Open Agenda

Cabinet

Tuesday 17 October 2023
11.00 am
Rooms GO2A, B and C, 160 Tooley Street, London SE1 2QH

Appendices – Part 2

List of Contents

Contact

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Date: 9 October 2023

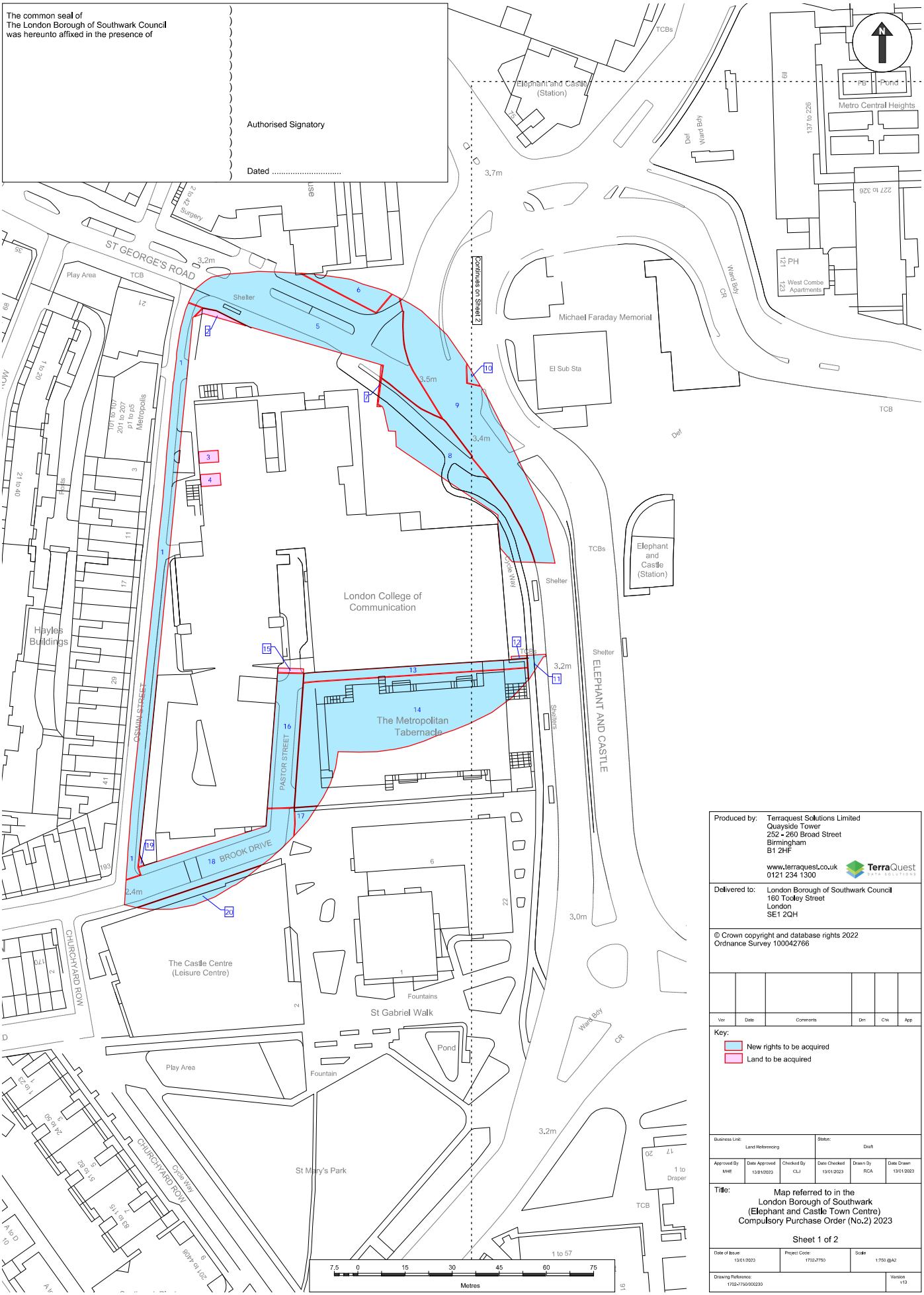
Appendix A
Draft CPO Map

Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023

The common seal of
The London Borough of Southwark Council
was hereunto affixed in the presence of

Authorised Signatory

Dated .....



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Ver	Date	Comments	Drn	Chk	App

Key:

- New rights to be acquired
- Land to be acquired

Business Unit:			Status:		
Land Referencing			Draft		
Approved By	Date Approved	Checked By	Date Checked	Drawn By	Date Drawn
MHE	13/01/2023	CLJ	13/01/2023	RCA	13/01/2023

Title:
Map referred to in the
London Borough of Southwark
(Elephant and Castle Town Centre)
Compulsory Purchase Order (No.2) 2023

Sheet 1 of 2

Date of Issue:	Project Code:	Scale
13/01/2023	1702-7750	1:750 @A2
Drawing Reference: 1702-7750/000230		Version v13

Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023

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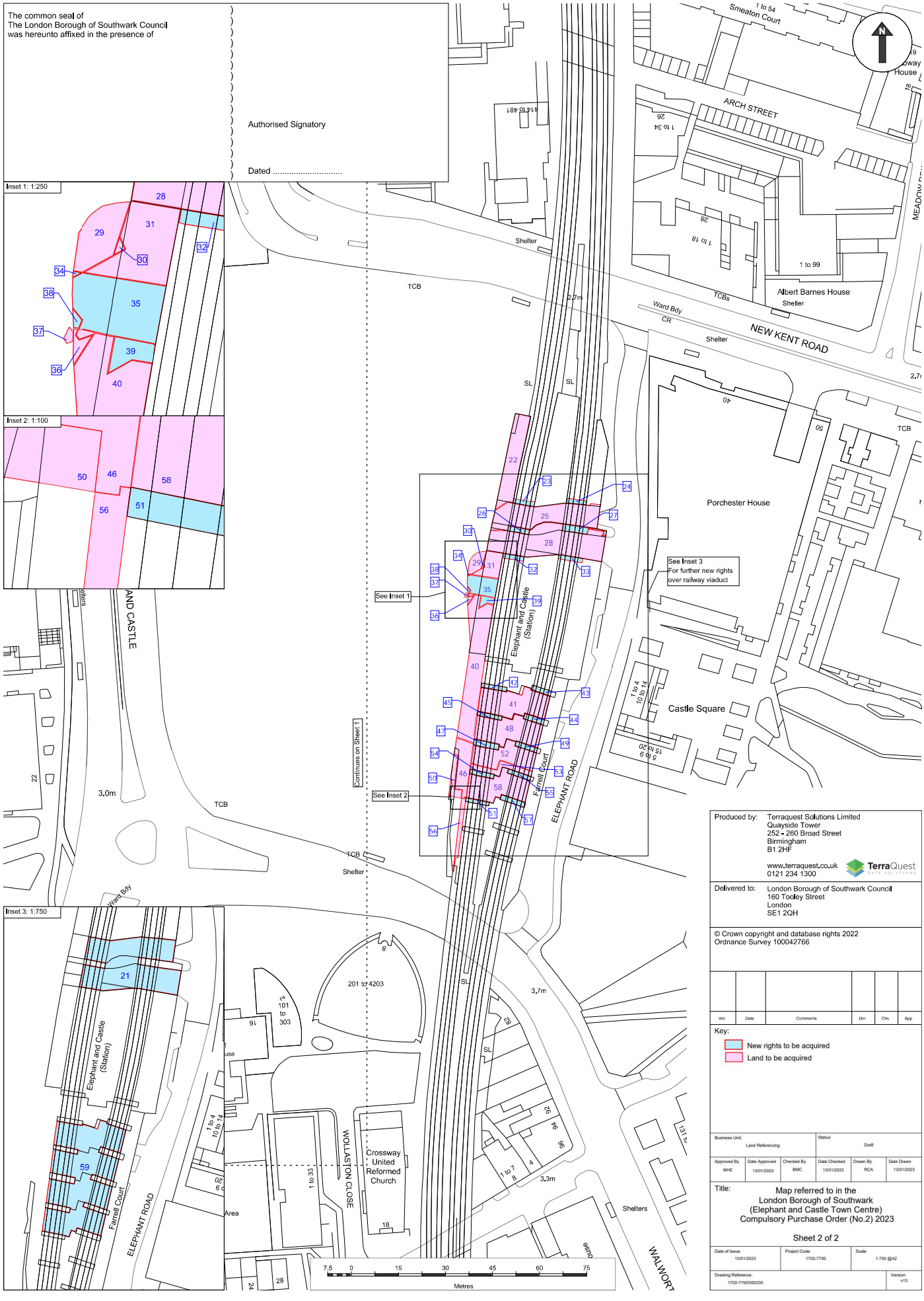

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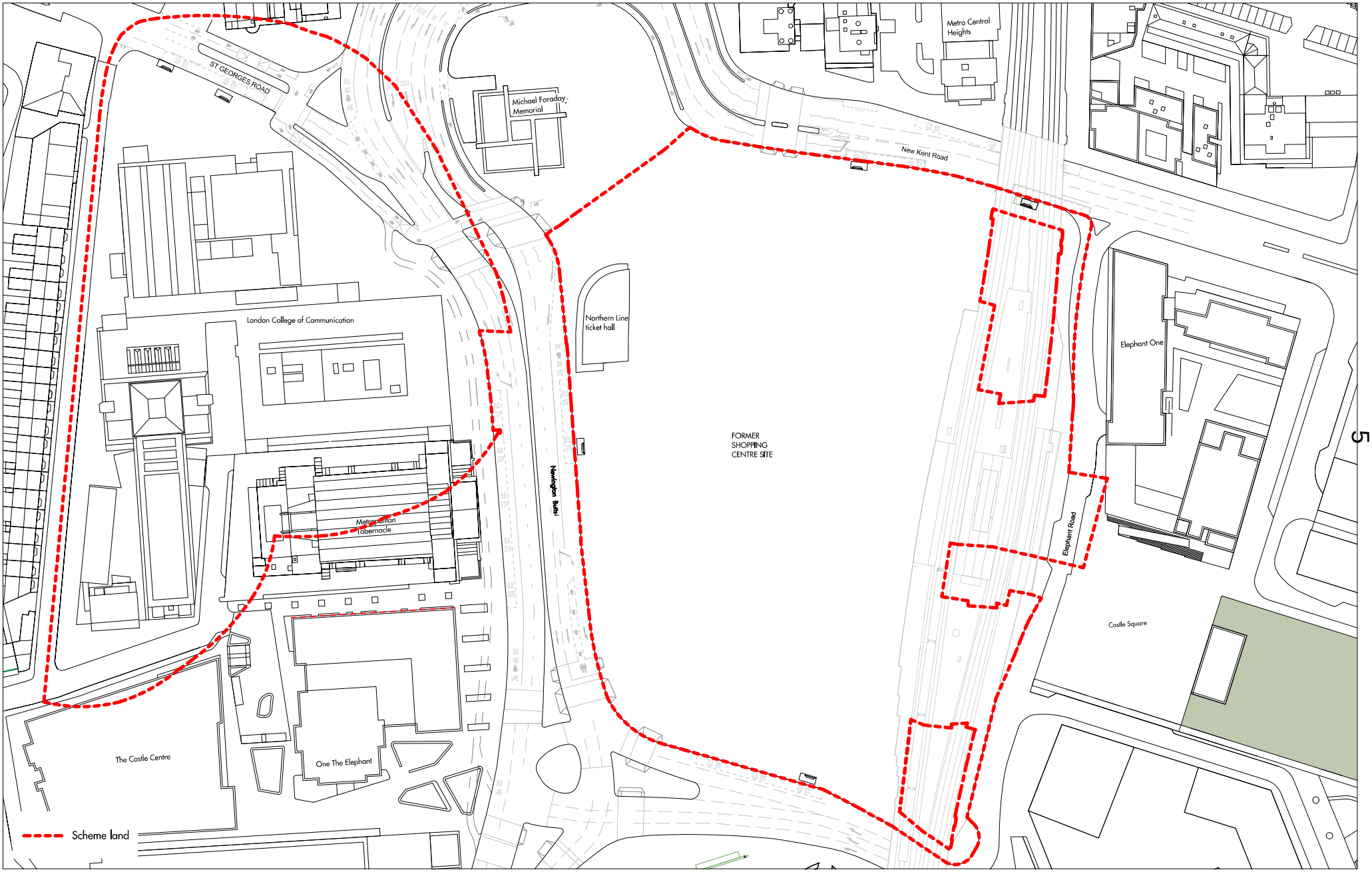
13/01/2023	1702-7750	1:750 @A2

Drawing Reference:	Version
1702-7750/000230	v13

Appendix B
Scheme Land plan



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P1	2.07.22	ISSUED FOR INFORMATION	EJ
P2	19.10.22	ISSUED FOR INFORMATION	DN

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A&M JOB No: 935_06

ELEPHANT AND CASTLE : TOWN CENTRE

Elephant & Castle Town Centre Redevelopment - Current

SCHEME LAND

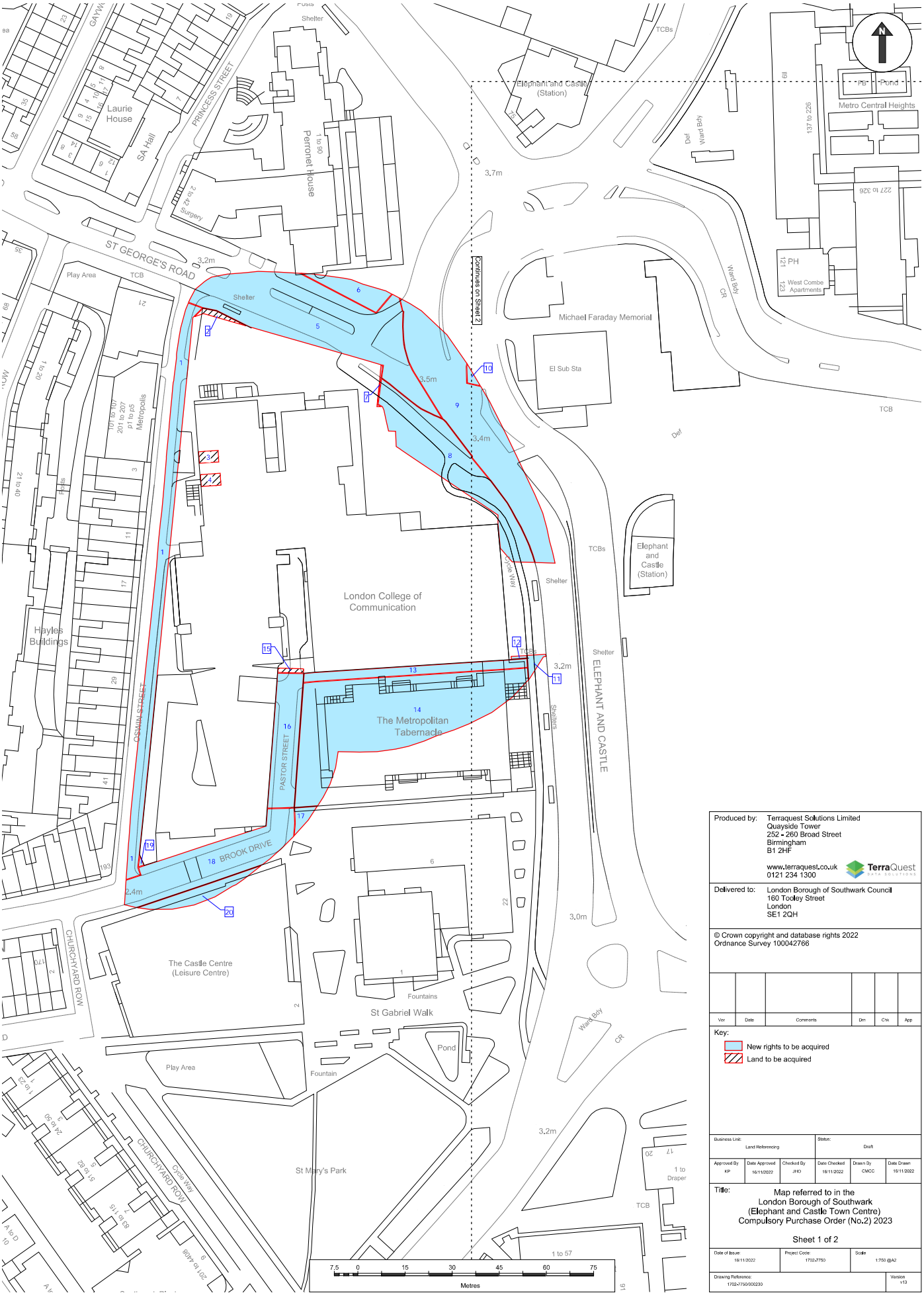
ETC-AAM-EX-DR-A-100024

P2
Revision

SCALE 1 : 500 @A1
SCALE: 1 : XXX @A3

Appendix C

Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023



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Business Unit: Land Referencing			Status: Draft		
Approved By: KP	Date Approved: 16/11/2022	Checked By: JHO	Date Checked: 16/11/2022	Drawn By: CMCC	Date Drawn: 16/11/2022

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Sheet 1 of 2

Date of Issue: 16/11/2022	Project Code: 1702-7750	Scale: 1:750 @A2
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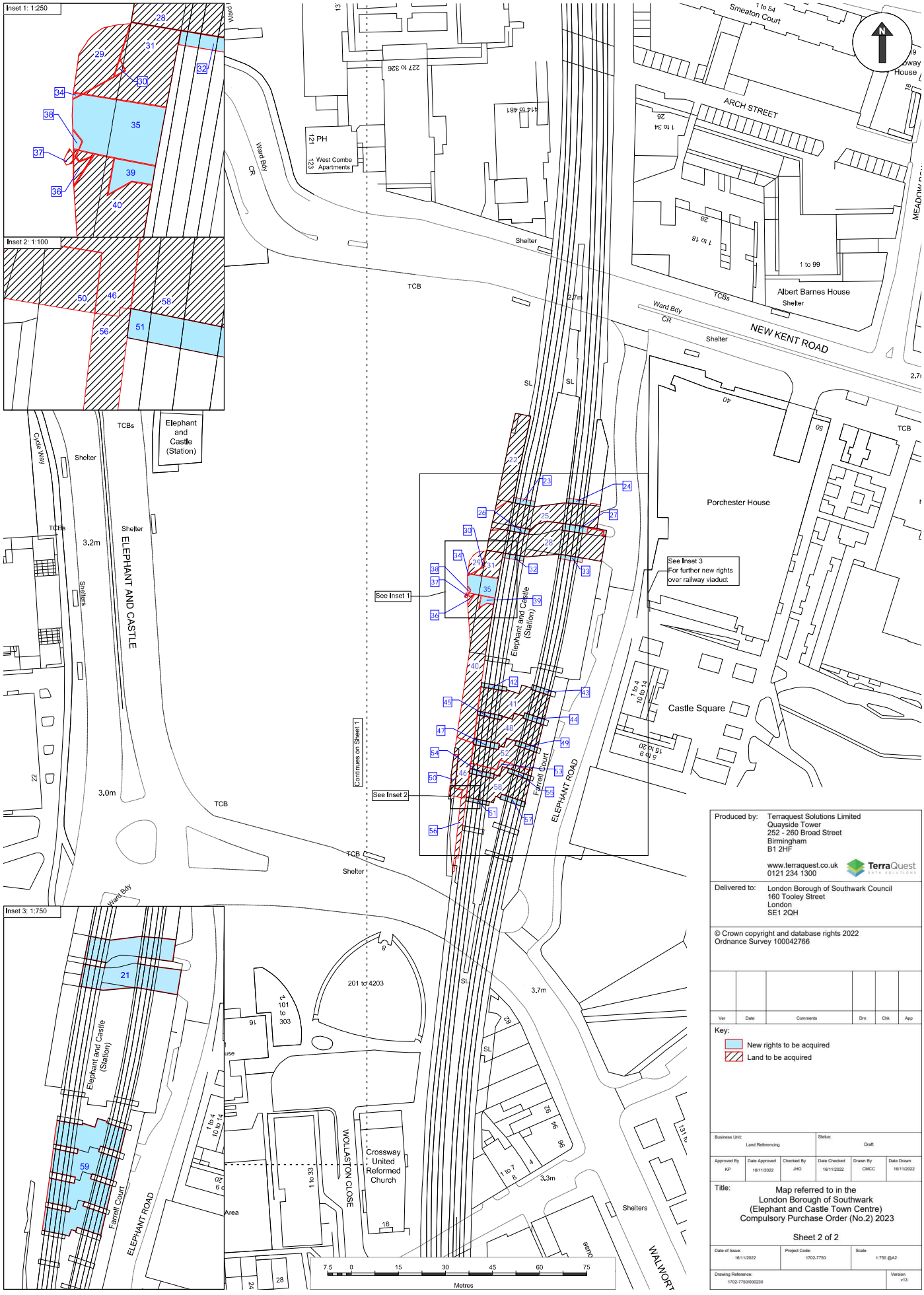

