of required land and rights and surrender and release of all adverse interests by agreement to recommend the making of a CPO and associated highways orders together with the decision to appropriate land for planning purposes in respect of any land and interests and/or rights required to facilitate the Scheme and which have not been acquired by agreement. Report to be supported by near final drafts of all necessary documentation needed to progress the CPO, SRO and appropriation (draft order, highways orders, CPO map and highways order plans, Statement of Reasons, statutory notices for press, affected parties and site and certificates to accompany submission to the Secretaries of State).

June/July 2022 – if Cabinet resolves to make a CPO and SRO, the Council (via further subsequent decision reports in pursuance of any delegations in the recommendations to this report if required) "makes" the Orders i.e. seals and dates the Orders, publishes, serves and posts site notices and submits the Orders to the relevant Secretaries of State. A 3 to 6 week objection period is to be specified to co-ordinate the programmes for the CPO and the SRO. Relevant land is appropriated for planning purposes pursuant to s122 of the 1972 Act.

November 2022 – estimated date of public inquiry opens to consider objections (if any) to the Orders (assume 8-10 day sitting period).

May 2023 - estimated date of decisions of Secretaries of State on confirmation of the CPO and SRO.

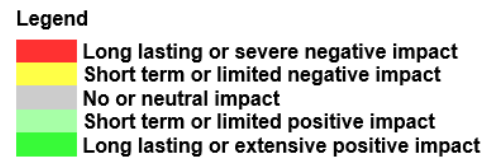
July 2023 – statutory challenge period to Secretary of State decisions to confirm the Orders expires.

October 2023 – estimated date on which the Council could vest land if the CPO is implemented through the making of general vesting declaration (GVD). The new rights or minor interests would be subject to Notices to Treat and Notices of Entry enabling the Council to exercise the new rights or acquire the minor interests on the same day as it is able to take possession of the land acquired by GVD.

9 Cornwall Development and Decision Wheel

- 9.1 Paragraph 6 of the CPO Guidance sets out how authorities should approach complying with their Public Sector Equality Duty as part of the compulsory purchase process. All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities must have due regard to the need to: (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.
- 9.2 The Council seeks to weigh the impacts of its decisions through the use of a decision wheel process. A decision wheel was previously completed and included within the November 2020 Cabinet report. However, as set out below, the Council has undertaken an updated decision wheel exercise which includes consideration of the impacts of the decision to make the CPO and SRO. While this report does not change the underlying factors to the earlier assessment, the new iteration reflects the greater level of detail now held in relation to both land ownership (as a result of additional up to date land referencing undertaken in preparation of the draft CPO) and the proposed development (following its progress through the planning process, culminating in the grant of planning permission on 5th April 2022).
- 9.3 Both assessments concluded that the delivery of the Scheme will have overall beneficial impacts for both existing local residents and the new residents of the Scheme while the impacts on those with protected characteristics directly affected by the CPO and SRO will be neutral. The impacts on those with protected characteristics will continue to be reviewed throughout the life of the Scheme's delivery programme, in accordance with the Council's Public Sector Equality Duty.
- 9.4 The products of the revised assessment are set out below.

9.5 Environmental and Social Assessment



9.6 Equality and Inclusion Assessment



Legend

	Long lasting or severe negative impact
	Short term or limited negative impact
	No or neutral impact
	Short term or limited positive impact
	Long lasting or extensive positive impact

- 9.7 There is a significant amount of detail in the assessment which overlaps much of what is in the Statement of Reasons, the preceding Cabinet reports listed in Section 4 and the reports associated with the planning applications, particularly PA20/09631 and therefore it is included in Appendix 6 to avoid further duplication.

10 **Options available**

- 10.1 Options in relation to taking forward the decisions relevant to the making and implementation of the CPO, the appropriation of land at Appendix 4 for the purposes of the development and for the use of powers under sections 172 and 203 of the 2016 Act, sections 236, 251, 271 and 272 of the 1990 Act:

The options are either to take forward the decision to make the CPO and the acquisition/extinguishment/overriding or all relevant land and new rights/existing rights or to continue to seek to acquire such land, new rights

and variation or surrender of existing rights by agreement with the relevant third party owners of such land interests. It is recommended that Cabinet resolves to use its statutory powers to acquire the necessary land and interests (or extinguish/override existing interests) in order to ensure that the development of the Scheme is able to come forward in accordance with the Council's development programme (which factors in the timing conditions attached to the Homes England funding).

10.2 Options in relation to taking forward the decisions relevant to the making and implementation of the SRO:

Without the SRO, the Council will not be able to implement the NAR and related changes to the local highways network required for the delivery and operation of the Scheme. There are therefore no alternative options to the making of the SRO that would allow the Scheme to come forward.

11 **Supporting Information (Appendices)**

- 11.1 Appendix 1 – Draft compulsory purchase order, schedule and map.
- 11.2 Appendix 2 – Draft Side Roads Order and map.
- 11.3 Appendix 3 – Draft Statement of Reasons.
- 11.4 Appendix 4 – Land to be appropriated for the purposes of development of the Scheme.
- 11.5 Appendix 5 – CONFIDENTIAL Financial statement (EXEMPT).
- 11.6 Appendix 6 – Cornwall Development and Decision Wheel Assessment.

12 **Background Papers**

- 12.1 None

13 **Approval and clearance**

All reports:

Final report sign offs	This report has been cleared by (or mark not required if appropriate)	Date
Governance/Legal (Required for all reports)	Mark Pearce	7 June 2022
Finance (Required for all reports)	Russell Ashman	07.06.2022

Equality and Diversity (If required)		
Service Director (Required for all reports)	Louise Wood	1 June 2022
Strategic Director (If required)	Phil Mason	7 th June 2022