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Sheet 2 of 2

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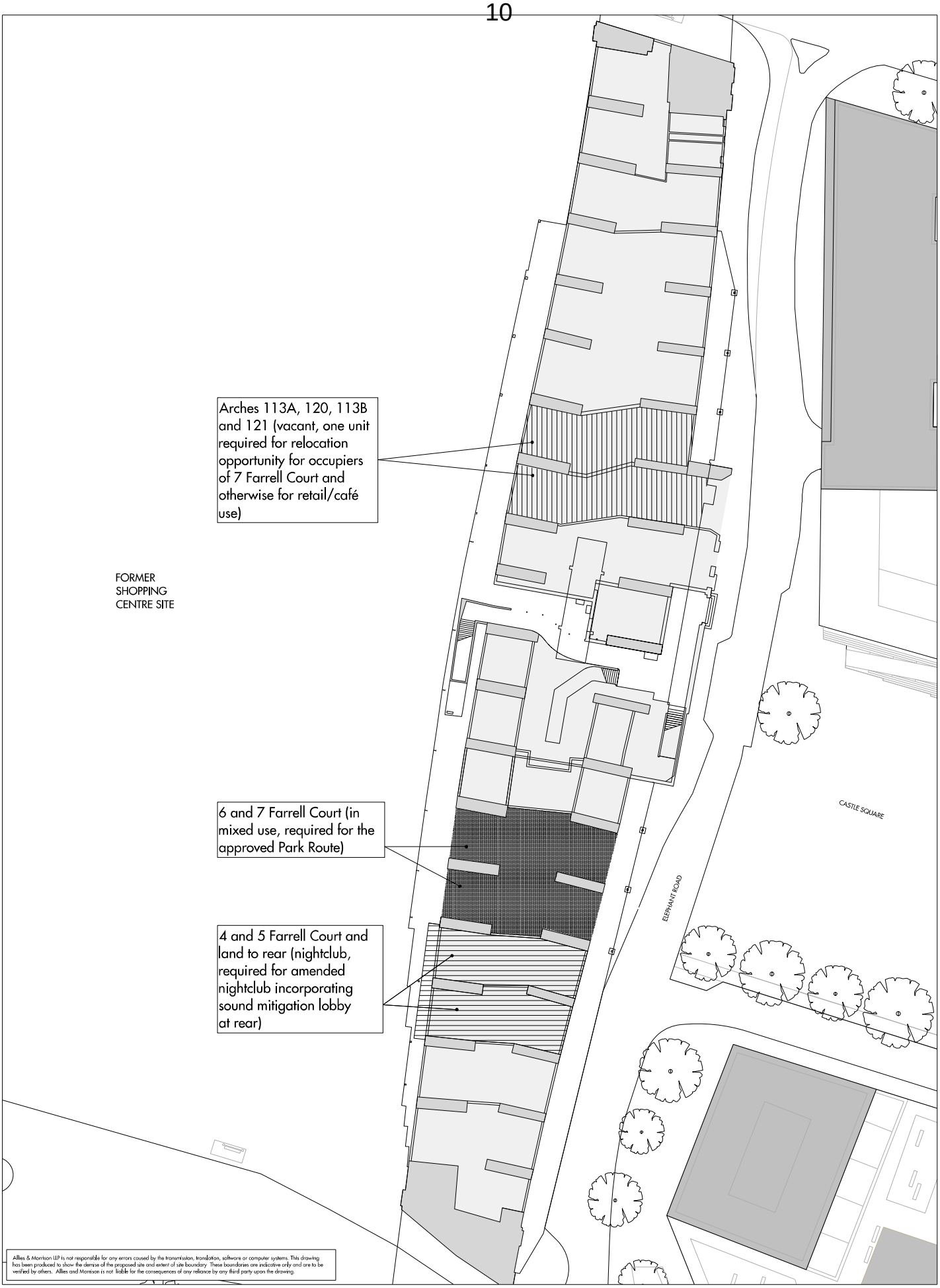
Drawing Reference:	Version
1702-7750/000230	v13

Appendix D



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P4	14.09.23	ISSUED FOR INFORMATION	EM

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ELEPHANT AND CASTLE : TOWN CENTRE
ELEPHANT & CASTLE RAILWAY ARCHES
INDICATIVE LOCATION PLAN
ETC-AAM-EX-ZZ-DR-A-100023

P4
Revision

SCALE 1 : 250 @A1
SCALE: 1 : 500 @A3

APPENDIX E

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

Planning Policy

Background

1. A Development Plan sets out a local authority's policies and proposals for land use in their area. The Development Plan for Southwark consists of the Southwark Plan 2022 and the London Plan 2021. The Southwark Plan 2022 replaced the Elephant and Castle Supplementary Planning Document (SPD) 2012. The National Planning Policy Framework, the London Plan and Southwark Plan contain policies which support town centre, mixed-use developments on previously developed (brownfield) land. In the context of Elephant and Castle town centre, these policies encourage a suitable mix of uses, including commercial and residential uses, through regeneration and the efficient use of land. The proposal is in accordance with these policies.

2. Relevant policies from the Development Plan are listed in the notes at the end of this Appendix.

Site Allocation

3. In the London Plan, the site is located within the Elephant and Castle Opportunity Area, the Central Activities Zone (CAZ) and forms part of an area designated as a Major Town Centre. The site is suitable for Tall Buildings under policy P17 (Tall Buildings) of the Southwark Plan because it is in the CAZ and a Major Town Centre.

4. In the Southwark Plan, the site is the subject of Proposal Site policy NSP48 (Elephant and Castle Shopping Centre and London College of Communication), a large area at the centre of Elephant and Castle identified as being suitable for comprehensive mixed-use redevelopment. In terms of housing policy, the site is in an area where a minimum of 35% affordable housing is required.

5. The allocation requires redevelopment to enhance connectivity to the existing cycle network and walking routes, improving the accessibility to the bus, tube and station interchange and enable the Low Line walking route along the railway viaduct.

6. The site sits within Zone 1 and has a Public Transport Accessibility Level (PTAL) of 6b - which is the best.

7. The London View Management Framework 2012 provides that Elephant and Castle sits in the background of townscape view 23A1 looking from the Serpentine Bridge in Hyde Park to Westminster.

National Planning Policy Framework (NPPF), July 2021

8. The NPPF sets out the Government's strong commitment to delivering sustainable development. It advises that there are three elements to sustainable development; economic, social and environmental. Sustainable development is the principal theme underpinning both

London-wide and Southwark policies, where the regeneration of areas such as the Elephant and Castle is of high priority.

9. The NPPF acknowledges the important role that town centres play at the heart of local communities. Paragraph 86(a) of the NPPF states that planning policies should define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters.

10. Paragraph 92 of the NPPF provides that planning policies and decisions should aim to achieve healthy, inclusive and safe places which
    (a) promote social interaction for example through street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages;
    (b) are safe and accessible – for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, which encourage the active and continual use of public areas; and
    (c) enable and support healthy lifestyles – for examples through the provision of safe and accessible green infrastructure and layouts that encourage walking and cycling.

11. With regards to public realm and pedestrian connectivity, NPPF paragraph 112 states that development should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas, and create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards.

12. Paragraph 119 of 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.

13. Paragraph 121 of the NPPF recognises that local planning authorities should take a proactive role in identifying and bringing forward land that may be suitable for development needs, using the full range of powers available to them. This includes identifying opportunities for land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.

14. Paragraph 187 of the NPPF provides that planning decisions and policies should ensure that new development is integrated effectively with existing businesses and community facilities, which should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or facility could have a significant adverse effect on new development in its vicinity, the applicant (or “agent of change”) should be required to provide suitable mitigation before the development has completed.

London Plan 2021

15. The London Plan was adopted in March 2021 following extensive consultation and an Examination in Public in 2019.

16. Policy SD1 (Opportunity Areas) of the London Plan states that the designated Opportunity Areas should maximise the delivery of affordable housing and create mixed and inclusive communities.

17. The London Plan allocates Elephant & Castle as an Opportunity Area. In addition, Policy SD6 (Town Centres and High Streets) applies to Elephant and Castle Town Centre and requires the vitality and viability of London's varied town centres to be promoted and enhanced through appropriate town centre development.

18. Table A1.1 - Town Centre Network of the London Plan sets out the vision for the Elephant and Castle Town Centre.

19. Elephant & Castle has a Major centre classification in the Town Centre Network. The London Plan defines Major centres as *"Major centres – typically found in inner and some parts of outer London with a borough-wide catchment. They generally contain over 50,000 sq.m of retail, leisure and service floorspace with a relatively high proportion of comparison goods relative to convenience goods. They may also have significant employment, leisure, service and civic functions."*

20. Elephant and Castle is classified as an NT2 in the night-time economy classification (Policy HC6). The town centre is of regional or sub-regional significance with regard to the night-time economy.

21. Elephant and Castle is classified as Medium under the commercial growth potential. The London Plan defines Medium growth as having "moderate levels of demand for retail, leisure or office floorspace, and with physical and public transport capacity to accommodate it."

22. The London Plan (Policy SD7) provides that town centres are likely to be able to accommodate high or medium levels of residential growth, or incremental residential development and boroughs should be planning proactively to seek opportunities for residential growth in and around town centres. Elephant and Castle is classified in the London Plan as High under residential growth potential.

23. Elephant and Castle is classified as A/B and part CAZ. The CAZ areas have significant potential for an office function. Classification A establishes that the town centre has *"Speculative office potential – These centres have the capacity, demand and viability to accommodate new speculative office development."* Classification B establishes that the town centre has "*Mixed-use office potential – These centres have the capacity, demand and viability to accommodate new office development, generally as part of mixed-use developments including residential use."*

24. The site sits within the CAZ, the strategic priorities and functions for which are set out in policies SD4 and SD5 of the London Plan; this includes enhancing and promoting the roles of the CAZ based on a rich mix of local and strategic uses.

25. The plan states that the Mayor is proposing to extend the Bakerloo Line from Elephant and Castle to Lewisham which will improve the route's connectivity and capacity supporting new

homes in the Old Kent Road and elsewhere in South-East London. The Bakerloo Line Extension has been delayed.

26. Policy GG1 (building strong and inclusive communities) requires those involved in planning and development to: seek to ensure changes to the physical environment to achieve an overall positive contribution to London; provide access to good quality community spaces and infrastructure that accommodate, encourage and strengthen communities, increasing active participation and social integration; ensure that streets and public spaces are consistently planned for people to move around and spend time in comfort and safety; ensure that new buildings and the spaces they create are designed to reinforce or enhance the identity, legibility, permeability and inclusivity of neighbourhoods; and support and promote the creation of a London where all Londoners, including those with protected characteristics, can move around with ease.

27. Policy GG2 (making the best use of land) states that those involved in planning and development must): enable the development of brownfield land, particularly in Opportunity Areas; and plan for good local walking, cycling and public transport connections to support a strategic target of 80% of all journeys using sustainable travel, enabling car free lifestyles that allow an efficient use of land, as well as using new and enhanced public transport links to unlock growth.

28. In relation to Corsica Studios and the night-time economy, Policy HC6 states that the night-time economy should be promoted, where appropriate, particularly in the CAZ, strategic areas of night-time activity, and town centres where public transport such as the Night Tube and Night Buses are available. It states that boroughs should improve access, inclusion and safety, and make the public realm welcoming for all night-time economy users and workers. The policy seeks to protect and support evening and night-time cultural venues such as pubs, night clubs, theatres, cinemas, music and other arts venues.

29. Also relevant in this context is Policy D13 (The Agent of Change). This places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of e.g. the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as a music venue like Corsica Studios) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue.

30. Regarding public realm and pedestrian connectivity, Policy D8 states that development should ensure that public realm is well-designed, safe, accessible, inclusive, attractive, well-connected, related to the local and historic context, and easy to understand, service and maintain. Proposals should maximise the contribution that the public realm makes to encourage active travel and ensure its design discourages travel by car. In particular, they should demonstrate an understanding of how people use the public realm, and the types, location and relationship between public spaces in an area, identifying where there are deficits for certain activities, or barriers to movement that create severance for pedestrians and cyclists. Desire lines for people walking and cycling should be a particular focus, including the placement of street crossings, which should be regular, convenient and accessible.

31. Policy T1 (Strategic approach to transport) requires Development Plans to support, and development proposals to facilitate the delivery of the Mayor's strategic target of 80% of all trips in London to be made by foot, cycle or public transport by 2041, requiring all

development to make the most effective use of land, reflecting its connectivity and accessibility by existing and future public transport, walking and cycling routes, and ensure that any impacts on London's transport networks and supporting infrastructure are mitigated.

32. In accordance with the Mayor's Healthy Streets initiative, Policy T2 states that development proposals should deliver patterns of land use that facilitate residents making shorter, regular trips by walking or cycling. Part D of the policy states that development proposals should be permeable by foot and cycle and connect to local walking and cycling networks as well as public transport.

Elephant & Castle Opportunity Area

33. The site is located within the Elephant and Castle Opportunity Area. The London Plan considers Opportunity Areas to be *"significant locations with development capacity to accommodate new housing, commercial development and infrastructure (of all types), linked to existing or potential improvements in public transport connectivity and capacity. Opportunity Areas typically contain capacity for at least 5,000 net additional jobs or 2,500 net additional homes or a combination of the two. When developing policies for Development Plans, allocations and frameworks, boroughs should use the indicative capacity figures as a starting point, to be tested through the assessment process"* (Paragraph 2.1.1).

34. Table 2.1 (Opportunity Area Indicative capacity for new homes and jobs) of the London Plan provides that Elephant and Castle has an indicative capacity of 5,000 homes and 10,000 jobs based on the 2017 SHLAA capacity from 2019-2041.

Southwark Plan 2022

AV.09 Elephant and Castle Area Vision

35. Policy AV.09 sets out the vision for Elephant and Castle Area, which is to provide an attractive destination for visitors with a strong daytime and night-time economy which provides cultural and entertainment spaces alongside a diverse retail environment for local residents. The vision also sets out to support the area's function as a major town centre for all Southwark residents and a central London location that attracts global business, research, teaching, shopping, flexible business spaces and cultural activities. The site allocations in Elephant and Castle and the remaining development coming forward on the Elephant Park site is expected to deliver around 135,000 sq.m (gross) offices and employment workspaces, 37,000 sq.m (gross) retail, community and leisure floorspace and around 2,200 homes. The wider area will deliver around 1ha new open space including a new Elephant Park.

36. The policy requires that development in Elephant and Castle should provide as many homes as possible at different tenures. Development should also provide opportunities for existing small businesses, particularly those from minority ethnic groups, to relocate and continue trading; and should provide safe and accessible walking, cycling and public transport routes including step-free access and a new ticket hall for the Northern line and BLE. Development is also expected to contribute towards developing the Low Line.

Site Allocation NSP48

37. The adopted site designation NSP48 (Elephant and Castle Shopping Centre and London College of Communication) in the Southwark Plan encompasses the East Site, all of the railway arches along Elephant Road and the LCC site. The site vision requires employment uses

including new offices (E(g)(i) use class), retail, cafes and bars to at least the existing level of provision, at least the same amount of education space as is currently on the site, new homes, civic space, public realm enhancements including along the railway viaduct, a new tube station entrance, and high quality active frontages.

38. The site designation also advises that a new community health hub may be provided. The site designation plan shows two improved pedestrian connectivity routes: one linking the Elephant and Castle peninsula and underground station with the railway station and out onto Elephant Road, and the other providing a link from Elephant Road through arches to the south of the railway station into the East Site and beyond, towards the open space of St Mary's Churchyard Newington.

39. Design and accessibility guidance in NSP48 provides that it is anticipated that the existing shopping centre will be demolished to facilitate a restructuring of the area's layout, walking and cycle routes should be enhanced and a comprehensive mixed-use redevelopment of the site can include taller buildings, subject to consideration of impacts on existing character, heritage and townscape.

Strategic policies

40. Policy ST1 of the Southwark Plan provides the targets for the distribution of jobs, which for the Elephant and Castle Opportunity Area is 10,000. Policy ST2 sets out the development targets:

Table A: Delivery in Vision Areas

Site Area		Employment floorspace (sqm)		Retail, lesure and community uses floorspace* (sqm)		Approximate housing capacity within the borough through site allocations by area (net, units)	Net open space provision within site allocations in GIA (sqm)
		Proposed provision (gross)	Uplift (net)	Proposed provision (gross)	Uplift (net)		
Elephant and Castle	Site Allocations	27,309	-2,884	30,946	2,261	1,686	1,640
	Elephant Park	60,000	60,000	6,014	6,014	683	8,000
	Planning applications	47,792	27,542	0	0	0	0
	Total	*135,101*	*84,658*	*36,960*	*8,275*	*2,369*	*9,640*

41. Policy SP4 (Green and Inclusive Economy) sets out town centre employment and jobs targets. For Elephant and Castle Opportunity Area the target for jobs is 10,000. The policy also sets targets for the distribution of the retail floorspace, which for the Elephant and Castle Major Town Centre is 10,000 sq.m.

Other Southwark Plan policies

42. Policy P33 provides that where small or independent businesses or small shops may be displaced by development, a business relocation strategy, written in consultation with affected businesses, must be provided. The strategy must set out viable relocation options.

43. Policy P34 supports the use of railway arches within the borough for commercial or community uses.

44. Policy P35 notes that town centres should be the main focus for new developments providing new shops, education, healthcare and community facilities, offices and workspaces, leisure facilities and entertainment venues. This includes encouraging a diverse night-time economy with a range of appropriate activities throughout the evening and night-time.

45. With regards to pedestrian connectivity, Policy P51 states that development must enhance the borough's walking networks by providing footways, routes and public realm that enable access through development sites and adjoining areas. Similarly, Policy P49 requires development to improve accessibility to public transport by creating and improving walking and cycling connections to public transport stops or stations.

Conclusion

46. In conclusion, the development plan and national policy framework confirms strong support for a high density, mixed-use development on this brownfield site. Across both East and West Sites there will be an increase in retail floorspace in accordance with the London Plan and the Southwark Plan. The proposed development will fully accord with the principle of accommodating large-scale development within Opportunity Areas and will deliver many of the key objectives set out in the development plan for the central character area, including extensive public realm improvements and significant enhancement to pedestrian experience and connectivity. The permeability of development sites for pedestrians is a key aspect of development plan policy, and the proposed development would create such permeability. The development will also include improvements to the nightclub on Elephant Road, in line with policy to protect the night time economy; and relocation opportunities for the displaced occupiers of 6 and 7 Farrell Court, in accordance with policy to offer opportunities to displaced small businesses to relocate and continue trading.

Notes

The London Plan 2021 – relevant policies
Policy GG1 - Building strong and inclusive communities
Policy GG2 - Making the best use of land
Policy SD1 - Opportunity Areas
Policy SD4 - The Central Activities Zone (CAZ)
Policy SD5 - Offices, other strategic functions and residential development in the CAZ
Policy SD6 - Town centres and high streets
Policy SD7 - Town centres: development principles and Development Plan Documents
Policy SD8 - Town centre network
Policy SD9 - Town centres: Local partnerships and implementation
Policy SD10 - Strategic and local regeneration
Policy D1 - London's form, character and capacity for growth
Policy D2 - Infrastructure requirements for sustainable densities
Policy D3 - Optimising site capacity through the design-led approach
Policy D4 - Delivering good design
Policy D5 - Inclusive design
Policy D6 - Housing quality and standards
Policy D7 - Accessible housing
Policy D8 - Public realm
Policy D9 - Tall buildings
Policy D10 - Basement development
Policy D11 - Safety, security and resilience to emergency

Policy D12 - Fire safety
Policy D13 - Agent of Change
Policy D14 - Noise
Policy H1 - Increasing housing supply
Policy H4 - Delivering affordable housing
Policy H5 - Threshold approach to applications
Policy H6 - Affordable housing tenure
Policy H7 - Monitoring of affordable housing
Policy H9 - Ensuring the best use of stock
Policy H10 - Housing size mix
Policy H11 - Build to Rent
Policy S1 - Developing London's social infrastructure
Policy S2 - Health and social care facilities
Policy S3 - Education and childcare facilities
Policy S4 - Play and informal recreation
Policy S5 - Sports and recreation facilities
Policy E1 - Offices
Policy E2 - Providing suitable business space
Policy E3 - Affordable workspace
Policy E8 - Sector growth opportunities and clusters
Policy E9 - Retail, markets and hot food takeaways
Policy E11 - Skills and opportunities for all
Policy HC1 - Heritage conservation and growth
Policy HC3 - Strategic and Local Views
Policy HC4 - London View Management Framework
Policy HC5 - Supporting London's culture and creative industries
Policy HC6 - Supporting the night-time economy
Policy HC7 - Protecting public houses
Policy G1 - Green infrastructure
Policy G4 - Open space
Policy G5 - Urban greening
Policy G6 - Biodiversity and access to nature
Policy G7 - Trees and woodlands
Policy G8 - Food growing
Policy G9 - Geodiversity
Policy SI 1 - Improving air quality
Policy SI 2 - Minimising greenhouse gas emissions
Policy SI 3 - Energy infrastructure
Policy SI 4 - Managing heat risk
Policy SI 5 - Water infrastructure
Policy SI 6 - Digital connectivity infrastructure
Policy SI 7 - Reducing waste and supporting the circular economy
Policy SI 12 - Flood risk management
Policy SI 13 - Sustainable drainage
Policy T1 - Strategic approach to transport
Policy T2 - Healthy Streets
Policy T3 - Transport capacity, connectivity and safeguarding
Policy T4 - Assessing and mitigating transport impacts
Policy T5 - Cycling
Policy T6 - Car parking
Policy T6.1 - Residential parking

Policy T6.2 - Office Parking
Policy T6.3 - Retail parking
Policy T6.4 - Hotel and leisure uses parking
Policy T6.5 - Non-residential disabled persons parking
Policy T7 - Deliveries, servicing and construction
Policy T9 - Funding transport infrastructure through planning

Relevant GLA Supplementary Planning Guidance/London Planning Guidance (SPG/LPG)
Character and Context SPG (June 2014)
Fire safety LPG (draft – February 2022)
Characterisation and Growth Strategy LPG (June 2023)
Housing Design Standards LPG (June 2023)
Optimising Site Capacity: A Design-led Approach LPG (June 2023)
Small Site Design Codes LPG (June 2023)
Housing SPG (August 2017)
Large scale purpose built shared living LPG (draft –January 2022)
Play and Informal Recreation SPG (September 2012)
Social Infrastructure SPG (May 2015)
London View Management Framework SPG (March 2012)
Urban Greening Factor SPG (September 2021)
Be Seen Energy Monitoring SPG (October 2021)
Circular Economy Statement SPG (March 2022)
Whole Lifecycle Carbon Assessment SPG (March 2022)
Energy Assessment Guidance (June 2020)
Control of Dust and Emissions (July 2014)
Air Quality Neutral LPG (AQN) (February 2023)
Air Quality Positive LPG (February 2023)
Sustainable Transport, Walking and Cycling LPG November 2022)
Affordable Housing and Viability Supplementary Planning Guidance (August 2017)
Affordable Housing LPG (draft – May 2023)
Development Viability LPG (draft – May 2023)

Relevant Southwark Plan Policies 2022
ST1 - Southwark's Development Targets
ST2 - Southwark's Places
SP1 - Homes for all
SP2 - Southwark Together
SP3 - Great start in life
SP4 - Green and inclusive economy
SP5 - Thriving neighourhoods and tackling health inequalities
SP6 - Climate Emergency
AV.09 - Elephant and Castle Area Vision
P1 - Social rented and intermediate housing
P2 - New family homes
P3 - Protection of existing homes
P4 - Private rented homes
P8 - Wheelchair accessible and adaptable housing
P13 - Design of places
P14 - Design quality
P15 - Residential design
P16 - Designing out crime

P17 - Tall buildings
P18 - Efficient use of land
P19 - Listed buildings and structures
P20 - Conservation areas
P21 - Conservation of the historic environment and natural heritage
P22 - Borough views
P23 - Archaeology
P26 - Local list
P27 - Education places
P28 - Access to employment and training
P30 - Office and business development
P31 - Affordable workspace
P32 - Small shops
P33 - Business relocation
P34 - Railway arches
P35 - Town and local centres
P36 - Development outside town centres
P37 - Protected shopping frontages
P38 - Shops outside protected shopping frontages, town and local centres
P39 - Shop fronts
P42 - Pubs
P43 - Outdoor advertisements and signage
P44 - Broadband and digital infrastructure
P45 - Healthy developments
P46 - Leisure, arts and culture
P47 - Community uses
P48 - Hot food takeaways
P49 - Public transport
P50 - Highways impacts
P51 - Walking
P53 - Cycling
P54 - Car Parking
P55 - Parking standards for disabled people and the physically impaired
P56 - Protection of amenity
P57 - Open space
P58 - Open water space
P59 - Green infrastructure
P60 - Biodiversity
P61 - Trees
P62 - Reducing waste
P64 - Contaminated land and hazardous substances
P65 - Improving air quality
P66 - Reducing noise pollution and enhancing soundscapes
P67 - Reducing water use
P68 - Reducing food risk
P69 - Sustainability standards
P70 - Energy
NSP48 - Elephant and Castle Shopping Centre and London College of Communication

Relevant Supplementary Planning Documents (SPDs)

Heritage SPD (2021)
Development Viability SPD (2016)
Technical Update to the Residential Design Standards SPD (2015)
Section 106 Planning Obligations/CIL SPD (2015) and technical update (2020)

Affordable Housing SPD (2008 - Adopted and 2011 - Draft)
Residential Design Standards SPD (2011) Sustainable Transport SPD (2010)
Statement of Community Involvement and Development Consultation Charter (2022)

APPENDIX F

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

STATUS UPDATE AS AT END OF SEPTEMBER 2023

SUMMARY ON DISCUSSIONS WITH THIRD PARTIES

(PROVIDED BY DEVELOPER)

1. This document provides an update summary, as from December 2022, on the current status of agreements with the key third parties whose land interests need to be acquired or over whose land new rights are sought to facilitate the redevelopment. Appendix F to the December 2022 Cabinet report contained the status of these discussions as at December 2022.

Transport for London (as regards crane oversail rights on the West Site)

2. TfL and LUL's land interests generally are brought into the Scheme by way of the December 2021 agreement with EC; crane oversail licences were also granted in May 2022 to facilitate works on part of the East Site. In respect of West Site crane oversail, after the making of the February 2023 CPO, the Council and TfL agreed upon an arrangement whereby, although the rights were included in the CPO, TfL will grant licences for oversail on certain terms in the future once EC is ready to proceed on the West Site and as long as they do so then the Council agreed not to use confirmed CPO powers against TfL. On this basis there was no need for TfL to object to the February 2023 CPO and the arrangement is to the satisfaction of all three parties. The same approach is intended again in respect of the new CPO and so, although the crane oversail rights will still be included in the new CPO (to cover the unlikely event that TfL departs from the arrangement) there should be no need to implement confirmed CPO powers against TfL, nor for TfL to object to the new CPO.

Network Rail - new rights to be granted

3. Station change proposals and asset protection agreements are already in place. EC has sought additional new rights to be granted by Network Rail to facilitate the Scheme. These are considered to be minor in nature. Network Rail owns the viaduct structure. EC's intention is to reach agreement with Network Rail by private treaty as soon as practicable and the detailed negotiation of the agreement requested by Network Rail in their objection to the February 2023 CPO is ongoing. EC has already made clear to Network Rail that in principle the items on which NR has sought protection/clarification are acceptable to EC. The rights are important and necessary and so they are included in the new CPO as there is no guarantee that they will be granted, in time or at all.

The Arch Company

4. The nature of the various offers and proposals which were put to Arch Co prior to the February 2023 CPO, in a bid to avoid the need for the compulsory acquisition of their long leasehold title, was explained in the December 2022 Cabinet report. These included offers for the entire run of arch units at Elephant & Castle due to Arch Co's desire to deal with all of the arch units at Elephant & Castle.

5. Since the making of the February 2023 CPO the negotiations have focused on just those interests and rights included within the CPO. Negotiations have been conducted on a

without prejudice basis both via Arch Co's agent, Gerald Eve, and directly with Arch Co. Gerald Eve's fees have been reimbursed by EC throughout the process. Negotiations have been conducted through a combination of emails and regular meetings. There is a fortnightly meeting between EC and Arch Co to review progress on the negotiations.

6. EC put forward an improved offer in April 2023 and a further improved offer in July 2023 with a detailed set of Heads of Terms setting out the proposed structure of the offer. EC is currently awaiting a response to the most recent offer.

Occupational tenancies in some of the railway arches on Elephant Road

7. 6 Farrell Court (DistriAndina) – at the time of the December 2022 Cabinet report DistriAndina were being advised by Ardent Management who had been instructed since February 2020, and whose fees were being reimbursed by EC. Negotiations progressed on the basis of a proposed relocation into Elephant Park and Heads of Terms were agreed and reached the stage of preparation of legal contracts, however, DistriAndina ultimately decided not to proceed with agreement. Accordingly, an alternative proposal was put to DistriAndina on the basis of a relocation into a unit within the Scheme, fronting Walworth Road. The offer was on the basis that DistriAndina would not be required to vacate their existing premises until they had relocated into their new premises, ensuring no loss of trading.

8. In January 2023 DistriAndina decided to change advisors and instructed Winbourne Martin French. EC provided an undertaking to pay their new advisors fees. Negotiations subsequently progressed on the basis of the proposed relocation. During these negotiations DistriAndina has expressed an interest in relocating to the Walworth Road unit. In March 2023 Heads of Terms were issued to DistriAndina's agent setting out proposed lease terms on the proposed relocation unit providing greater security of tenure than their existing lease and on affordable rent terms. The Heads of Terms included an agreement to pay compensation at a sum to be agreed or determined in accordance with the 'compensation code'.

9. By July 2023 it became increasingly likely that a solution could be devised which would enable Corsica Studios to remain in 4/5 Farrell Court, meaning that arches 113A/120 and 113B/121 would now be available on the basis that they would not be required for Corsica Studios. Accordingly, a relocation to 113A/120 has been offered to DistriAndina as an alternative to the unit on Walworth Road, although that unit also remains on offer to DistriAndina.

10. Negotiations are progressing with DistriAndina's agent on the basis of the proposed relocation into one of these two properties.

11. 7 Farrell Court (Beset International) – at the time of the December 2022 Cabinet report Beset were being advised by Keith Murray Consultants, who had been instructed since March 2020 and whose fees were being reimbursed by EC. Negotiations had been progressed on the basis of a potential relocation to other premises outside the Scheme but there was difficulty in finding an opportunity which met Beset's requirements. Accordingly, in 2022 an alternative proposal was put to Beset on the basis of a relocation into 4 and 5 Farrell Court as at that time it was envisaged that Corsica Studios would relocate from that property to other arches 113A/120 and 113B/121. The offer was on the basis that Beset would not be required to vacate their existing premises until they had relocated into their new premises, ensuring no loss of trading.

12. In January 2023 Beset decided to change advisors and instructed Winbourne Martin French. EC provided an undertaking to pay their new advisor's fees. Negotiations subsequently progressed on the basis of a relocation to 4 and 5 Farrell Court. During these negotiations Beset has expressed a willingness to relocate to 4 and 5 Farrell Court. In March 2023 Heads of Terms were issued to Beset's agent setting out proposed lease terms on the proposed relocation unit providing greater security of tenure than their existing lease and based on a rent to be capped in line with their existing unit. The Heads of Terms included an agreement to pay compensation at a sum to be agreed or determined in accordance with the 'compensation code'.

13. A requirement of the relocation offer was that Beset would offer relocation accommodation within the relocation arches to all of their existing occupiers who wished to relocate with Beset and that such offer would be made on reasonable terms. Beset agreed to this request. As with Beset, the Beset occupiers would not be required to vacate their exiting premises until they had relocated to the new premises to ensure no loss of trading.

14. By July 2023 it became increasingly likely that a solution could be devised which would enable Corsica Studios to remain in 4/5 Farrell Court, meaning that it would no longer be available as a relocation opportunity for Beset. However, this would mean that arch 113B/121 would now be available on the basis that they would not be required for Corsica Studios. Accordingly, a relocation to 113B/121 was proposed to Beset. It is considered that a relocation to this arch is actually preferable as the increased size and headroom is sufficient to enable Beset to relocate into a single arch which is more comparable to their existing operation. Beset have confirmed they are interested in relocating to this arch.

15. All other terms of the offer are the same as was previously offered in respect of 4 and 5 Farrell Court including the compensation provisions, continuity of trade and the requirement to offer comparable accommodation on comparable terms to the existing subtenants. Negotiations are progressing with Beset's agent on this basis.

16. 7 Farrell Court occupiers – the Council's and EC's intention is to recreate for the 7 Farrell Court occupiers a trading unit on a like for like basis in arch 113B/121 and that Beset will continue to be their immediate landlord in the new unit on comparable terms and with comparable floorspace to which they have now. Positive meetings have been held between EC, the Council and the occupiers in September to address their concerns. If for any reason Beset did not take up the offer of a lease in one of those arches then (assuming the CPO was confirmed to enable the Council and thus EC to acquire the units) EC is content to offer floorspace in the new unit to the other occupiers on the basis that EC would become their direct landlord.

17. 4-5 Farrell Court (Corsica Studios) – at the time of the December 2022 Cabinet report an offer had been put to Corsica Studios based on a relocation to arches 113A/120 and 113B/121. Discussions progressed with Corsica on the basis of the proposed relocation and Heads of Terms were issued to Corsica's agent in February 2023 setting out proposed lease terms on the proposed relocation arches providing greater security of tenure than their existing lease and based on a rent to be capped in line with their existing arches. The Heads of Terms included an agreement to pay compensation at a sum to be agreed or determined in accordance with the 'compensation code'. The offer was on the basis that Corsica would not be required to vacate their existing premises until they had relocated into their new premises, ensuring no loss of trading.

18. However, after further consideration by Corsica, it became clear that Corsica's preference was to find a solution that would enable them to remain in their existing arches. Corsica assembled a professional team including a surveyor, solicitor, licencing specialist and acoustician whose fees are all being reimbursed by EC. Corsica's professional team have been working with EC's professional team and together a workable solution has been devised that will enable Corsica to operate from their existing arches. This will require the construction of the sound mitigation lobby together with internal reconfiguration works.

19. Corsica will need to vacate the arches whilst the works are undertaken (envisaged to be around 9 months), but they are aware of this and that it will facilitate the solution of a long term future for them in these arches. Negotiations are being conducted on a without prejudice basis but based on a compensation agreement for the acquisition of the existing interest in conjunction with an option to return under a new lease, with greater security of tenure than their existing lease, on completion of the works. Negotiations are at an advanced stage and Heads of Terms have been issued.

20. Discussions are ongoing with all of these tenants and occupiers.

London Power Networks (surrender of electricity substations)

21. The leases of the current substations on the LCC Site will need to be surrendered and the substations relocated in due course. Discussions are ongoing with the electricity undertaker and it is hoped that this will be done by private agreement but the CPO is necessary as a backstop should this fail.

Metropolitan Tabernacle (new rights to be acquired)

22. The Tabernacle has appointed a surveyor to act on its behalf and the parties are in discussion to address various practical aspects that the Tabernacle has raised in respect of EC's request to obtain some relatively minor new rights to facilitate the demolition of the adjacent LCC building and crane oversail. Negotiations are progressing with the Tabernacle's agent and Heads of Terms were issued in June 2023. Whilst it is hoped that these discussions will result in an agreement by private treaty, and EC is working towards that objective, the CPO is required in case agreement cannot be reached.

Other crane oversail (West Site)

23. Crane oversail rights over some highway areas and to a small extent over The Castle Centre and Perronet House. The highway areas are unregistered but some of them are presumed to be owned by the Council. Perronet House and the Castle Centre are owned by the Council.

ELEPHANT AND CASTLE TOWN CENTRE – COMPULSORY PURCHASE ORDER

APPENDIX G

SUMMARY OF OBJECTIONS LODGED TO FEBRUARY 2023 CPO

	Party	Summary of grounds of objection
01	**Network Rail Infrastructure Limited ("NR")**	1. Does not object to the Scheme, but objects to the exercise of compulsory acquisition powers over NR's operational land which NR relies upon for the purposes of carrying out its statutory undertaking. 2. Principal issues identified as acquisition of parcel 37 (the tiny fragment); compulsory acquisition of rights in operational land and extinguishment of rights that NR relies upon for its statutory undertaking; and the works proposed may impede NR's ability to ensure the safe, efficient and economical operation of the railway. 3. However, the objection sets out a request for the entry into an agreement to satisfy NR's concerns and that if such an agreement is completed the Council should not exercise CPO powers otherwise than in accordance with such agreement. In addition, NR sent a section 16 Acquisition of Land Act 1981 representation letter to the DfT, albeit it says it is envisaged that negotiations are likely to take place with a view to securing a resolution.
02	**The Castle Shop** Unit 8 within 7 Farrell Court (Nanci Estella Cardona Grajales)	1. Not recognised as a business impacted by the Order or by the Acquiring Authority. 2. Will lose trade and business without compensation. 3. Unwarranted assumption that impacted traders in this arch will simply relocate with their landlord. 4. No concrete alternative to ensure they can continue to trade without being financially disadvantaged or losing the benefits they currently enjoy from their occupancy. 5. Why not knock through 4 and 5 Farrell Court (Corsica) instead? Only one business then displaced. 6. Failure of equalities, racial justice, human rights, and well being tests.

	Party	Summary of grounds of objection
		7. English is not first language. Order documentation is all in English, which could be financially disadvantageous, no financial support for translation services.
03	**Castle Café Bakery Ltd** Unit 7 within 7 Farrell Court (Nanci Estella Cardona Grajales)	The same arguments as for objection 2 above except: (a) does not allege on this occasion that the Council have failed to take into account the impact on this business or identify the business. (b) also refers to the northern arches access which could be used for the walk-through instead of 6 and 7 Farrell Court. (c) as regards the first language point, goes further and alleges that the failure to provide financial support means the Council failed to make reasonable adjustments and take into account the public sector equality duty. The CPO is therefore procedurally defective.
04	**Giros Don Pedro** Unit 5 within 7 Farrell Court	Exactly the same arguments and format as in objection 3.
05	**Beset International Limited** 7 Farrell Court	1. The revival and enhancement of Walworth Road existing shops should be the priority. 2. New housing should not be to the detriment of the existing community. 3. Replacement of old shopping centre with a new shopping centre would be a backward step when so many shopping centres are under pressure for occupiers. 4. The existing, northern arches is adequate for the Park Route – no need to move Beset, DistriAndina or Corsica. 5. This proposal runs a very serious risk of diluting the Elephant Park, Castle Square and Elephant Central retail offer. 6. As a fallback argument to their objection, Beset are concerned that the relocation should take place quickly if it is to take place so that EC can become their landlord immediately. Beset feel they are subject to uncertainty, before the CPO, by virtue of Arch Co being their current landlord. Their concern is that Arch Co may have no interest in safeguarding the proposed relocations.

	Party	Summary of grounds of objection
		7. If the order is confirmed, the acquisition of the arches should be directed to vest on confirmation so that the proposed relocation as set out in the Scheme and as proposed by developer and the Council can be realised. 8. Serious reservations as to the benefits of a significant retail and leisure hub at Elephant & Castle.
06	**DistriAndina** 6 Farrell Court	Almost identical to objection 5, but with reference to this tenant being a vital resource for the Latin American community.
07	**CDR Nomineeco 1 Limited and CDR Nomineeco 2 Limited (Arch Co)**	1. The arches form a small part of the Scheme Land and are not integral to the wider piece of land required for the Scheme. 2. No planning permission for certain elements – an impediment. 3. The arches are being acquired to "address some of the deficiencies of the original Scheme which failed to cater for the full implications of accommodating some existing uses and occupiers, which are now considered to be inappropriately located… a desire to gentrify the Scheme". 4. Corsica relocation to arches 113A/120 and 113B/121 – Agent of Change policy is against it. 5. It remains the case that sound mitigation comprising glazing and at source soundproofing would allow compliance with condition 28 of the planning permission. 6. No evidence given of claims that practically cannot be done. 7. Failure to consider alternative locations for Corsica relocation. 8. Impediments to relocation of Corsica – no planning permission, potential for onerous conditions to be imposed, whether Corsica would want to move. 9. Where discussions about relocation of affected businesses have not concluded, the use of CPO powers cannot be said to be a matter of last resort. 10. Absence of "reasonable certainty" that Corsica will relocate.

	Party	Summary of grounds of objection
		11. Entirely unclear why alternative of retail/café units in arches 113A/120 and 113B/121 is necessary. 12. 6 and 7 Farrell Court acquisitions – there is an alternative route for the walk through available via northern arches as set out in s106. Neither s106 nor planning condition make it an absolute requirement and therefore it cannot be necessary to acquire. 13. A licence would suffice for 6 & 7 Farrell Court and the Council has not considered that alternative. 14. Acquisition of 4 and 5 Farrell Court for Beset – queries whether Beset are a retailer and if not why not; and why occupiers do not qualify for s106? 15. Onus is on EC to find suitable relocation premises – and to demonstrate that new premises cannot be provided within the Scheme or elsewhere. 16. Even if s106 does not provide for relocation of Beset and the occupiers, this does not discharge EC's responsibility to find suitable relocation premises for them. 17. No evidence of Council/EC exploring alternative locations for Beset/their occupiers. 18. Impediments to relocation of Beset. 19. If s106 does not provide for relocation of Beset/their occupiers, then no planning requirement for their relocation exists and it follows that CPO is unnecessary. 20. The corridor of land adjacent to the railway viaduct – accepts requirement for delivery of the public realm but this could be done by licence. 21. Conclusions – no compelling case, not a matter of last resort, and unjustified and disproportionate interference with Arch Co's rights under Article 1 of First Protocol of ECHR.
08	**Patricia Moreta Services Ltd** Unit 7 Farrell Court (Mrs Patricia Moreta)	Almost identical to objection 3 above.
09	**The Elders & Deacons of the Metropolitan Tabernacle**	1. Accepted that crane oversailing would not cause disruption to them - assuming all Health & Safety considerations are achieved. 2. However, entry onto the land and erection and use of scaffolding may cause severe disruption to the

	Party	Summary of grounds of objection
		Tabernacle's activities and the safety and functioning of the property. Significant numbers of children and mobility impaired people attend. 3. Scaffolding will severely undermine and constrain pedestrian access and will entirely prevent vehicular access and impact fire access/egress from the property. 4. Pastor Street needs to remain open and available to vehicles. 5. Offer of a working agreement and collaborative approach. 6. The rights would effectively be permanent even though expressed as being for the benefit of this scheme.
10	**Mr & Mrs Roberts** **Occupiers of The Flat** Metropolitan Tabernacle	Nearly identical to the objection at 9. They are the occupiers of the flat within the Tabernacle, being the caretakers of the building.
11	**Adriana Hoyos Rojas** Hoyos Legal, Unit 2 within 7 Farrell Court	Similar to objections 3 and 8.
12	**Bola 8 Limited** c/o Mrs Rodriguez-Osorio and Mr Garson-Medina 122 Elephant Road	1. Objection stated to be on behalf of Bola 8 Limited but also Pool Lounge Limited and Bola Ocho Limited, plus their shareholders and directors and "the Latin American communities in and around the Elephant and Castle area". 2. Confirmation of the CPO would cause material detriment and/or further seriously affect the (i) amenity, (ii) convenience, (iii) property (including leases, tenancies, licences and occupations), (iv) livelihoods and (v) cultural expression of the objectors. 3. The Latin American community have not been consulted fully, properly or at all. 4. The closure of the companies would bring cultural and financial losses. **N.B. This objection was withdrawn after Council officers corresponded with the objectors and explained that the February 2023 CPO did not seek the acquisition of their interests nor would it result in the closure of their businesses.**

APPENDIX H

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

ADVERSE EFFECTS ARISING FROM PROPOSED NEW CPO

1. The use of CPO powers in relation to the two railway arches to the north of the railway station to which EC already has long leasehold title, so that control can be achieved to turn one arch into a relocation premises for Beset and their occupiers, and another for DistriAndina (if that is their preference), and otherwise for retail/café uses including retail kiosk units, will deprive Arch Co of its long leasehold title to those arches. Similarly the acquisition by the Council under the new CPO of 4 and 5 Farrell Court, and 6 and 7 Farrell Court, and the corridor of land to the immediate west of the railway viaduct, will deprive Arch Co of its long leasehold title to those premises. Arch Co is a large commercial concern with many railway arch units across the country. It is not considered that the acquisition of these areas will cause serious detriment to it. In Arch Co's objection to the February 2023 CPO, there was no suggestion that it would suffer any material detriment from the loss of their interest in these arches.

2. The occupiers of 6 and 7 Farrell Court will be displaced if their interests were compulsorily acquired to facilitate the creation of the Park Route. In a worst case scenario, they might cease trading as a result of an acquisition through the new CPO. However, the Council's and EC's intention is that arch 113B/121 will be acquired and developed as a relocation opportunity within the Scheme for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them. The tenant of 6 Farrell Court, DistriAndina, is also being offered the opportunity to relocate within the Scheme, to a new unit on the East Site or to arch 113A/120 (whichever is their preference). Again, it is envisaged this would mitigate the adverse impact of the new CPO on them. In their objections to the February 2023 CPO, whilst Beset and DistriAndina explain why they should be allowed to remain, they do not suggest that they would suffer significant adverse effects if they had to move to the relocation premises.

3. The tenant of 4 and 5 Farrell Court, Corsica Studios, would be displaced if its interest was simply compulsorily acquired in a worst case scenario and might cease trading as a result of that. However, the Council and EC's intention is that they should be offered the opportunity to occupy 4-5 Farrell Court on a long term basis under a new lease once the sound mitigation lobby has been constructed to the immediate rear of those units, with the unified and enlarged floorspace (i.e. inclusive of the sound mitigation lobby) being the subject of the new lease, thus safeguarding the future of this venue. The proposed works to 4 and 5 Farrell Court would potentially take around 9 months to complete and in that time the venue would cease trading to enable the works to take place. This would result in some short term loss of trade to the nightclub but this is understood by Corsica and it would facilitate the longer term future of the venue and Corsica's preferred solution.

4. Any party that has their interest acquired pursuant to the new CPO will be entitled to statutory compensation for the loss of their interest. Where only part of the land is taken, there is the opportunity to claim compensation for severance or injurious affection in respect of the retained part. Furthermore, and independent of statutory compensation, the section 106 agreement has a relocation fund for eligible local independent traders on the East Site.

5. The new CPO would also see new rights created over the land shown shaded blue on the plan at Appendix A. The new rights to carry out works to the sides and undersides of the viaduct in connection with the creation of the walk-through in what is currently 6 and 7 Farrell Court (including removing the existing shopfronts) would apply against Network Rail, as would the additional new right to affix the sound mitigation lobby to the viaduct (to the rear of 4-5 Farrell Court), but these are considered to be relatively minor in nature. No works would be carried out which would affect the operation of the railway. The same is true of the new rights that are sought in respect of (i) a right of way to/from the East Site over Network Rail's adjacent land to the railway station (and related right to pave and maintain that area), and (ii) the sides and undersides of the viaduct arches 113A/120 and 113B/121 currently owned long leasehold by EC, so that they can be brought into beneficial use for the relocation premises for Beset and their occupiers, and potentially for DistriAndina if they wish to relocate there, and otherwise for retail/café uses (including the right to install frontage and rear elevations). A right is also sought to pave under an external staircase adjacent to the railway station and to maintain such paving.

6. The rights being sought over the Tabernacle will result in some minor inconvenience to the Tabernacle for a relatively short period, as explained in the December 2022 report but the Tabernacle will remain open to its congregation throughout the duration of any such works and disabled access will be maintained at all times whilst the Tabernacle is being used. It is considered that such an adverse effect (if mitigation cannot fully remove it) is minor. The Tabernacle's objection to the February 2023 CPO suggests that their concerns could be overcome by the registration and completion of a working agreement, and EC is seeking to agree matters with the Tabernacle.

7. The acquisition of crane oversail rights over various pieces of land is considered to be relatively minor in effect.

8. The owner of any land interest affected by the new rights will be entitled to statutory compensation in respect of those new rights.

9. As explained in Appendix D of the December 2022 report, within Appendix K to this report, in accordance with the Cabinet resolution of April 2020, the Council has already conducted a process which overrides rights of light and other rights held by third parties in respect of all areas of the East and West Site on which new buildings will be erected. This removes the ability of eg rights of light holders to obtain an injunction or to hold the developer to ransom, with the rights holders entitled to compensation on a diminution in value basis. It is not considered that there are any such rights in respect of the areas that will now be subject to acquisition under the new CPO which would be problematic, but any such rights as exist will be overridden by way of the implementation of the new CPO in any event.

10. The tall buildings proposed as part of the Scheme will result in adverse day light and sunlight effects on a number of nearby properties, including residential properties, particularly those in Oswin Street, Hayles Buildings and Metro Central Heights. The tall buildings on the East Site can be constructed without the new CPO but the new CPO is required to build those on the West Site. Cabinet is referred to the Planning Committee report in the background papers – the Planning Committee considered light amenity and overshadowing in detail as part of the planning application process and it was considered that those adverse effects were outweighed by the benefits of the Scheme.

11. As set out in the Planning Committee report, there would be harm to the setting of the Metropolitan Tabernacle. Cabinet will note, though, that notwithstanding the substantial

weight given to that harm, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme.

12. Without mitigation, there are likely to be some adverse equality impacts as discussed in detail in Appendix I of this report in respect of the tenants and occupiers of the affected railway arches and the Tabernacle. However, as explained in Appendix I, mitigation is proposed by way of the proposed relocations for the affected arch tenants, plus the construction of the sound mitigation lobby to benefit Corsica Studios's premises, and measures will be taken to mitigate the effects of construction on the Tabernacle, including maintenance of disabled access. It is considered all that can reasonably expected to be done to mitigate impacts on these parties has been and is continuing to be done.

APPENDIX I

Equalities Impact Assessment (EqIA)

1. Background

The Public Sector Equality Duty (PSED) created by the Equality Act 2010 imposes a continuing duty on the Council to consider equalities impacts to inform its decision making. Previous EqIAs were produced by AECOM in June 2016 prior to approval of the planning application for the development of the Elephant & Castle Shopping Centre and Town Centre area. Additional analysis was carried out by AECOM in March and August 2017 relating to the potential redevelopment of the Bingo Hall and Bowling Alley within the Shopping Centre and which helped to formulate the business relocation strategy and compensation package for affected businesses, which was put in place under the section 106 agreement. The developer (EC) has also carried out its own analysis as part of the planning application process.

A further report was commissioned by the Council in August 2019 with a detailed report being provided by AECOM in January 2020, to inform the Council's decision-making as to a Compulsory Purchase Order (CPO) at that time.

Prior to resolving to make a CPO in December 2022, the Council undertook a further EqIA in respect of that CPO. The Council updated its EqIA in this respect in January 2023 before making the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023 on 2 February 2023.

It is now proposed that the February 2023 CPO be withdrawn and a new CPO be made by the Council (the new CPO) to reflect changes to the proposals for the occupants of Elephant Road.

In line with the continuing duty, this report addresses the equalities impacts that may arise in the context of the new CPO. It does not seek to duplicate the work done in connection with earlier reports. Rather, it addresses the potential equalities impacts on those businesses and stakeholders likely to be affected by the making and implementation of the new CPO so as to inform the Council's decision-making as to whether to make the new CPO.

2. Legislative background

The Equality Act 2010, section 149 (Public Sector Equality Duty) sets out that a public authority must, in the exercise of its functions, 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 who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics for the purposes of the Act are –

- Age

- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

The EqIA aims to consider the effects of the Council's decision making (in this case to make the new CPO) and whether these effects are likely to have a disproportionate or differential impact. A disproportionate impact will arise if an impact has a proportionately greater effect on groups who share a protected characteristic than on other members of the general population in a location. A differential impact will arise where members of a group sharing a protected characteristic are affected differently from the rest of the population because of specific needs, or a recognised sensitivity or vulnerability associated with their protected characteristic.

3. Current decision

As referred to in the Cabinet Report, the Council is proposing to make the new CPO in order to acquire the remaining title and new rights required to facilitate the town centre redevelopment scheme. The compulsory acquisition of these properties and new rights will directly impact the owners of the businesses and organisations thereby affected, their employees and their customers and clients. Mitigation measures will seek to reduce these impacts as far as possible.

The businesses and organisations that will be directly affected by the making and implementation of the new CPO are those that currently occupy parts of the proposed order land who will either need to relocate in order to enable redevelopment to take place or whose businesses may otherwise be affected, or, in the case of the Metropolitan Tabernacle, whose land will be the subject of new rights to facilitate the redevelopment. These have been identified as follows:

Units 4 & 5 Farrell Court – Corsica Studios
The business currently carried out in units 4 & 5 is that of a cultural venue hosting electronic and other genres of music and club nights and creative events, including techno and live alternative rock and art installations.[1] The business has a well-articulated inclusivity, equality and diversity policy whereby it aims to promote a positive environment where differences are respected and valued. It also aims to redress the gender, racial and sexuality balance within the industry. The venue welcomes disabled customers and aims to be accessible and inclusive.

As explained in the December 2022 Cabinet papers and the January 2023 EqIA, the Council and Developer at that time proposed to relocate the business to the railway arches to the north of the station, a short distance up Elephant Road, which would have been fitted out and soundproofed prior to the relocation taking place. However, Corsica expressed a wish not to relocate to these arches and instead to seek a solution which would enable them to occupy 4 & 5 Farrell Court harmoniously with the new, adjacent residential use. As explained in the Cabinet report, a satisfactory noise solution has

[1] Source : www.corsicastudios.com accessed 20 September 2023.

now been arrived at – a sound mitigation lobby is proposed for the rear of the units which would reduce external sound levels.

In an unlikely worst case scenario of the business closing and/or the use ceasing it is not considered that any one group with protected characteristics would be disproportionately affected.

Given the terms of the noise condition imposed on the residential development, another worst case scenario, if the confirmed CPO does not allow for the construction of the sound mitigation lobby and the acquisition of the requisite interests in 4 & 5 Farrell Court, is that the nightclub use continues but a significant number of the new residential units (including affordable units) could not be occupied, in compliance with the condition, unless the sound levels of the music played were greatly reduced. The effective loss of occupation of residential units would be detrimental and, as particular groups with significant housing need which are strongly represented in the local population include ethnic minority groups, women, families with children and young people, that has the potential to impact negatively on those with protected characteristics.

If the music levels were reduced to a great degree, to enable compliance with the condition in the absence of the sound mitigation lobby, this would avoid the detrimental effect of leaving residential units vacant but would change the activities of the music venue. It is not considered that any one group with protected characteristics would be disproportionately affected in terms of such a change in the music venue's activities.

The clear intention is that the sound mitigation lobby is provided and the lobby is leased to Corsica along with the units and the fire escape in one new leasehold demise as envisaged. The proposal, if implemented, would mean that the business would need to temporarily cease trading for around 9 months to facilitate the construction of the sound mitigation lobby and other works. It is considered that the likely equalities impact of the proposed sound mitigation lobby would be neutral as, although the changes would help secure the future of Corsica Studios and overcome the uncertainties in relation to the extent of their current demise and the use of the fire escape, the continuation or not of the operation of Corsica Studios (or a replacement similar use) should not disproportionately affect any one group with protected characteristics.

If Corsica decided not to take up the option of a new lease of the units complete with the sound mitigation lobby, it is envisaged that the developer would then offer the amended units (complete with the sound mitigation lobby) to other music venue operators so that the use would continue.

It should also be noted that compensation is available under the CPO legislation for costs/losses of needing to temporarily cease trading (if that became necessary), so that the effect with the proposed mitigation would not affect Corsica Studios financially.

It is not considered that adverse equalities impacts from the CPO as proposed would be likely to arise in relation to Corsica Studios. To the extent that any adverse equalities impacts could arise, the proposed mitigation is the sound mitigation lobby as proposed above. As to the prospects of that proposed mitigation occurring, discussions are well advanced with Corsica and it is considered that there are good prospects that the proposed sound mitigation lobby will take place.

Unit 6 Farrell Court – DistriAndina

Unit 6 Farrell Court is occupied by DistriAndina which operates as a café, delicatessen and a Latin American supermarket which sells groceries both retail and wholesale and also delivers around England, Scotland and Wales. They describe themselves as "Serving the UK's Latin American

Community"[2] which previous EqIAs have identified as being a section of the population likely to be disproportionately affected by redevelopment at the Elephant & Castle, as there are several Latin American businesses in the area serving a large local population. DistriAndina themselves are part of that Latin American community, and therefore the protected characteristic of race is relevant. Redevelopment may potentially impact disproportionately and differentially on groups who benefit from the provision of specialist goods and services.

The worst case scenario is the closure and loss of this Latin American business. However, the developer's proposal and clear intention is to relocate DistriAndina into one of the affordable retail units being constructed as part of the redevelopment and fronting Walworth Road or (at DistriAndina's choice) arch 113A/120 to the north of the railway station. The new unit envisaged for the relocation fronting Walworth Road would be of a similar size to their existing unit and would benefit from a large shopfront onto Walworth Road, where there is high footfall and a large number of bus stops, thereby enabling the unit to be easily accessed both on foot and by public transport. Although not in Elephant Road itself, such a replacement unit is within the scheme and would be located only a short distance away from the current unit, in an area with other Latin American businesses nearby. It is considered that this would provide adequate mitigation from the closure of unit 6. If DistriAndina chose to relocate to arch 113A/120 instead, this is considered to be a like for like replacement and again would provide adequate mitigation. Relocation of the business would be organised such that the business did not have to close and there would be continuity of operation.

Compensation is available under the CPO legislation for costs/losses of needing to relocate, so that the effect with mitigation would not affect DistriAndina financially.

Accordingly, the proposed mitigation is relocation as proposed above. As to the prospects of that proposed mitigation occurring, discussions are well advanced with DistriAndina and it is considered that there are good prospects that the proposed relocation will take place. It is considered that the likely equalities impacts would be neutral with that mitigation (i.e. relocation) taken into account.

Unit 7 Farrell Court – Beset International Limited and their occupiers

Beset International Limited occupies unit 7 and operates a shipping and air freighting business as well as providing business space for a number of small businesses of varying types which occupy areas within the railway arch. These include hairdressing, international money transfer, assorted retail and a café. In the survey undertaken on behalf of the Council, the proprietor of Beset identified as being of Black African ethnic minority. The other business owners within the arch identified as being Latin American. The worst case scenario of a closure of this unit and the loss of the businesses would be likely to disproportionately affect these BAME groups.

However, again, the developer's proposal is to relocate these businesses into arch 113B/121 on Elephant Road. This would enable the businesses to continue to trade in the same immediate locality as currently, in very similar premises, as part of the scheme, but in a newly fitted-out unit. As with the other proposals for relocation, the intention is to ensure continuity of provision so that no interruption to the businesses would occur.

As referred to above, compensation is available under the CPO legislation for costs/losses of needing to relocate, so that the effect with mitigation would not affect Beset financially.

Accordingly, the proposed mitigation is relocation as proposed above. As to the prospects of that proposed mitigation occurring, Beset have expressed an in principle acceptance of it if their interest is to be acquired and discussions are underway with their occupiers. In addition, Beset accept the

[2] www.distriandina.co.uk accessed 20 September 2023.

principle of an obligation to offer comparable floorspace and terms to their occupiers and so it is considered that there are good prospects that the proposed relocation will take place. It is considered that the likely equalities impacts would be neutral with that mitigation (i.e. relocation) taken into account.

Some of the occupiers of Unit 7 objected to the February 2023 CPO. One of the objection points was that their first language was not English, but Spanish, and they were disadvantaged by the fact that the CPO documents were in English and no assistance with translation into Spanish had been provided to them. Some of those raising this point alleged a breach of the PSED. The Council officers considered this point and, whilst no breach of the PSED had arisen, the Council has agreed to the principle of translation of key CPO documents provided by the Council into Spanish (in a reasonable and proportionate way). This decision was communicated to these affected parties in July and the Council will take a similar approach in respect of the new CPO, thus mitigating any disadvantage to these Spanish speakers.

Metropolitan Tabernacle

The Metropolitan Tabernacle is an independent reformed Baptist church which occupies the Grade II listed Tabernacle building on the west side of Elephant & Castle. It holds services on Sunday mornings and evenings, prayer meetings on Monday evenings, bible study on Wednesday evenings, and a Sunday School on Sunday afternoons for children and teenagers, as well as hosting a bookshop. That the Tabernacle serves a wide group of people and nationalities is evidenced by the fact that simultaneous translations of its Sunday services are available via headsets into Spanish, French, Portuguese, Chinese and Farsi[3]. The numbers of people using the building vary according to the time of day and the events taking place but can be as many as 1,000 including typically circa 500 children (sometimes as many as 600 children) attending the Sunday school.

The building has disabled access to the front (in one of the side arches) which can be accessed either from the Elephant & Castle highway to the front or from the rear parking area along the north flank of the building. Some of the members of the church's congregation are mobility impaired.

Information about the congregation and staff was requested, in order that any groups sharing protected characteristics can be identified and their needs met as far as practicable. In their objection to the February 2023 CPO, the Tabernacle raised concerns about access for mobility impaired people and children. Effects of the new CPO on the congregation and staff of the Tabernacle could potentially disproportionately affect groups sharing the protected characteristics of religion, age, race, pregnancy and maternity, and disability.

However, the effect of the new CPO on the Tabernacle and its congregation is limited to the need to carry out demolition works to the adjoining London College of Communication building, and the Tabernacle is only included in the CPO in order to secure rights to carry out that work, to erect scaffolding on part of the Tabernacle site and to oversail a crane. Any effects of the new CPO will be temporary and works will be carried out in such a way that the Tabernacle can remain open at all operational times.

Some disruption will be caused by the erection of scaffolding which is necessary to carry out the works to de-couple the LCC building from the Tabernacle and to demolish the LCC building, which is immediately adjacent to the Tabernacle. This may need to stay in place for up to three months. However, it will be erected in such a way as to ensure that access to the front side entrance of the building (which contains the disabled entrance) is still available, with access to the disabled entrance being maintained during operational hours. It is possible that persons with mobility impairments or

[3] www.metropolitantabernacle.org accessed 20 September 2023.

parents pushing pushchairs may not be able to use the side accessway under the scaffolding to reach the disabled entrance at the front side entrance if they approach from Pastor Street, and instead would need to go round the other side of the Tabernacle to reach it from Elephant & Castle highway. This would cause inconvenience to disabled persons, the elderly and families with young children. It might also hinder, and cause inconvenience to, pregnant women. As to the scale of such inconvenience, it is considered that this would be minor. EC's project team have been working with the building contractor, Keltbray, on a method of working so as to minimise any adverse effects on the Tabernacle and are confident that the side passage will be available for pedestrian use.

It is that the scaffolding will also have an impact on vehicular parking to the rear and side of the building, within the Tabernacle grounds. It is understood that the vehicles parking there include minibuses which are used to facilitate travel to the venue for (among others) those with mobility impairments, whether through disability or age. Therefore the loss of those spaces, though temporary and for a relatively short period, may give rise to inconvenience, particularly to disabled persons, the elderly, families with young children and possibly to pregnant women. The developer is content to pay for alternative parking provision within the locality for the duration that spaces are not available due to the scaffolding. It may be that the minibuses would still be able to drop off visitors to the rear of the Tabernacle, without parking there, before then moving to the alternative parking provision, with drivers then returning to pick up later, in that way ensuring that those with mobility impairments would not need to move from the alternative parking to the Tabernacle. The movement of visitors dropped off at the rear of the Tabernacle to the disabled entrance in the front side arch would be as discussed above. The scale of inconvenience arising is considered to be minor. Again, EC's project team have been undertaking further work on this and are confident that demolition protection measures can be designed to ensure minibuses and emergency vehicles can still access the Tabernacle entrance from Pastor Street and use the existing parking area identified by the Tabernacle.

In terms of mitigation, the developer will need to submit a demolition management plan for the West Site in due course and so the Council will be able to assess and approve the detailed demolition methodology at that time. The Council will be seeking to ensure that disruption to the Tabernacle is kept to a minimum as part of that plan. Moreover, the developer agrees in the CPO indemnity agreement (as will be varied) to procure that (a) the disabled entrance in the front side arch is available at all times when the Tabernacle is in operation and (b) measures are taken to keep open the side accessway route from the rear of the Tabernacle to that disabled entrance in the front side arch, under the scaffolding, for persons with (and without) mobility impairments if it is safe and practicable to do so and that (c) safe access/egress from the Tabernacle is ensured at all times.

The Council and the developer will continue to take steps to ensure that the adverse effects of the works on the Tabernacle building and its users are kept to a minimum. If it proves not practicable and safe to keep open the side accessway for those with (and without) mobility impairments during the period when the scaffolding will be in place, the residual equalities impacts of the temporary works are considered to be minor adverse. It is considered that, if the mitigation referred to above is put in place with the side accessway kept open, residual equalities impacts are unlikely to arise.

In their objection to the February 2023 CPO, the Tabernacle suggests their concerns could be overcome by the negotiation and completion of a working agreement with the developer. The developer is seeking to put in place an agreement with the Tabernacle as mitigation against any impacts that may arise and to address all of its concerns.

4. Other impacts arising from the new CPO

East Site
There will be benefits to all users of the East Site from the creation of surface level public access to create the Station Route, the Park Route and further public realm adjacent to the railway viaduct. This is likely to be particularly beneficial to the elderly, disabled persons, pregnant women and families with young children. It will also ensure the permeability of the site for visitors to all parts of the East Site, including the replacement affordable retail floorspace and proposed replacement bingo facility, both of which are included in the East Site at least in part to address adverse equality impacts identified at the planning permission stage.

West Site
The title and new rights being sought in relation to the West Site are all necessary for the West Site redevelopment to proceed, so the new CPO will unlock the ability to develop the West Site, including the public realm areas, affordable retail floorspace, new dwellings (including affordable housing units, and 10% wheelchair accessible units) and job opportunities associated with that phase of the Scheme, all of which are considered to have positive equality impacts. The public realm and improved accessibility on the West Site is likely to benefit older people (i.e. the protected characteristic of age), plus disabled persons, pregnant women and families with young children. Particular groups with significant housing need are strongly represented in the local population including ethnic minority groups, women, families with children and young people. Increased access to affordable housing, due to the affordable housing provided as part of the West Site redevelopment, may benefit these groups. The employment opportunities may benefit in particular young people and others seeking entry level employment. Increased retail employment is, on average, expected to provide a disproportionate number of jobs to local ethnic minority residents. The wheelchair accessible housing will be of benefit to disabled persons.

It is not considered that the daylight and sunlight impacts which could arise from the construction of tall buildings on the West Site would disproportionately affect any one group with protected characteristics.

Consideration has been given to the potential adverse impacts on the local community during the demolition and construction phase on the West Site, particularly to those people with protected characteristics who may be more sensitive to safety, security and accessibility construction impacts, including people with disabilities, children, older people and pregnant women. Similarly, consideration has also been given to the potential noise impacts that the demolition and construction of the West Site may have on groups with protected characteristics, who may be more sensitive to noise increases including people with certain disabilities, children and older people. Whilst the scale of any such impacts is considered to be minor, the Council has already sought to mitigate these impacts through securing demolition management plans and construction environmental management plans in the section 106 agreement.

5. Summary

The making and implementation of the new CPO, following a resolution of Cabinet to do so, will have effects on those directly affected by it, details of which are summarised above. The provisions of the Equality Act are engaged, in that certain groups sharing protected characteristics are potentially disproportionately affected by the proposals.

However, the mitigation measures that are proposed, as detailed above, will play a significant role in minimising the effects of the new CPO on those groups such that any negative impacts on them are

minimised as far as possible. With the proposed mitigation in place, any residual effects would be limited.

Previous EqIAs have concluded that the mitigation measures proposed by the Council and the developer were likely to prove effective in minimising residual negative effects, and pointed out that the scheme facilitated by the new CPO will enable affected businesses to share in the benefits to be delivered, in particular the creation of jobs, new retail space, improved transport links, the new campus for the London College of Communication and the provision of affordable housing.

The Council will need to ensure that the developer commits to and implements the mitigation measures outlined above and that these are monitored in order to help minimise the adverse effects and realise the positive benefits of the redevelopment proposals.

2 October 2023

APPENDIX J

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED – THE NEW CPO

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.

2. Section 226(1)(a) gives the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land". The making of the new CPO will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land covered by the new CPO. The Scheme has already begun on part of the East Site, adjacent to the new CPO land, and EC has shown through all of its progress its continued intention to proceed with the Scheme so as to complete the East Site redevelopment and then carry out the West redevelopment if CPO powers are utilised. Without the use of the new CPO powers, it will not be possible to deliver key areas of public realm on the East Site, nor to complete the East Site redevelopment of the Scheme. Moreover, the title and new rights sought in respect of the West Site are necessary to enable demolition and construction in respect of the West Site. Also, the acquisition of title to certain railway arch premises and related new rights over the viaduct structure is required to deliver the relocation opportunity for the tenant and occupiers of 7 Farrell Court in arch113B/121, and 113A/120 potentially for DistriAndina if they wish to move there, and otherwise to bring those units into retail/café use. The new CPO will also enable the construction of the sound mitigation lobby to the rear of 4-5 Farrell Court and associated works in 4-5 Farrell Court, and leasehold title to the unified floorspace of 4-5 Farrell Court and the sound mitigation lobby to be acquired by the Council, thus allowing for the offer of a new long term lease to Corsica and if they do not wish to take up that option to another operator. So the new CPO will facilitate the carrying out of redevelopment on, or in relation to, the land included in the new CPO and thus the test in section 226(1)(a) is satisfied.

3. In addition to section 226(1)(a), section 226(1A) applies, so the Council must not exercise the power under section 226(1)(a) unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the environmental well-being of their area. In this case, the Council thinks the development, re-development or improvement is likely to contribute to the improvement of all three well-being objects.

4. The Scheme is likely to result in *economic* well-being improvements, including a material increase in the quantity and quality of town centre uses, including providing additional and better quality retail, leisure, education and office provision, consistent with the long term strategy to regenerate the Town Centre and enhance its vitality and viability. The Scheme will create enhanced linkages, and assist in the regeneration of the wider centre. The Scheme includes the provision of affordable retail and office floorspace. The education facility will secure LCC's long-term future in the area.

5. The Scheme will create around 1,300 construction jobs per year during peak times over the 10 year build programme. The completed Scheme will generate up to 2,085 gross new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward, an increase of over 600 when compared with the estimated 1,418

full time equivalent jobs on the East and West Sites before the development commenced. Measures to secure jobs for unemployed borough residents are contained in the section 106 agreement and will deliver significant economic benefits to the local population.

6. The Scheme will secure key new transport infrastructure, including a new station entrance, create enhanced linkages between existing transport provision, and provide a comprehensive package of measures to enhance the connectivity of the new town centre. These measures will make the town centre more competitive, better able to retain and attract trade from within its catchment, including meeting the needs of the additional local residents, workers and students, and encourage the use of sustainable means of transport.

7. As regards the fitting out and opening of the underground station box, the amendments made to the section 106 agreement due to TfL's funding position means that there is an increased chance (as compared to the position in April 2020) that the new station box will not be fitted out and come into operation, but the likelihood of the new station being fitted out and becoming operational at a reasonable point in the future is still high. Even if reduced weight was given to the new station box due to the TfL funding uncertainty, the new CPO would still be justified for all the other economic, social and environmental well-being improvements that the Scheme would bring.

8. The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally. It is estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are offered. The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and £11,230,308 Southwark CIL.

9. The Scheme will deliver significant *social* well-being improvements. These include the creation of a more balanced mix of uses, creating quality homes, offices, education and community facilities, including the provision of affordable retail, workspace and homes. The Scheme includes the provision of cultural and community facilities, including new and enhanced public realm and public toilets which will benefit all sections of the community. It will include the opportunity for Corsica Studios to take up a new lease of 4-5 Farrell Court, with the sound mitigation lobby incorporated, thus giving the opportunity to safeguard the longer term future of this cultural venue on Elephant Road whilst also ensuring that there will be no adverse noise effects on the new residential population. The noise mitigation will also help protect the venue against future noise complaints which might otherwise arise from other sources (e.g. future new uses or development) and therefore helps secure the future of the venue in that sense also. It will also include relocation premises for the small, local businesses which will be displaced by the creation of the Park Route.

10. The Scheme will also deliver significant *environmental* well-being improvements. In addition to providing well designed buildings and well connected spaces, the Scheme will contribute to securing more sustainable travel patterns, by better serving the needs of current and future residents, workers and students. The Scheme includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements, including additional landscaping and tree planting. The Scheme will also provide a sound mitigation lobby on the rear of 4-5 Farrell Court, thus alleviating noise amenity concerns.

11. Notwithstanding that there will be some negative effects to those affected by the new CPO, as referred to in this report, and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.

12. The specific economic, social and environmental well-being improvements that the new CPO will deliver directly are in themselves sufficient to satisfy section 226(1A) of the 1990 Act. Firstly, without the new CPO, the Park Route as shown in the planning permission approved drawings cannot be delivered. It has been a key aspect of the Council's planning vision for a long time that the redeveloped Shopping Centre site should be opened up for pedestrians to what is now Elephant Park, thus facilitating the connection of these two key sites. EC is under an obligation in the section 106 agreement to use reasonable endeavours to open the Park Route prior to the East Site opening. Although the section 106 agreement allows for an alternative route for the Park Route through one of the arches that EC has some long leasehold to, or such other alternative route that the Council may approve, the July 2021 planning permission only shows the route through 6 and 7 Farrell Court, so that is the approved route under the permission. That route was chosen for the planning application, after analysis of likely pedestrian footfalls, and what would be the optimum route through the East Site because it forms a natural pedestrian "desire line", as it aligns with a boulevard from Elephant Park and so represents the optimum connection to Elephant Park and Lendlease's new redevelopment around it. From the chosen Park Route, pedestrians will be able to continue west through the new town centre to Elephant & Castle highway with its bus services (and Brook Drive beyond), or to move northwest to the new Underground station. This route is also close to Castle Square and Walworth Road. By contrast the arch EC has some long leasehold title to is situated further away from Walworth Road and Elephant Park and so would be inferior as a direct pedestrian link to those areas. In addition, it is located close to (and opposite) the proposed new building for the LCC, Building E1, and for pedestrians to emerge opposite Building E1 and close to the railway station, when considered along with users of the rail station, risked creating a pinchpoint. Building E1 would likely have had to have been smaller to accommodate additional pedestrian circulation space, losing mass from its south eastern corner. Reduced footprint of that building would be problematic, due to UAL's requirements for the new educational facility to achieve critical mass in order to retain the LCC at Elephant & Castle. Shifting Building E1 to the west would have impacted on the Station Route, making it too narrow and affecting the clear and permeable route through the East Site to the Elephant & Castle peninsula.

13. Secondly, areas of new public realm (and the pedestrian connectivity they bring) adjacent to the railway viaduct are also at risk of not being delivered without the new CPO, including the ability to complete the Station Route from the new Underground station box to the railway station for pedestrians, via the new right sought in that respect. Again, this is a key aspect of the East Site.

14. Thirdly, the use of the new CPO powers will facilitate a practical solution for the retention of the nightclub use in this location, as explained in more detail in the main body of the report.

15. Fourthly, the use of the new CPO powers will facilitate the redevelopment of arch 113B/121 to provide a suitable and immediately adjacent relocation opportunity for the tenant and occupiers of 7 Farrell Court, and arch 113A/120 potentially for DistriAndina too if they wish to move there, thus mitigating adverse impacts on them.

16. Fifthly, the new CPO elements being sought in relation to the West Site itself are all necessary for the West Site redevelopment to proceed, thus the new CPO unlocks all the benefits associated with the West Site, including 498 residential units (165 of which are to be affordable), new retail floorspace (including affordable retail) and a new cultural venue.

17. The new CPO is therefore essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring.

18. Accordingly the statutory test in 226(1A) is met.

19. The key paragraphs from the Guidance are now considered.

Acquiring authorities should use compulsory purchase powers where it is expedient to do so

20. Given the conclusions in relation to the tests under section 226(1)(a) and section 226(1A) above, it is clearly expedient to make the new CPO to facilitate this very important redevelopment. For the reasons explained above, the new CPO is essential to the successful implementation and completion of the Scheme. The only change as to expediency (as compared to December 2022) is the fact that the redevelopment has progressed further, which makes it even more expedient than was previously the case that the Council supports the Scheme through CPO powers so that the Scheme can continue and be completed.

However, a CPO should only be made where there is a compelling case in the public interest

21. The Scheme will transform the town centre. Although there are some adverse effects, as referred to elsewhere in this report, it is considered that these are relatively minor and in any event need to be weighed against the very significant and numerous public benefits that will accrue from the Scheme. This is considered to be the case even in relation to the specific benefits that would be directly delivered through the use of the new CPO powers (as detailed above). The new CPO is necessary to unlock these benefits of the Scheme. The public benefits arising from the use of the new CPO powers amount to sufficiently compelling reasons for powers to be sought and outweigh the loss and any overriding of property interests to individuals and businesses arising from the new CPO. As vacant possession of most of the East Site was obtained by agreement, confirming the new CPO will not have many of the potentially adverse impacts it could have caused as originally envisaged in April 2020, so there is now less private loss to be outweighed by the public benefits. There is an increased need for the redevelopment to proceed and be completed given that the East Site has been demolished and cleared and the construction is well underway. So, the case for a CPO is now more compelling than ever.

The acquiring authority will be expected to demonstrate that it has made reasonable offers to acquire land and rights by agreement

22. It is considered that this part of the Guidance has been satisfied to date and will continue to be so. EC, acting in collaboration with Council officers, has been making reasonable efforts to acquire outstanding land interests and new rights by agreement over a significant period of time. Council officers have been kept regularly appraised of, and have been consulted in respect of, the ongoing negotiations. The Council's officers have also been directly involved with discussions with Arch Co, seeking agreement. This approach has generally worked well, as evidenced by the fact that EC has concluded various acquisitions and agreements with third parties already, thus avoiding the compulsory acquisition of various interests, but the new CPO is now required to give impetus to negotiations with the

remaining affected parties. EC is continuing its attempts to acquire by agreement and is obliged to continue to do so under the CPO indemnity agreement. The Council is taking an active role, in collaboration with EC, to take those negotiations forward and in making offers to the remaining parties. The discussions with Corsica, the Council and EC are an example of how the Council and EC have been putting very considerable effort into attempting to resolve matters by agreement to the greatest extent possible.

Compulsory purchase is intended as a last resort; but it may be sensible for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal proceedings to mitigate loss of valuable time and to encourage those whose land is affected to enter into meaningful negotiations

23. The making of the new CPO will assist in the remaining negotiations as it will make all parties aware of the continued seriousness of the Council's intentions, as is recognised in the Guidance. It is fair to say the making of the February 2023 CPO gave added impetus to negotiations. The new CPO is being used as a genuine last resort to ensure the land assembly needed to continue and complete the Scheme. The new CPO will underpin the remaining negotiations that need to be concluded to enable the Scheme. The use of the new CPO as a last resort is evidenced by the considerable reduction in land that has been included in the CPO as compared to that in April 2020 (because much of the necessary land has been acquired by agreement). The fact that development has commenced makes it all the more important to have the new CPO to complete the development. Delaying the new CPO risks being unable to complete the Scheme in accordance with the development programme, or at all.

When making … [a CPO] acquiring authorities … should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.

24. The Council's purpose in making the new CPO is to facilitate the development, redevelopment or improvement on or in relation to the new CPO land, namely the Scheme. The Scheme represents a vital, comprehensive redevelopment of the town centre. The very considerable benefits that will arise from the Scheme have been summarised elsewhere in this report. These public benefits outweigh, and justify interference with, human rights, and such interference is proportionate to the large level of public benefits that would arise from the Scheme. The purpose to be achieved by the new CPO would justify interference with human rights even if the interference was a lot wider or more severe than considered in this report, given the benefits of the Scheme. The public benefits of the Scheme outweigh the private losses. This is the case even if the specific benefits that would be directly delivered by the new CPO are considered in isolation and weighed against the interference with the human rights of the affected parties.

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

25. Please refer to paragraph 22 above as to offers to date and the intention for the Council and EC to actively pursue further negotiation. The Council has sought to engage constructively with those affected, as evidenced by Council officers addressing affected traders as to the proposals, the appointment of Tree Shepherd to assist affected parties with relocation advice and the other measures in the agreed relocation strategy under the section 106 agreement. The Council and EC are also seeking to constructively work towards

arch 113B/121 being redeveloped as a relocation opportunity for displaced occupiers of 7 Farrell Court as part of the Scheme, and arch 113A/120 potentially for DistriAndina too if they wish to move there, and to allow for the long term future of Corsica Studios at 4-5 Farrell Court. The proposed new arrangements for Corsica demonstrate the lengths to which the Council and EC are going to engage constructively about mitigation and relocation issues, as does the ability to offer relocation opportunities with the Scheme to Beset and its occupiers and to DistriAndina.

The acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time… [the acquiring authority should] have a clear idea of how it intends to use the land which it is proposing to acquire and [should be able to] show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.

26. The Council plans to use the new CPO acquisitions and new rights to facilitate the carrying out of the Scheme, to enable the Scheme to continue and be completed. The powers need to be sought now, otherwise the East Site will not be able to be completed in accordance with the development programme, or at all. Title to certain areas and new rights are also required for the West Site redevelopment. The Council and EC, with the best of intentions, have sought to be patient in allowing time for private treaty negotiations to bear fruit but the new CPO is needed to ensure the Scheme can continue and be completed. Resources are dealt with below.

The acquiring authority should address (a) sources of funding … available for both acquiring the land and implementing [the Scheme] … and (b) the timing of that funding - funding should generally be available now or early in the process … evidence should be … provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

27. The Council now has the benefit of the CPO indemnity agreement with EC (backed by a guarantee from Get Living Plc). Some minor variations to this will be required but importantly these will not affect the position that the Council will receive a complete indemnity in respect of all compensation to be paid pursuant to the new CPO and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the new CPO will be borne by EC too (again, guaranteed by Get Living Plc). The Council is satisfied that Get Living Plc has good covenant strength to meet its obligations in the unlikely event that EC defaulted. As a minor update to paragraph 17 of the December 2022 report, one of the three "Triangle Partnership" shareholders in Get Living, QD UK Holdings Limited Partnership, has sold its 22% stake in the Triangle Partnership to the Australian pension fund Aware Super. This is considered to have no effect on the ability of Get Living to meet any liabilities under the CPO indemnity agreement.

28. In addition, further details of funding have been provided by EC which has been reviewed and officers are satisfied that the funding is either already available, for East Site, or is likely to be available in good time to commence the West Site redevelopment as envisaged. It is anticipated that around 40% of the West Site redevelopment cost (including land acquisition) will be financed by equity payments from the Triangle partners and a further affordable housing grant in respect of the West Site, with around 60% being provided through debt funding. Understandably, the developer will not seek that debt funding for the West Site until closer to the time that the West Site redevelopment is begun, otherwise it would incur significant and unnecessary interest charges in the interim period. (By way of example, the East Site debt funding for the construction of new buildings on East Site

was put in place in December 2021, and piling began in March 2022). As to whether the West Site debt funding is likely to be obtainable on reasonable commercial terms to the developer, it is considered that this is likely to be the case given: the identity of EC's backers; the central London location and prestige of the redevelopment, with which lenders are likely to wish to be associated; that Delancey, who advise EC, are experienced in and have obtained significant debt funding on other large scale redevelopment projects for their clients; and the fact that EC was able to procure debt funding to fully fund the East Site redevelopment. These details have been re-confirmed by EC to officers in the run up to this Cabinet meeting.

29. As regards non-financial resources, EC has procured a professional team from all disciplines to advise in respect of the Scheme. It is advised by Delancey, an experienced property development and asset management company. The Triangle partners (EC's backers) have developed large schemes before, as referred to in the April 2020 Cabinet report. Officers are satisfied the developer has the expertise and the ability to attract the funding to deliver the West Site. It has already demonstrated its commitment by at considerable expense securing a planning consent, acquiring much of the land needed to deliver the Scheme, securing funding for the construction phase of the East Site and commencing on the East Site. This is therefore not an impediment. There are no known external factors that may frustrate delivery of the Scheme. Further comfort can be taken from the progress made with the development of the East Site to date.

Acquiring authorities will need to demonstrate that the scheme is unlikely to be blocked by any physical or legal impediments. These include:

(a) the programming of any infrastructure accommodation works or remedial work which may be required

30. It is considered there are no such impediments. LUL has planning permission for its connecting tunnel works for the new station box and the revised planning permission allows for the new station box to be larger, thus accommodating the Northern and potentially the Bakerloo Line too.

(b) any need for planning permission for the scheme or other consent or licence.

31. The vast majority of the Scheme has been granted planning permission. The conversion of arch 113B/121 as a relocation premises for Beset and their occupiers (commercial, business and services use), and arch 113A/120 potentially for DistriAndina if they wish to move there, and otherwise for retail/café use, including kiosks, will require planning permission (for change in use and physical works). Subject to the imposition of suitable conditions, there is no reason why such planning permission would not be granted, as this would be in keeping with the current uses on Elephant Road and the policies applicable to the Opportunity Area. The proposed sound mitigation lobby to be constructed to the immediate rear of 4-5 Farrell Court and associated works and internal alterations will also require planning permission. There is no reason why such planning permission would not be granted given that it would help to meet the Agent of Change planning policy requirements and produce overall environmental improvements. In each case, EC has advised that it has instructed its planning consultants to prepare the necessary planning applications, in the case of 4-5 Farrell Court once the final form has been agreed with Corsica.

32. The Government intends to bring into operation revised building regulations to require second staircases in new, tall residential buildings. EC's representatives are of the view that even if the West Site tall buildings are not caught by the proposed regulations (because they form part of a permission which has already been begun), they may well choose to put second staircases in the West Site tall buildings. Similarly, they are also considering whether the energy strategy for the West Site could be enhanced by changing the currently consented gas based system to an all-electric supply. These positive changes, if pursued, would require some form of planning approval from the Council, because pursuant to the planning permission the Scheme is to be built in accordance with the approved planning drawings and they do not currently show such second staircases or an all-electric based energy supply. The form of such planning approval would depend on the level of materiality of any change to the West Site buildings and could potentially be dealt with by way of non-material amendment approval, or through a minor material amendment section 73 planning permission or possibly even another permission, depending on the materiality of the changes. The Council would at that point need to assess what changes were proposed and whether they were acceptable from a planning perspective. Given the development plan allocations for the site and the fact that tall buildings are already considered acceptable on the site and have been granted planning permission, and any changes would be necessitated by positive improvements to the scheme, it is considered likely that any such planning approval (if required) would be granted and this is unlikely to represent any impediment to the Scheme.

33. The April 2020 Cabinet report stated that the listed building consent for the minor works to the façade of the Tabernacle only had a 3 year period in which to begin works. This was an error. The consent has, in fact, a 10 year implementation period and so there is no need to seek a longer consent as was envisaged in that report. This is beneficial.

34. Planning permission was also obtained by EC on 10 June 2022 in respect of a heating network pipe which will run from 50 New Kent Road (owned by EC's group company) under Elephant Road into the East Site. An easement has been completed with Network Rail to facilitate this.

35. Highway stopping-up orders in respect of both East and West Sites have already come into operation and so there are no further stopping-up orders required in respect of the Scheme.

36. One or more agreements under the Highways Act 1980 with TfL and the Council, as highway authorities, will be required for highway works. Agreement will very likely be reached on these, as they are, routinely, on many different types of development. The section 106 agreement imposes restrictions on certain milestones in the development programme until the highways agreements, and their respective works, are completed. The Council's consent, as highway authority, would also be required if the highway layer is to be disturbed to facilitate the heating pipe network works referred to above. Again, there is no reason why that consent should not be forthcoming.

37. Licences will be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments. Such licences are already in place in respect of the works to date on East Site.

38. There are no physical impediments which are known which will prevent the Scheme from proceeding.

39. The CPO legislation affords special protection to statutory undertakers' operational land. Statutory undertakers can make representations to their appropriate minister (i.e. the minister who is responsible for that undertaker) against the inclusion of their operational land, as well as objecting to the Secretary of State in the normal manner. If such a representation is made and not withdrawn, generally the Secretary of State will not confirm a CPO as regards that interest in land unless the appropriate minister gives a certificate that the land can be taken without serious detriment to the statutory undertaker.

40. There is some operational land of statutory undertakers within the new CPO area, notably the railway viaduct and the area of land immediately to the west of the railway station over which a new pedestrian right of way (and related right to pave and maintain that area) is sought. Network Rail have made a representation to the Department for Transport against the inclusion of their land in the February 2023 CPO. However, in doing so, they also made clear that their representation and objection could be withdrawn if an agreement was reached between EC and Network Rail, and specified what their requirements for such an agreement would be. EC is content in principle with those requirements and is seeking to progress the agreement with Network Rail. It is not the intention of EC or the Council to interfere with the operational running of the railway. Discussions are progressing between EC and Network Rail in these respects and EC is confident that agreement shall be reached on all matters. EC has been keeping the Council appraised of progress and given confidence that agreement can be reached, thereby bringing Network Rail into the Scheme by agreement. Nevertheless, the new CPO is needed as a backstop. Although crane oversail will take place over some highway areas administered by TfL and the Council, there should be no operational impact on TfL and the Council as highway authorities.

41. There are also electricity sub-stations within the new CPO area, held leasehold by London Power Networks. Again, this is operational land and EC will work towards procuring their agreement to bring the leases to an end but the new CPO is needed as a backstop.

42. The new CPO land also includes statutory undertaker and telecommunications operator apparatus and EC is already in discussions with the utility companies and the telecommunications operators to reach agreement with them.

43. There are no areas of land which attract special protection under section 19 Acquisition of Land Act 1981 (common land, open space or allotments).

44. Therefore, there are unlikely to be any impediments to the Scheme if the new CPO is made.

Acquiring authorities are expected to evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.

45. This is addressed above at paragraph 22 and in Appendix F.

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

46. The Council's purpose in making the new CPO is stated above. It fits with the adopted development plan, which supports the regeneration envisaged by the Scheme. The new CPO is necessary to implement the Council's and the Mayor's objectives as specified in the Southwark Plan 2022 and the London Plan 2021. Both of these documents had been

envisaged by the Cabinet report in April 2020 and the policies in both were considered by the Council at Planning Committee for the revised planning application on 6 July 2021.

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.

47. This is addressed at paragraphs 3 -18 above.

Whether the purpose for which the acquiring authority is proposing to acquire the land would be achieved by any other means. 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 of which the land is being acquired.

48. The prospects of acquiring all the relevant land interests by agreement to enable the comprehensive redevelopment within a reasonable timescale are unlikely. The Council has already, with the best intentions, allowed ample time for negotiations to reach fruition. If the Council does not act now then the completion of the East Site, and the West Site redevelopment, will be entirely dependent on the owners and occupiers of the outstanding land interests. Although Arch Co have raised the possibility (in their objection to the February 2023 CPO) that they would be willing to grant a licence, on appropriate terms, in respect of some of the aspects sought by the Council and EC under the February 2023 CPO, such a licence (if agreed) would not for example, enable the Council to secure vacant possession of 6 and 7 Farrell Court for the purposes of creating the Park Route, nor would it secure the Park Route fully and permanently or give any long term control of the site to the Council or EC.

49. Consideration has been given to whether the Council's objectives might be achieved by individual landowners within the land separately carrying out development of their land. This would be likely to result in poorly co-ordinated redevelopment of parts of the new CPO land, in a piecemeal fashion, which will contrast badly with the comprehensive vision of the Scheme. Any proper redevelopment needs the interests/rights covered by the new CPO and certainly any redevelopment in line with planning policy does. The Scheme, as per planning policy, is an holistic concept which cannot be delivered on a piecemeal basis and any attempt by third parties to redevelop parts of the land on a piecemeal basis without the use of CPO powers would destroy the additional benefits that come from a co-ordinated, holistic regeneration in line with planning policy.

50. The Council has considered whether there are alternative proposals for this land and whether such proposals would be appropriate. There are no known alternative proposals that the Council is aware of, and even if there were, such alternatives would not (1) meet the objectives of planning policy for a comprehensive redevelopment of the Scheme Land and (2) provide the benefits of the Scheme.

51. Consideration has been given to whether the Council's objectives in making the new CPO can be achieved at a different location. The scope for any alternative location in the context of the particular objectives here is absent. The Scheme is to regenerate this area of land, which cannot be achieved on another area of land.

52. Consideration has also been given to whether an alternative alignment for the Park Route, through Arches 113A/120 and 113B/121, to the north of the railway station, would have avoided the need to acquire the leasehold title to 6 and 7 Farrell Court and associated new

rights. For the reasons given at paragraph 12, that alternative alignment would have been significantly inferior to the chosen route, such that 6 and 7 Farrell Court do need to be acquired. Consideration has also been given to whether it is necessary to acquire arch 113B/121 as a relocation premises for Beset and their occupiers, and 113A/120 potentially for DistriAndina if they wish to move there, and otherwise for retail/café use, and whether there are any alternatives to doing so. No suitable alternative off site relocation opportunity which meets Beset's requirements has been found. Recent decisions on CPOs have highlighted the importance of seeking where possible to provide relocation opportunities for occupiers within the scheme area. Beset have expressed a preference to take one railway arch unit which can accommodate a mezzanine floor, thereby recreating their arrangements in 7 Farrell Court. Although 4-5 Farrell Court had previously been envisaged for their relocation, those units do not possess the height to include a mezzanine floor across them which would be big enough and compliant with building regulations. Arch 113B/121 does have sufficient height. In addition, it is now proposed to retain the nightclub use within 4-5 Farrell Court and in particular to give Corsica Studios the option to have a longer term occupation of 4-5 Farrell Court. It would be preferable to retain the nightclub use in situ, which means 4-5 Farrell Court would not be available for the relocation of Beset and its occupiers (or DistriAndina). EC does not have the necessary title to bring about the beneficial use and works in arches 113A/120 and 113B/121, so the acquisition of greater leasehold title and associated new rights is necessary to achieve this. Consideration has also been given to whether it is necessary to acquire the leasehold title to 4 and 5 Farrell Court and the land to the immediate rear of those units where the sound mitigation lobby is to be sited, and associated new rights against the viaduct. The leasehold title to the rear area is required to build the lobby and then offer the new longer term lease of it to Corsica along with 4 and 5 Farrell Court as a unified space; new rights are required to affix the lobby to the viaduct and for associated physical works. The leasehold title to 4 and 5 Farrell Court and the bisecting fire escape accessway is required to facilitate these works and to obtain control of the unit so as to offer a longer term lease of the unified space (i.e. with the sound mitigation lobby) to Corsica. If Corsica choose not to take up that option then the leasehold title is still required to ensure that a longer term lease of the unified floorspace (i.e. with the sound mitigation lobby) can be offered to other operators to seek to retain the use.

The potential financial viability of the scheme for which the land is being acquired. 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 scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.

53. Funding intentions are dealt with above. The potential viability of the Scheme has been examined as part of the planning application process in the context of the maximum level of affordable housing the Scheme can provide. Discussion took place during the original planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as

well as costs advice from cost advisors. The advice from GVA (now Avison Young), advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.

54. In June 2021, as part of consideration of the revised planning application, DS2 (advising EC) concluded that there had been a notional increase in viability so that the ungeared IRR had risen to 10.23% but pointed out this was derived only from the fact that the East Site value had reduced due to the demolition of buildings, and that in real terms there was a reduction in retail values due to the COVID-19 pandemic, and the general decline in high street retailing, increased construction costs and the pandemic's effect meant that development economics were extremely challenging. Avison Young concurred that the target level of profit was not predicted to be met with the requisite level of affordable housing.

55. Prior to the December 2022 Cabinet, the viability position was the subject of further expert work by Avison Young for the Council. They carried out a high level review of the viability of the Scheme. The exercise took the form of a review of the updated proposed Scheme appraisals and commentary upon whether the inputs are reasonable at this point in time. This high-level review was undertaken on a desktop basis to inform the Council's decision making. Avison Young advised that this exercise would likely have to be reviewed again in the run up to a CPO inquiry. The review also included a sensitivity analysis of the IRR, commercial rents and yields.

56. On the basis of their high level analysis, Avison Young concluded that the Scheme is viable. They advised that the following points further reinforce their conclusion that the Scheme is viable: the East Site works have been procured under a fixed price Design and Build Contract with a major building contractor, Multiplex; full funding for the East Site has been secured; the existence of the contractual agreement with UAL/LCC; the Scheme has commenced and is proceeding; whilst the current macro-economic situation is challenging, there nevertheless remains underlying demand for high quality professionally managed residential stock, and rental forecasts remain positive.

57. In the run up to this Cabinet meeting, Avison Young have provided further high level analysis for the Council which is to the effect that the position remains much as it was in December 2022, and that the scheme is viable**.**

58. Viability is a moot point in respect of the East Site because EC has chosen to proceed, has funded it and has a contractor appointed and on site to build it (subject in the case of the CPO areas to being able to do so). As regards the West Site, the reality is that once the new university campus building has been completed on the East Site for UAL, the completion of the sale of the LCC site is triggered, albeit UAL will have some time in which to move across to the East Site. So, having paid a very considerable sum to acquire the West Site at that point, it is highly likely that EC's group company, Elephant Three Properties Limited, would then proceed with the West Site redevelopment (subject to the new CPO enabling it to do so), to recoup a return on its investment. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case, though it is noted the target rate of return is not currently forecast to be met, officers do not consider there is any real uncertainty that the West Site will proceed given the factors above but, even if there was such uncertainty, the confirmation of the new CPO will still be justified because the case for the new CPO is so very compelling.

59. In terms of the CPO indemnity agreement, all interests to be acquired by the Council, whether by agreement or by CPO, will be acquired for planning purposes. Under section

233(3) of the 1990 Act, the Council needs to achieve best consideration when disposing of land under this provision. This however needs to be judged in the context of the totality of the arrangements for the transfer of interests pursuant to the CPO indemnity agreement. The Council will only be acquiring interests from third parties or creating rights over their land on the basis that funding for the initial acquisitions or rights (at market value) is coming from EC and on the basis that it will thereafter dispose of any acquired land to EC or EC's group company. As such, there is no realistic prospect of the Council obtaining consideration in respect of the disposals to EC (or its group company) under the CPO indemnity agreement beyond the indemnity arrangements, such that these arrangements are still the best consideration that can reasonably be obtained in the circumstances.

60. The Council is required to exercise its power under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation on the land in question (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land that wish to obtain accommodation. The Council and EC's intention is to offer relocation opportunities to the affected occupiers. Corsica Studios (4-5 Farrell Court) are being offered the opportunity to take a new lease of those premises, unified with the sound mitigation box once it is built. Beset and its occupiers (7 Farrell Court) are being offered the opportunity to relocate within arch 113B/121. DistriAndina (6 Farrell Court) are being offered the opportunity to relocate into the Scheme, either within a new unit on the East Site or arch 113A/120 (whichever is their preference). It is envisaged that Beset (and its occupiers) and DistriAndina will not need to cease trading nor suffer any material delays in re-opening. Corsica will have some short term cessation of trading (potentially around 9 months) whilst the works to their unit take place but they fully understand that situation and the works would facilitate the solution which they have sought, with an offer to take up a longer lease of the new unit complete with the sound mitigation lobby. The indemnity agreement between the Council and EC requires EC to offer relocation opportunities in accordance with section 233 in respect of any land that is acquired by the Council and disposed of to EC pursuant to the CPO arrangements. Accordingly it is concluded that the duty under section 233(5) will be satisfied.

61. In addition, the section 106 agreement relocation strategy requires that 10% of the new retail floorspace pursuant to the July 2021 planning permission will be affordable retail floorspace and will be offered in the first instance to eligible businesses displaced from the East Site. Similarly, 10% of the commercial floorspace pursuant to the July 2021 permission will be provided as affordable workspace, again offered in the first instance to eligible businesses from the East Site displaced by the redevelopment.

62. In respect of the statutory duty under section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, in the exercise of the powers of disposal under section 233, the Metropolitan Tabernacle is a listed building and some minor works to that building are required and have received listed building consent. The Council will acquire new rights over the land under the new CPO and EC will be able to utilise those new rights. Cabinet will note that notwithstanding the substantial weight given to harm to the setting of the Tabernacle, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme. Any effects the Scheme may have on the other designated heritage assets in the locality, including the Faraday Memorial and Metro Central Heights listed buildings, listed buildings at West Square and the West Square and Elliott Row Conservation Areas, and any undesignated heritage assets, were fully considered by the Planning Committee. Officers

consider that there is no breach of this statutory duty by reason of the proposals set out in this report.

That the correct statutory procedures have been correctly followed

63. It is considered that the relevant statutory procedures have been correctly followed to date. It will be necessary for the Council to follow the correct statutory procedures in making the new CPO and publicising the same and serving notice of it on the affected parties, and to follow the Guidance policy on (among other things) providing a Statement of Reasons to affected parties. Thereafter the Council will need to adhere to the statutory procedures as regards the proposed confirmation of the new CPO, including adhering to the inquiry rules.

APPENDIX K

Agenda Item 22

December 2022

Item No. 22.	Classification: Open	Date: 6 December 2022	Meeting Name: Cabinet
Report title:		Elephant and Castle Town Centre – Compulsory Purchase Order	
Ward(s) or groups affected:		North Walworth St George's	
Cabinet Member:		Councillor James McAsh, Climate Emergency and Sustainable Development	

FOREWORD - COUNCILLOR JAMES MCASH, CABINET MEMBER FOR THE CLIMATE EMERGENCY AND SUSTAINABLE DEVELOPMENT

In April 2020 cabinet agreed to make and pursue a compulsory purchase order (CPO) for both the east and west Elephant and Castle town centre sites. This report explains that since then the developer has made considerable progress towards delivering the scheme. Vacant possession of the shopping centre and 26-32 New Kent Road were obtained without the need for CPO powers. Subsequently these buildings were demolished and the developer has appointed Multiplex, a major building contractor, to carry out the new development on the East site which is now visibly underway. The report sets out the considerable benefits that will arise from the development which include new homes, jobs, and work space.

Agreements have been reached with Transport for London (TfL) to enable the construction and handover of the new Northern Line Underground station box to London Underground. A revised planning permission has been secured which will allow for the incorporation of the Bakerloo Line when the Bakerloo Line extension proceeds. Contracts have been exchanged with the University of the Arts London to build a new campus for the London College of Communication on the east site which paves the way for the redevelopment of the west site. These are welcome developments that deliver on our commitments to enhance public transport provision and secure the long term future of LCC at its established home at the Elephant and Castle.

Throughout this process the council has continued to meet its commitment to local traders displaced by the redevelopment to ensure they have the opportunity to continue to operate in the area. The relocation funds secured through the s106 agreement and the £200,000 that the council made available have been now been largely expended. This has ensured that 53 eligible independent businesses have been relocated or are in ongoing and final legal discussions.

RECOMMENDATIONS

That the Cabinet agrees:

1. That subject to the prior completion of an indemnity agreement with Elephant & Castle Properties Co. Limited ("EC"), the council makes and (subject to any

necessary confirmation from the Secretary of State) implements a compulsory purchase order ("CPO") under section 226(1)(a) of the Town and Country Planning Act 1990 and section 13 Local Government (Miscellaneous Provisions) Act 1976 (and in accordance with the procedures in the Acquisition of Land Act 1981) in respect of the area edged red on the plan at Appendix A ("the Order Land") for the acquisition of the land shown coloured pink on the same plan and the creation and acquisition of new rights over the land shown coloured blue on the same plan[1] for the purpose of facilitating the redevelopment, development and improvement on or in relation to that land, namely a mixed use town centre redevelopment scheme including residential, retail, offices, education, assembly and leisure, a new station entrance and station box for use as a London Underground operational railway station, nightclub, commercial, business and services, access and highway works, public realm and landscaping, car and cycle parking, plant and servicing and associated and ancillary works and structures ("the Scheme") on and adjacent to the Order Land, with the land comprised within the Scheme ("the Scheme Land") being shown edged red on the plan at Appendix B

2. The Director of Planning and Growth be authorised on behalf of the council to finalise the terms of and enter into the CPO indemnity agreement with EC to underwrite in full the council's costs and liabilities associated with the proposed CPO, including suitable security for the council's liabilities, and

3. Subject to completion of the CPO indemnity agreement referred to in recommendation 2, the Director of Planning and Growth be authorised on behalf of the council to :

   (a) take all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of all notices and the presentation of the Council's case at public inquiry should one be called;

   (b) acquire for planning purposes all interests in land and new rights within the Order Land as may be necessary to facilitate the Scheme, either by agreement or compulsorily, including entering into negotiations with any third parties for the acquisition of their land interests and/or for new rights over their land (as appropriate), the payment of compensation and dealing with any blight notices served in connection with the CPO;

   (c) approve agreements with land owners setting out the terms for the withdrawal of objections to the CPO, including where appropriate seeking the exclusion of land or new rights from the CPO or giving undertakings as to the enforcement of the terms of the CPO;

   (d) make any deletions or amendments to the draft CPO map at Appendix A and/or the related draft ownership schedules of the CPO (including any minor additions) should the need arise, so as to include all interests in

[1] Colour versions of the CPO map are attached at appendix A; a black and white version of the draft CPO map, showing the areas to be acquired (pink) as hatched black and the areas of new rights (blue) as light grey is included at Appendix L.

land and rights required to facilitate the construction, maintenance and use of the Scheme;

(e) dispose of the land acquired from third parties pursuant to the CPO and/or through private negotiations, pursuant to section 233 of the Town and Country Planning Act 1990, in accordance with the terms of the CPO indemnity agreement;

(f) take all necessary actions in relation to any legal proceedings relating to the CPO, including defending or settling (as appropriate) any compensation claims referred to the Lands Chamber of the Upper Tribunal due to the making or implementation of the CPO, and to take all necessary steps in respect of other legal proceedings that relate to the making, confirmation or implementation of the CPO;

(g) authorise entry onto land to undertake surveys under section 172 Housing and Planning Act 2016 and/or other relevant powers;

(h) where necessary in the absence of agreement, to exercise powers under section 271 and/or 272 Town and Country Planning Act 1990 in respect of the extinguishment of rights of statutory undertakers and electronic communications code network operators;

(i) appoint and/or retain such external professional advisors and consultants as are necessary to assist the Council in facilitating the Scheme, including in the promotion of the CPO and the settlement of any compensation claims;

(j) take all necessary, ancillary or incidental steps to give effect to the recommendations in the report.

BACKGROUND INFORMATION

Introduction and the need for a further Cabinet decision

4. In April 2020, Cabinet considered a trio of reports on the redevelopment of the Elephant and Castle Shopping Centre and London College of Communication (“LCC site”). Cabinet unanimously resolved to authorise the use of CPO powers to facilitate the redevelopment and so deliver on the Council's long term vision for this strategic site within the Elephant and Castle opportunity area. The site is now designated as NSP48 in the recently adopted Southwark Plan. The site comprises: "the East Site", being the former Shopping Centre site and the immediately adjacent 26-32 New Kent Road (the buildings on those areas having now been demolished in full) and some of the arches under the adjacent railway viaduct; and "the West Site", comprising the LCC site and its immediate surroundings.

5. Considerable progress has been made since April 2020. The developer has acquired much of the land and new rights required for the Scheme by agreement, thus greatly reducing the potential adverse effects of compulsory purchase as previously considered by Cabinet. The old buildings on the Shopping Centre site

and at 26-32 New Kent Road have been demolished and the developer has secured funding for, and has begun, the new buildings on the East Site. Further detail on the considerable progress made can be found at paragraph 26 and Appendix D.

6. However, despite further negotiations between the developer and the remaining affected parties, agreement has not been reached to acquire all the land interests required for the Scheme. This raises the very real risk that parts of the East Site of the consented Scheme will not be delivered.

7. Amongst the areas at risk is a significant and important part of the planned public realm on the East Site, which currently comprises two railway arch units at 6 and 7 Farrell Court on Elephant Road and an area of hardstanding immediately adjacent to the railway viaduct. This would provide an important pedestrian link between the East Site, Elephant Road and Elephant Park, thus bringing the connectivity benefits that the Council has long been seeking for this part of the town centre. Furthermore, acquisition of land and new rights over the area immediately to the west of the viaduct is also needed to ensure the completion of other public realm including the completion of a new, direct, surface level access for pedestrians between the new London Underground station and the railway station.

8. As the approved phasing plan for the planning permission requires the East Site to be completed (save in certain respects) before development takes place on the West Site, as a consequence this jeopardises the delivery of the West Site.

9. Due to the progress that has been made to acquire interests through agreement, the extent of land and new rights that needs to be acquired by way of CPO is now significantly reduced as compared to what was envisaged in April 2020. While this is a welcome development, a new CPO resolution, focused on the reduced extent of land and the current circumstances, will now be needed. This requirement is in part necessary as the April 2020 Cabinet CPO resolution was amended by Cabinet so that only minor amendments to the then proposed draft CPO map could be made. The changes to the original map, though largely arising from the progress that has been made, cannot be considered to be minor amendments.

10. In broad terms, the outstanding interests and rights that still remain to be acquired are as follows (Cabinet may find the indicative plan of the railway arch units at Appendix E helpful in this context):

    - Arches 6 and 7 Farrell Court on Elephant Road are required to provide the pedestrian link between the East Site, Elephant Road and Elephant Park, to be known as the Park Route. Both the units are owned long leasehold by Arch Co and will need to be acquired from them to achieve this outcome. These arches are also currently occupied by two business tenants, DistriAndina and Beset. Beset have shared occupation of their unit with various other small businesses. The Council and the developer wish to relocate the tenants (and their occupiers) to enable the redevelopment of these arches. The developer is proposing to relocate DistriAndina to new premises it is developing on the East Site as part of the Scheme. It is

proposed that Beset would also be relocated within the Scheme, to the two arch units 4 and 5 Farrell Court currently occupied by Corsica Studios (see below).

- A corridor of land immediately to the west of the viaduct which is needed to provide the public realm to connect the East Site (including the new London Underground station) with the new public route beneath the viaduct and the overground railway station. The long leasehold title to the land is owned by Arch Co and will need to be acquired from them to ensure this outcome is achieved.

- A new right of way for pedestrians over the small area of Network Rail land to the immediate west of the railway station is also required. A tiny fragment of Network Rail land, which is not used operationally, is also required as part of the public realm area.

- Arches 113A, 120, 113B and 121 on Elephant Road (to the north of the railway station). These arches formed the vehicular access to the former Shopping Centre and a private pedestrian route providing access to the rear of the former Coronet. Both access routes are no longer needed following the demolition of those buildings on the East Site. It is proposed that these arches become the new home for Corsica Studios, a cultural venue specialising in electronic and dance music which is currently located to the south of the railway station at 4 and 5 Farrell Court on Elephant Road. It has been concluded that for the developer to meet the “agent of change principle” it has become necessary to relocate the club here, just a short distance up Elephant Road, so that it can continue to operate on Elephant Road. Although the developer has some leasehold interest in these arch units to the north of the railway station, its lease is constrained to be used only for access purposes. Arch Co also have a long leasehold interest in these arches, but their interest is not so constrained. Their interest will therefore need to be acquired to achieve this outcome.

- Arches 4 and 5 Farrell Court. These arches are currently home to Corsica Studios. As referred to above (and as explained in more detail in paragraphs 34 - 40) it has been concluded that the developer will need to relocate Corsica Studios a short distance up Elephant Road to ensure that the developer is meeting its obligations, as an agent of change, to mitigate impacts upon the operation of the club. If Corsica Studios were to relocate to Arches 113A/120 and 113B/121, 4 and 5 Farrell Court would become vacant. It is proposed that 4 and 5 Farrell Court would be used to relocate Beset, who will need to be relocated because of the creation of the pedestrian route in what is currently 6 and 7 Farrell Court. These Arches are also owned long leasehold by Arch Co and it will be necessary to acquire their interest in the arches to achieve this outcome.

- On the West Site there are a number of relatively minor issues but which could still potentially jeopardise the delivery of the Scheme. There are two small areas of unregistered land and two sub stations that the developer will need to acquire in order to proceed with the Scheme on the West Site.

The developer also requires some new rights over the Metropolitan Tabernacle land (but not the acquisition of the Tabernacle land), for a temporary period, to facilitate demolition of the current LCC building and to decouple the current LCC building from the northern façade of the Tabernacle. Some crane oversail rights are also sought over the Tabernacle and other areas adjacent to the LCC site.

KEY ISSUES FOR CONSIDERATION

11. As stated in April 2020, exercising compulsory purchase powers is a power of last resort that should only be used appropriately. It continues to be the case that the Council's preference would be for the remaining issues to be resolved through negotiation between the parties. Officers are of the view, however, that there are significant differences in the views of the key parties (principally the developer and Arch Co) which mean that a negotiated outcome is not a realistic prospect at this point in time. This "deadlock" is creating uncertainty for the businesses occupying the arches and could frustrate the delivery of the full benefits of the Scheme. In these circumstances, officers have concluded that a new CPO resolution, and the making and pursuit of a CPO, is justified in the public interest.

12. The CPO process is legally complex and therefore this report is both long and technical in nature. It sets out why the use of CPO powers continues to be necessary and justified and should be pursued. It sets out the progress that has been made to date to acquire land and new rights, the public benefits of the Scheme and those benefits which would directly arise from the proposed CPO. The report also provides background information regarding the developer and confirms that an indemnity agreement will be completed with the Council to meet its costs in full arising from the CPO process.

13. In conclusion the CPO process is a long one and the Council's action is required now. Unless the Cabinet authorises a CPO as recommended in this report, there is a very real risk that the East Site will not be completed in full and therefore not all the public benefits of the Scheme would be secured. In particular, the long standing objective of establishing a pedestrian route between the East Site, Elephant Road and Elephant Park would not be provided. The location of the Park Route through what is currently 6 and 7 Farrell Court was the subject of careful consideration prior to the planning application being submitted, and the reasons why this route was chosen can be found at paragraph 12 of Appendix J. As explained above, due to the approved planning phasing, if the developer is not able to complete the East Site this could also jeopardise the ability to continue the Scheme onto the West Site. Agreeing this resolution will also ensure that the Council can be confident that its long term commitment to provide alternative locations for businesses impacted by the Scheme will be delivered.

The April 2020 Cabinet decisions

14. On 7 April 2020, Cabinet considered three reports on the Scheme. Agenda Item 23 was a Progress Report which set out the context for the future of the Shopping Centre, detailed the planning benefits that would arise from the Scheme, public sector equality duty ("PSED") issues and recommended the allocation of

£200,000 of additional support for displaced traders. Agenda Item 24 considered the case for making a CPO to facilitate the Scheme and recommended that the Council make and pursue the confirmation of a CPO. Agenda Item 25 considered the case for overriding third party rights that affect the Scheme site (primarily rights of light) and recommended the use of the Council's statutory powers to override those rights, so as to facilitate the Scheme, with holders of those rights being entitled to compensation.

15. Cabinet resolved unanimously to follow officers' recommendations for all three items, with a slight amendment to the proposed recommendation on the CPO so that the Director of Regeneration has delegated authority to make minor (rather than any) alterations to the draft CPO map.

16. The general background and context to the redevelopment was considered in detail by Cabinet in April 2020, with paragraphs 3 – 26 of the Agenda Item 24 report explaining the general principles regarding compulsory purchase, the details of the developer, the site context and history and the planning policy as it then stood (links to that report are available at the end of this report - see Background Documents).

The developer

17. EC is a company registered in the British Virgin Islands. It owns the freehold title to the former Shopping Centre site and the immediately adjacent New Kent Road properties. It is a subsidiary company of Get Living plc, an English public limited company. Get Living's shareholders are "the Triangle Partnership". The Triangle Partnership comprises three parties: (1) Dutch pension fund Stichting Depositary APG Strategic Real Estate Pool, which has a 39% share in the Triangle Partnership and is the largest pension fund manager in the Netherlands; (2) QD UK Holdings Limited Partnership, a Scottish limited partnership, set up by Qatari Diar, the sovereign wealth fund of the State of Qatar, which has a 22% share in the Triangle Partnership; and (3) DOOR SLP, which has a 39% share in the Triangle Partnership. DOOR is a co-investment platform co-founded by Oxford Properties Group and DV4 Limited and it is a separate legal partnership registered in Jersey. All its assets are based in the UK. The Oxford Properties Group is the global real estate arm of the Ontario Municipal Employees Retirement System and is based in Toronto, Canada. DV4 is a real estate investment vehicle based in the British Virgin Islands.

The Scheme

18. Full planning permission for the vast majority of the Scheme was granted by the Council on 10 January 2019 for the comprehensive redevelopment of the Shopping Centre, 26-32 New Kent Road, arches 6 and 7 Elephant Road and the LCC site. Planning Committee approval had been given in July 2018 subject to completion of the section 106 planning agreement and no call-in by the Mayor, and the planning permission was granted once those pre-conditions were satisfied. A judicial review court challenge to the planning permission failed on all grounds, with both the High Court (20 December 2019) and the Court of Appeal (28 May 2021) ruling that the Council had acted entirely lawfully in granting the permission.

19. Since April 2020 the Council has approved two section 73 applications to make material amendments to the Scheme. These did not fundamentally alter any components of the Scheme but included further planning benefits such as an increased number of affordable housing units, increased office space (including affordable workspace) and the construction of a larger new London Underground station box.

20. The July 2021 planning permission for the redevelopment (as amended by non-material amendment approvals) includes:

- 18,210 sq m of new retail (use classes A1 – A4) floorspace (including 10% affordable retail space)

- 6,462 sq m of assembly and leisure facilities

- 983 new homes (with 35% affordable housing, comprising 119 flats at social rent equivalent levels, 57 flats at London Living Rent Levels and 161 flats at discounted market rent). 983 homes equates to 42% of the borough's annual housing target.

- 7,019 sq m of new offices (including 10% affordable workspace)

- a new London Underground station box and entrance to the East Site, with an enlarged station box to increase capacity and improve accessibility in the new Northern Line ticket hall, and to future-proof the station box so that it can also accommodate the Bakerloo Line extension if that project is delivered. The new station will improve operational capacity and accessibility from street level to platform level, with step-free access between the new ticket hall and the Northern Line platforms, and will provide the potential for a single entrance into both the Northern and Bakerloo Lines from the East Site. The new station will represent a significant improvement in strategic transport infrastructure at Elephant and Castle and is a key part of unlocking the growth required by planning policy in the town centre. Though there is some uncertainty as to the TfL funding position for the fit-out of the new station box due to the pandemic, all parties are working towards the provision of the new Underground station. Whilst there is some uncertainty as to whether the Bakerloo Line extension project will proceed, it remains an important policy commitment for the Council and in January 2020 the Council agreed to provide £7.5 million towards that project.

- a new modern campus building of 43,870 sq m for the LCC on the East Site, to replace its current outdated buildings, helping to secure its long-term future in the area

- a pedestrianised route from Elephant Road into the heart of the new development ("the Park Route"), through some of the railway viaduct arches adjacent to the Shopping Centre site, thereby improving the connectivity of the town centre and Elephant Park, fulfilling a key ambition for the Council.

- Significant improvements in public realm, permeability of the site and accessibility. The layout of the East Site has been planned to improve the transition between the national rail station, the Underground station and the wider town centre, improving the efficiency of this location as a major transport interchange. As well as the Park Route, a new "Station Route" will provide a direct surface pedestrian connection from the Underground station to the rail station. The Park Route and the Station Route will meet at a new space outside the rail station to be known as "the Court". A third pedestrian public realm route on the East Site will connect Walworth Road to the Court along the western side of the railway viaduct.

21. The Metropolitan Tabernacle is a Grade II listed building, part of which immediately adjoins the current LCC building. Listed building consent has been obtained to carry out minor alteration works to the northern façade of the Tabernacle, to allow for the separation of the two buildings to take place.

Planning Policy

22. Paragraph 25 of the Agenda Item 24 April 2020 report, and Appendix H to that report, set out the strong planning policy support for a high density, mixed-use redevelopment on this large brownfield site. Since then, the Southwark Plan 2022 and the London Plan 2021 have been adopted and form the up to date development plan. At both the general and site specific levels, these new development plan documents continue to provide strong policy support for the Scheme. Appendix C to this report provides an updated summary of the development plan policy framework for the site. It can be seen from that there is specific planning policy support not just for the Scheme as a whole but also for the creation of the Park Route, pedestrian connectivity, connectivity between public transport nodes, public realm improvements and protecting the night-time economy (in relation to the electronic and dance music club). All of these important aspects will be facilitated by the proposed CPO.

Benefits of the Scheme

23. In addition to the beneficial elements referred to at paragraph 20, the very considerable benefits arising from the Scheme include:

    - The creation of 1,230 construction jobs per year over the 10 year build programme.

    - The generation of up to 2,085 gross new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward; this would be an increase of over 600 as compared to the estimated 1,418 such jobs across the East and West sites when the Shopping Centre and the New Kent Road properties were occupied.

    - Measures to secure jobs for unemployed borough residents are contained in the section 106 planning agreement and will deliver significant economic benefits to the local population. On the East Site there will be 282 construction jobs and courses for unemployed local residents and 70 apprenticeships. In the completed East Site there will be a minimum 212

jobs for local residents. On the West Site there will be 132 construction jobs and courses for unemployed local residents and 33 apprenticeships. In the completed West Site there will be a minimum of 45 jobs for local residents.

- The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally.

- It is estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are offered.

- The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and at least £11,230,308 Southwark CIL.

- The redevelopment of the two arches to the north of the railway station to provide a new cultural venue to cater for electronic and dance music, so that Corsica Studios can relocate there, thus ensuring the retention of that cultural use on Elephant Road, as explained in more detail later in this report.

- The redevelopment of 4 and 5 Farrell Court, currently occupied by Corsica Studios, to provide a suitable relocation opportunity for the displaced tenant and occupiers of 7 Farrell Court (which is required for the Park Route), as explained in more detail later in this report.

- A substantial investment in cycling infrastructure within the buildings and the public realm amounting to 2,115 long-stay and 302 short-stay cycle parking spaces. The Scheme will deliver an additional 60 cycle hire docking points, split between 2 new locations, one primarily serving the East Site and one the West.

- Bus stop upgrades and real time information displays.

24. Many of the benefits of the Scheme depend on the proposed CPO because the Scheme cannot be progressed and completed (in accordance with the planning permission) without the CPO. Although work has begun on the East Site (as explained below), and the physical construction of the East Site new buildings can take place without the CPO, the completion of key parts of public realm, including the connectivity between the East Site and Elephant Park and the pedestrian connection to the railway station, are at risk; and the approved phasing of the planning permission requires the East Site to be completed (save in respect of the proposed redevelopment of the current LUL Northern Line station) before demolition of the West Site can begin. So the CPO is necessary to continue and complete the East Site, and thus to allow the redevelopment of the entirety of the West Site. The CPO is also required to facilitate the demolition and construction for the West Site. So the CPO is essential for the successful implementation and completion of the Scheme.

25. Specific benefits that the new CPO would directly deliver are:

- Improvements in pedestrian connectivity between the East Site and Elephant Park by enabling the creation of the Park Route beneath the railway viaduct;
- Improvements in pedestrian connectivity on the East Site between the new Underground station and the railway station;
- Improvements in the public realm on the East Site;
- Securing the future of Corsica Studios on Elephant Road, within Arches 113A/120 and 113B/121 to the north of the railway station;
- Providing a relocation opportunity for the displaced occupiers of 7 Farrell Court, within the adjacent 4 and 5 Farrell Court;
- The completion of the East Site, thus allowing the West Site to come forward in accordance with the approved phasing, with all the benefits that the West Site entails, including 498 new residential units (of which 165 are affordable housing units), 3,962 sq.m. of new retail units and a new cultural venue;
- The ability to physically construct the West Site through the acquisition of title to the small unregistered areas and the new rights to facilitate the development, as referred to in paragraph 10.

Progress of the Scheme since April 2020

26. Very considerable progress has been made on the Scheme. A detailed list of the various milestones that have occurred since April 2020 appears at Appendix D. By way of a brief summary of some of the key events:

- EC and its group companies have entered into a contract with the key anchor tenant, the owner of the LCC site, University of the Arts, London ("UAL") to build a new university campus for UAL on the East Site, and once that is completed to purchase the LCC site, thereby paving the way for the West Site redevelopment to occur.
- The overriding rights mechanism approved by Cabinet as Agenda Item 25 in April 2020 was put in place for all requisite areas, thus removing the ability of third parties to prevent the development proceeding because of e.g. rights of light.
- Affordable replacement retail units were opened in Perronet House, 50 New Kent Road and on a temporary (5 year) basis at Castle Square.
- EC obtained vacant possession of the Shopping Centre and 26-32 New Kent Road, without any need to resort to CPO powers. The relocation funds under the section 106 planning agreement and the additional £200,000 allocated for traders by the Council have largely been expended.

- The Shopping Centre and buildings at 26-32 New Kent Road have been demolished.

- EC obtained a revised planning permission, refining parts of the East Site, in part due to changes required by UAL. The new Underground station box will now be bigger, to allow not just for the Northern Line but also potentially for the Bakerloo Line if the Bakerloo Line extension proceeds.

- Agreement has been reached with Network Rail and Govia Thameslink for the developer to fund the operational changes which will be required to the railway station.

- EC and its group company have entered into an agreement with LUL and TfL in respect of (among other aspects) the construction and handover of the new Underground station box to LUL and the transfer of various plots of TfL land to EC.

- A major building contractor, Multiplex, has been appointed to carry out the new construction on the East Site.

- EC has procured debt funding for the East Site (£365 million).

- Multiplex has begun the substantive new construction on the East Site.

Significant progress - but land assembly is not complete

27. From the preceding section, Cabinet will see that there has been very significant progress towards the delivery of the Council's vision for the East Site. However, some key parts of the Scheme Land are not yet under EC's control and thus cannot be delivered, and without those key parts being delivered the Scheme cannot be delivered as envisaged. In broad terms the outstanding land requirements and related ownership issues can be summarised as follows (Cabinet may find the indicative plan at Appendix E helpful in respect of the railway arch units).

The East Site - the Park Route

28. Firstly, there is the need for the Park Route to be secured i.e. the pedestrian walkway, to the south of the railway station, under the railway viaduct through what are currently railway arch premises at 6 and 7 Farrell Court between the East Site and Elephant Road/Elephant Park. The requirement for such a link was first proposed in the Council's 2004 Elephant & Castle Supplementary Planning Guidance and has been a constant and longstanding aim of the Council in redeveloping the town centre. The requirement for such a pedestrian access link is now contained in the New Southwark Plan policy NSP48.

29. 6 and 7 Farrell Court are owned by Network Rail (freehold) and Arch Co (long leasehold). These two units are subject to tenancies granted to DistriAndina (6 Farrell Court) and Beset (7 Farrell Court). Beset has shared possession of that unit with small, micro businesses. To create the Park Route it will be necessary to acquire the long leasehold title of Arch Co and the tenancy interests in these

two units, thus allowing vacant possession of those two arch units to be achieved. The relocation of the occupiers of 6 and 7 is discussed below. As Arch Co's leasehold title to the railway arch units comprises the railway arch units and the subsoil beneath, and does not extend to the viaduct structure including the adjacent undersides and sides of arches, it is also necessary to acquire new rights from Network Rail to affix apparatus to the sides and undersides of those arches in connection with the proposed works. So, for the creation of the Park Route, new rights will need to be created in respect of the viaduct structure to allow for the necessary works to be undertaken to remove the existing arch unit premises and to affix eg lighting and signage to the sides and undersides of the arches, and to allow the affixing of a kiosk unit within one of the arches required for the Park Route.

30. In respect of the Park Route, and more generally, the Council's proposals and the proposed CPO will not interfere with the operational running of the railway and for the avoidance of doubt no title owned by Network Rail to any part of the operational railway is to be acquired as part of the CPO.

The East Site - other public realm

31. An important corridor of land required for proposed public realm immediately to the west of the railway viaduct has not been secured. This corridor can be seen on the draft CPO map at Appendix A (numbered parcels 22, 25 (part), 28 (part), 29 – 31, 34-36, 38 -40, 46 and 56 on Sheet 2 of the map). This is necessary to form part of the Park Route and to connect the East Site to the overground railway station via the Station Route, fully integrating those two sites and enabling the continuous public realm connection between the new Underground station and the overground railway station which the Council requires.

32. The freehold title to this area is largely unregistered, but accepted by all parties to be owned by Network Rail (who also own a registered freehold title to part of the corridor). Arch Co holds a long leasehold title to most of the corridor, though a small area to the immediate west of the railway station is owned solely by Network Rail. On one part of the corridor, immediately to the west of 4 and 5 Farrell Court, an external smoking shelter has been erected which is used by the tenant of 4 and 5 Farrell Court, Corsica Studios. It will be necessary to acquire Arch Co's long leasehold title to most of the corridor (and any interest that Corsica Studios has as occupier in the external smoking shelter area) and to acquire a new right of way for pedestrians across the small area owned by Network Rail and a corresponding right to pave and maintain the small area solely owned by Network Rail (parcels 34, 35 and 38 on the draft map at Appendix A). A new right is also sought to pave and maintain paving under an external staircase outside the railway station (parcel 39).

33. Adjacent to the corridor of land running along the western side of the railway viaduct is a tiny fragment of land which juts into the private vehicular access road which formerly led to the basement of the former Shopping Centre (parcel 37 on the draft CPO map at Appendix A). This parcel is owned by Network Rail. It is not clear why this land remained with Network Rail's predecessors (the British Railways Board) given that for many years it has formed part of the access into the Shopping Centre. It will be necessary to acquire this fragment of land from

Network Rail. This will have no operational impact on Network Rail given that the land has formed part of the Shopping Centre access for many years.

The East Site – 4 and 5 Farrell Court and the arches to the north of the railway station

34. Immediately to the south of 6 Farrell Court is 4 and 5 Farrell Court, occupied as a cultural venue specialising in electronic and dance music by Corsica Studios. London Plan policy D13 (The Agent of Change) places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of eg the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as Corsica Studios) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue. Corsica Studios is on the GLA's Cultural Use at Risk register, so some intervention by the Council has been envisaged to ensure Corsica can continue to operate successfully.

35. Accordingly, the July 2021 planning permission envisages the need for some acoustic mitigation to take place in the new residential units on the East Site in addition to measures applied at source in 4 and 5 Farrell Court, with noise limits needing to be complied with at the boundary of the residential units by way of condition. EC proposed two methods of mitigation – high specification glazing on its new buildings and soundproofing of 4 and 5 Farrell Court which, taken together, would mitigate the noise impacts. The related section 106 planning agreement requires a payment to be made to the Council of £125,000 to be used for the purposes of funding the soundproofing works within 4 and 5 Farrell Court. That money has been paid to the Council by EC in accordance with the agreement. EC and the Council's intention has always been (and remains) to ensure that the electronic and dance music and residential uses can subsist harmoniously together.

36. In April 2020, when Cabinet first considered a CPO resolution, it was envisaged that the Council would acquire new rights over 4 and 5 Farrell Court, to undertake the sound insulation works within the existing music venue. However, as detailed technical discussions have progressed between Corsica and EC as to the location of the sound-proofing within 4 and 5 Farrell Court and the consequential works that would be required to the units, it has become clear that the sound insulation required would be so considerable (costing far in excess of the money secured under the section 106 agreement) and so extensive physically that the work would (in effect) require the complete remodelling of 4 and 5 Farrell Court - but would still result in a significant loss of useable floorspace, below that required by Corsica. The position is also complicated by the fact that, running through the centre of 4 and 5 Farrell Court, is a fire escape route, which Corsica have a right to use but which is not currently part of the demised area of their tenancy. To make the remodelling of their units work, this fire escape area would need to be leased to Corsica too. This cannot be done by the creation of new rights. Furthermore, to achieve the required remodelling of 4 and 5 Farrell Court would require physical works that will take between 3-6 months to carry out, during which time Corsica would not be able to trade and would close during that period.

37. EC therefore analysed whether, alternatively, it would be feasible to install further, additional acoustic insulation (beyond the higher specification glazing which had already been planned for the residential units) within the new residential units on the East Site. However, the detailed analysis demonstrated that further façade treatment of the residential units was not feasible, with the increased thickness of wall required on the residential tower leading to numerous apartments being impacted and the considerable loss of residential floorspace, including lost bedrooms (the majority being within the affordable units). In addition, the increased façade treatment would not work on its own (ie without some mitigation at the source in 4 and 5 Farrell Court).

38. As with the delivery of the new residential units, the retention of the electronic and dance music use in this location also attracts strong planning policy support (as seen at Appendix C) and the retention of that use as an important part of the night-time economy is needed. However, it is practically impossible for a satisfactory noise solution which leaves Corsica at 4 and 5 Farrell Court.

39. Faced with these facts, the only practical solution which enables the retention of the electronic and dance music use on Elephant Road, and one which would allow for Corsica to continue trading throughout, is for the set of railway arches to the north of the railway station, Arches 113A/120 and 113B/121, which are currently vacant (see the plan at Appendix E), to be developed into new premises for Corsica by EC. These units could accommodate the necessary sound insulation and would give Corsica the requisite floorspace. Once that new space is ready for Corsica, they could then move their operation seamlessly the short distance up Elephant Road, with no need to close their operation. This would also have the added benefit that Corsica would be able to operate entirely within an area clearly let to them – at present they are using areas which fall outside their tenancy area (to the rear of 4 and 5 Farrell Court, and within the fire escape) and the basis for their doing so is unclear.

40. EC owns a long leasehold title to Arches 113A/120 and 113B/121 which are proposed for the rehoused electronic and dance music club, but the leasehold title EC owns is constrained to be used for access purposes only. It does not allow for any beneficial occupational uses, and so would not allow for the proposed redevelopment of these arches. Arch Co owns a long leasehold interest in these arches which is not so constrained (other than by the EC leases) and the freehold title is accepted to be owned by Network Rail. To achieve the development of the Arches 113/120 and 113B/121 for the music use it will be necessary for the Council to acquire Arch Co's long leasehold title to the units, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works (such as the affixing to the viaduct arches of new frontage and rear elevations for the club). So the acquisition of title and new rights in respect of Arches 113A/120 and 113B/121 is justified as it is the means by which the only practical way of retaining the electronic and dance music use, harmoniously with the new residential use, can be achieved.

41. Planning permission for the envisaged use of Arches 113A/120 and 113B/121 has not yet been granted, but EC’s planning consultants are working up a planning application for the works and change in use. There is no reason why

the necessary consents should not be granted given the policy support for the cultural music use.

42. If, for some reason, that use was not instigated in Arches 113A/120 and 113B/121, the Council would not want to see those arches left vacant, as a gap in the arch units fronting Elephant Road, and EC would still wish to have some other beneficial use of those arches in that scenario. In April 2020, Cabinet approved the use of CPO powers for those arches on the basis that the intention was that these units would be converted into retail/café units. If the relocated electronic and dance music use was not instigated in those arches, the acquisition of greater title from Arch Co, and related rights from Network Rail, would still be justified to bring about retail/café uses. Again, planning permission for such alternative uses does not exist but there is no reason why permission would not be granted in this location.

43. The relocation of Corsica Studios to the northern arches would leave 4 and 5 Farrell Court vacant. As discussed above, the creation of the Park Route in 6 and 7 Farrell Court would displace the occupiers of those units. The Council is mindful that the occupiers of the units are small, local businesses. There is a need to mitigate any adverse impacts on those tenants and occupiers. Although efforts have been made to secure the relocation of the tenants and their occupiers elsewhere in the vicinity this has not been achieved. As described later in this report, it may be that the tenant of 6 Farrell Court (DistriAndina) relocates elsewhere in the vicinity but it is not clear to the Council that this will occur. No suitable alternative relocation premises has been found which meets the requirements of the tenant of 7 Farrell Court (Beset). Accordingly, the Council and EC intend to acquire 4 and 5 Farrell Court, immediately next door to 6 and 7 Farrell Court, as a relocation opportunity within the Scheme for Beset and the other occupiers of 7 Farrell Court. This would be the best mitigation against their displacement (and the potential adverse effects arising therefrom) as the units are suitable for their uses and are immediately adjacent. For DistriAndina, EC also proposes to relocate them within the Scheme, into a new unit fronting Walworth Road on the East Site.

44. It is not practicable to house both DistriAndina and Beset within 4 and 5 Farrell Court as there is not enough space to do so and in any event DistriAndina meet the eligibility criteria to move into new premises on the East Site under the terms of the existing section 106 planning agreement whereas Beset do not (as Beset are not a retailer), so DistriAndina have that option available to them (as well as possibly being able to take a unit on the adjacent Lendlease scheme as referred to below).

45. This proposal would require redevelopment of 4 and 5 Farrell Court by way of physical works and change in use from its current electronic and dance music venue use to the uses currently carried on by the occupiers of 7 Farrell Court. Planning permission for that element of the Scheme does not yet exist but there is no reason why such permission would not be granted given the proposal to create a new home for Corsica Studios further up Elephant Road. Again, EC's planning consultants are working up an application which would include those works and change in use for 4 and 5 Farrell Court.

46. The long leasehold title to 4 and 5 Farrell Court is owned by Arch Co, with Network Rail again owning the unregistered freehold title. To achieve the development of 4 and 5 Farrell Court referred to above it will be necessary for the Council to acquire Arch Co's long leasehold title to the units, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works.

The West Site

47. There are several areas on the West Site where the acquisition of title or new rights is required. The approved phasing strategy for the Scheme is for the East Site to come forward first, but it is necessary to pursue and obtain CPO powers in respect of parts of the West Site now, to ensure that the West Site redevelopment can commence and be completed as envisaged. In summary the West Site outstanding land requirements and related ownership issues are as follows.

The West Site – two strips of unregistered land

48. Title to two strips of unregistered land is required. The first is an area of hardstanding to the immediate north of the LCC site, adjacent to St Georges Road, which will be used as paved public realm. This is needed to complete the public realm in that area. The second is an area of hardstanding immediately to the north of Pastor Street and forming part of the southern access into the LCC site. Again, this will be used as paved public realm, but the proposed basement of the new West Site buildings also just juts into this area. If this strip is not acquired then it would present an obstacle to the extension of the public access route north from Pastor Street, through the heart of the West Site, thus undermining the aim (and requirement) of planning policy to increase pedestrian connectivity throughout the site. It would also mean that a small part of the basement would not be delivered as permitted. As the strips are unregistered, their ownership is unknown and EC cannot negotiate for their acquisition.

The West Site – two ground floor electricity sub-stations within the LCC site

49. These two sub-stations are held on a long leasehold basis by the electricity statutory undertaker, London Power Networks. These areas will be built upon with new buildings, so the areas are required for the Scheme. It is hoped that a surrender of these leases can be negotiated by agreement, but given the location of the sub-stations on what will be the West Site redevelopment the Council must ensure that acquisition of the leasehold title to the sub-stations can take place.

The West Site – new rights over the Metropolitan Tabernacle

50. No acquisition of title to the Tabernacle's land is envisaged, but some new rights are required which are relatively minor in nature but which are nevertheless essential to the successful demolition and construction to be carried out on the West Site. New rights are needed to de-couple the current LCC building from the northern façade of the Tabernacle, and for carrying out any consequential amendments to that façade as a result, and to erect scaffolding over a relatively small part of the Tabernacle land (and to manage access thereto) whilst

demolition on the immediately adjacent LCC site takes place. This may require the temporary restriction of access through the walkway within the Tabernacle site which adjoins the LCC building for up to 3 months. This is to ensure safe working whilst the LCC building is removed and the decoupling works are undertaken. A right of crane oversail over part of the Tabernacle site is also sought. This is necessary to allow construction cranes to swing over the site. Without such a right the redevelopment of the West Site would be constrained and significantly more difficult.

The West Site – crane oversail rights over other areas

51. Crane oversail rights are required over a small part of The Castle Centre (leisure centre) to the south of the LCC site, part of the grounds of Perronet House to the north of the LCC site, and parts of highways adjoining the LCC site being Elephant and Castle, St George's Road, Oswin Street, and Brook Drive, and the entirety of Pastor Street. The rationale for seeking these rights is the same as for the crane oversail over the Tabernacle.

Relocation

52. The Council has been working to ensure that the occupiers of the affected railway arch units are relocated satisfactorily. Whilst the tenant of 6 Farrell Court (DistriAndina) has been negotiating the lease of a unit from Lendlease in its adjacent scheme, it is still present at 6 Farrell Court and may stay there (in addition to taking a lease of the nearby Lendlease unit).

53. Despite the efforts of EC and the Council, no suitable off site unit meeting the requirements of the tenant of 7 Farrell Court has been found.

54. The relocation provision summarised earlier in this report, i.e. Corsica to move to the arches north of the railway station, DistriAndina to move into a new unit within the Scheme, and Beset and the other occupiers of 7 Farrell Court to move within the Scheme into 4 and 5 Farrell Court, offers a solution which will not only deliver the Park Route as set out in the July 2021 planning permission but will also retain the electronic and dance music use, and facilitate relocation of those businesses, without the need for any period of closures of those businesses. The envisaged sequencing is that Corsica Studios would move first, out of 4 and 5 Farrell Court into Arches 113A/120 and 113B/121 to the north of the railway station, then EC would redevelop 4 and 5 Farrell Court for Beset and their occupiers. In the meantime, DistriAndina would fit out and open their new unit within the East Site. This would then free up 6 and 7 Farrell Court to be opened as the Park Route a few months later. It should be noted that this sequencing, which will ensure continuity of trading for all of the affected occupiers, may result in the Park Route opening slightly later than the rest of the East Site. However, it should only be a matter of months and officers are of the view that a short interval would be acceptable given the favourable outcomes for all of the affected occupiers.

55. The proposed relocation arrangements have been put to Arch Co and the affected tenants. Officers are of the view that the arrangements are reasonable and should very much be supported. The proposed agreement between the

Council and EC will contain provisions which will require EC to offer the envisaged relocation opportunities where land is acquired by the Council pursuant to a CPO and then disposed of to EC.

Attempts to acquire land interests by negotiation

56. In collaboration with the Council, and in line with Government guidance, steady progress has been made by EC in acquiring the necessary land interests and rights required for the Scheme by agreement. This can be seen from the detailed list of update events in Appendix D.

57. Cabinet is referred to Appendix F, where the developer has provided an updated summary of the status of discussions with the remaining third parties. EC has been acting in collaboration with the Council in making offers to third parties, with the common aim of acquiring the necessary land interests by agreement wherever practicable and reducing the areas required to be compulsorily acquired. Officers have been kept regularly appraised of negotiations by EC. Officers are satisfied that genuine and reasonable attempts to acquire interests by agreement have been made. Credible and reasonable offers have been made by EC to acquire land interests over several years. The extent of agreements already reached with various other parties over several years is further evidence that EC has been acting reasonably.

58. Discussions with the Arch Co for its long leasehold interest were taking place for some considerable time before the Cabinet meeting of April 2020. Following the April 2020 resolution, EC has been seeking to agree commercial terms with the Arch Co and Council officers have been kept informed as to the negotiations. The Council's surveyor also wrote to Arch Co on 28 August 2020 to make plain the Council's intentions and to stress the importance of the Scheme to the Council. Council officers also met with Arch Co representatives in May 2022 to again impress on Arch Co the importance of the Scheme and to try to encourage Arch Co to reach agreement with EC. The offers put to Arch Co include a range of options which include, but went beyond, simply acquiring what is included in the CPO. Despite reasonable offers having been made by EC, the parties remain apart in their valuations.

59. In early June 2022, in a further genuine effort to reach agreement, EC put a proposal to Arch Co which involved the redevelopment of the arch units and the relocation arrangements of the tenants but which would also allow Arch Co to retain its long leasehold title of the arch units and the corridor immediately adjacent to the viaduct. In return, Arch Co would be required to (i) grant EC long leases of the corridor immediately adjacent to the viaduct and one of the arches to the north of the railway station, (ii) agree surrenders of the existing occupational tenancies in 4 and 5, and 6 and 7, Farrell Court and (iii) grant new tenancies in respect of 4 and 5 Farrell Court and the new home for the electronic and dance music club to the north of the railway station. EC would undertake the necessary works to create the new club and to create the Park Route in 6 and 7 Farrell Court and physical works to 4 and 5 Farrell Court, subject to obtaining Network Rail consent to do so. It is not clear to EC or the Council that Arch Co will engage with that proposal. Since it was submitted to Arch Co, there

has been no positive engagement on it and Arch Co have again referred to the possibility of an outright sale.

60. Offers have been made by EC to acquire the occupational tenancy interests owned in the railway arches needed for the Park Route from the Scheme to Elephant Road. So far those offers have not been accepted by the tenants.

61. It is important to note that the proposal put to Arch Co to potentially achieve the redevelopment of the arch units and the relocation of Beset and Corsica within them, outside the CPO context, would require the co-operation and agreement of all parties – EC, Arch Co, Network Rail and the tenants. Whilst officers hope that all parties will agree to those arrangements, the CPO is required to (among other things) facilitate those redevelopments and those relocation opportunities in the event that agreement is not reached with all parties. Moreover, even if agreement is reached with all parties, if any one party defaults on its contractual commitments that may lead to the proposal unravelling. For that reason, it is envisaged that the CPO would be pursued even if agreement was reached with Arch Co and all of the affected parties along the lines put to Arch Co in June 2022, but so that the Council would undertake not to implement the confirmed CPO in respect of the arches as long as all parties stuck to their contractual commitments. In this way, it is envisaged that in this scenario the CPO would act as a backstop in the event of default.

62. EC has also been in discussions with the Tabernacle to acquire the requisite new rights over the Tabernacle site for some time, but no agreement has yet been reached.

63. Accordingly, the making of a CPO by the Council (and the seeking of confirmation from the Secretary of State as to the CPO) is necessary to acquire the outstanding land interests and rights for the Scheme.

64. As pointed out in April 2020, where commercial property is involved it is often the case that the making of a CPO acts as a catalyst for the parties to enter into meaningful negotiations. Government guidance explicitly recognises this and suggests the making of a CPO can help make the authority's intentions clear, which might encourage parties to enter more readily into meaningful negotiations. That guidance also states that it may be sensible for the acquiring authority to instigate the formal CPO process whilst negotiations continue, to mitigate against valuable loss of time. That is the situation that now faces EC and the Council. Without the Council making a CPO, the delivery of important parts of the East Site is jeopardised, as is the ability to carry out the Scheme on the West Site.

The Council's powers and the legal and policy guidance framework

65. Appendix G sets out the relevant legal and policy framework in respect of considering the exercise of CPO powers.

66. Among these, section 226(1)(a) of the Town and Country Planning Act 1990 gives the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development,

re-development, or improvement on, or in relation to, the land". Not only must this test be met, but in addition the Council must have regard to and apply Section 226(1A) of the 1990 Act so the Council must not exercise the power under section 226(1)(a) unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:

(a) the promotion or improvement of the economic well-being of their area

(b) the promotion or improvement of the social well-being of their area

(c) the promotion or improvement of the environmental well-being of their area.

67. As stated in more detail in Appendix G, the Government has set out detailed policy guidance to be followed by local authorities in respect of CPOs. Among the guidance tests are: a CPO should only be made where there is a compelling case in the public interest; compulsory purchase is intended as a last resort, however it may often be sensible to initiate formal CPO procedures to mitigate loss of valuable time; the purposes for which the CPO is made must justify interference with the human rights of affected parties; acquiring authorities should address sources of funding and the timing of that funding, and the potential financial viability of the scheme for which land is being acquired; the acquiring authority are expected to evidence that meaningful attempts at negotiation have been pursued and reasonable offers to acquire have been made by the acquiring authority; that the scheme is unlikely to be blocked by any physical or legal impediments; and the acquiring authority should show the extent to which the proposed purpose of the CPO will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area.

The proposed CPO

68. The proposed CPO will enable the outstanding land interests that are required for the Scheme shown shaded pink on the plan at Appendix A to be acquired. It will also provide for the creation and acquisition of new rights over the land shaded blue on the plan at Appendix A. Seeking such new rights is relatively common in a CPO and will particularly facilitate the construction process. The rationale for including these areas is included in the "Significant progress – but land assembly is not complete" section above.

69. The area required for compulsory acquisition as compared to April 2020 is considerably reduced on the East Site, which reflects EC's success in ensuring title to and vacant possession of the large majority of the East Site. With the construction process having begun on East Site, EC has also been able to consider with its contractor what is possible to be undertaken from the western side of the railway viaduct, without access through the railway station and some of the other railway arch premises, which also explains why less land is being included for new rights within the railway viaduct than in 2020. Crane oversail rights have also been obtained from TfL and LUL in respect of the East Site, removing the need to seek the same by compulsory acquisition.

70. It may nevertheless be necessary as part of the finalisation of the CPO to make amendments to the draft CPO map and the recommendations allow for this.

71. Cabinet may note that some of the railway arch areas are shaded pink on the CPO map (for acquisition) but also have corresponding areas of blue (creation of new rights) on inset plans on the draft CPO map. This is due to the fact that it is the arch units (and the airspace and subsoil therein) which are being acquired, not the viaduct structure itself, so it is necessary to acquire new rights in respect of the railway viaduct for the minor works required to eg affix apparatus to the sides and undersides of those arches and to remove existing frontage and rear elevations at 6 and 7 Farrell Court from the viaduct.

The CPO Process

72. Appendix H explains the detailed (and lengthy) process of a CPO and the compensation that would be payable to affected parties both for the acquisition of title and for new rights.

73. Importantly, all costs associated with the process and all compensation payable to third parties for the acquisition of their land (or for new rights) will be underwritten by EC through the CPO indemnity agreement.

The terms of the CPO indemnity agreement

74. Cabinet is referred to paragraphs 72 – 81 of the April 2020 Agenda Item 24 report which set out the proposed terms of the CPO indemnity agreement between EC and the Council. These remain relevant. A satisfactory CPO indemnity agreement with EC (complete with guarantee of EC's obligations by Get Living Plc) has been negotiated by officers, and the completion of such an agreement is a prerequisite of making a CPO under the proposed Cabinet resolution.

75. The previous Cabinet resolution required the exchange of the UAL sale contract as a pre-condition to the making of the CPO. This is no longer required because the UAL sale contract was entered into in 2020.

76. It is unnecessary, as part of the CPO indemnity agreement, to include an obligation on EC to build the Scheme. In April 2020 the Council took the considered view that the heavy investment and commitment to the Scheme shown by EC meant it was likely that EC would progress with the Scheme, such that an obligation on EC to build the Scheme was unnecessary. That view has been borne out (and reinforced) by the considerable progress that EC has subsequently made with the Scheme. The numerous commitments and heavy investment since April 2020 lend further weight to the conclusion that the Scheme will progress and be completed subject to the Council using CPO powers. Similarly, it is now unnecessary for the CPO indemnity agreement to contain a pre-condition to exercise of the confirmed CPO powers that the Council must be satisfied that there is a reasonable prospect of the land being redeveloped within a reasonable period of time. The extent of EC's resolute commitment to go forward with the Scheme has already been demonstrated.

Adverse effects of the CPO

77. The proposed CPO will (or in some cases may) result in some adverse effects for those affected. Appendix I contains details of the adverse effects that can be ascribed to the CPO. Given that EC was able to acquire title to and vacant possession of the large majority of the East Site without the need to have recourse to CPO powers, these adverse effects are greatly reduced as compared to the potential adverse effects in April 2020.

78. Regard is to be had to the adverse effects at Appendix I and weighed in considering whether to resolve to authorise the CPO.

Policy framework implications

79. Planning policy is addressed at paragraph 22 and Appendix C.

Community, equalities (including socio-economic) and health impacts

Community impact statement

Human Rights Implications

80. The acquisition of land (and the creation and acquisition of new rights) authorised by this report will interfere with rights under Article 1 of the First Protocol to the European Convention on Human Rights (right to peaceful enjoyment of possessions). The CPO will give rise to the acquisition of property interests against the will of the owner and may also in certain instances infringe the enjoyment of existing assets with economic value, such as the goodwill of a business (which could happen in a worst case scenario in respect of the tenants of 4 and 5 Farrell Court and 6 and 7 Farrell Court). It will also interfere with rights over the CPO site. However, Article 1 of the First Protocol allows for such interference if it is in the public interest and subject to the conditions provided for by law and the principles of international law. The interference must also be in pursuit of a legitimate aim, which is the case here. Therefore, the use of planning powers contemplated in this report is lawful in Article 1 terms provided that the Council strikes a fair balance between the public interest and the private rights protected by Article 1. It is also relevant that compensation is available to persons affected by compulsory acquisition in certain instances. By way of the very considerable benefits that will arise from the Scheme (even limited to those specific benefits that the CPO would directly deliver), it is considered the compelling benefits in the public interest when weighed against the private rights of individuals, and indeed the wider adverse implications set out in Appendix I, justify the interference with Article 1 rights in this case.

81. As regards Article 6 Convention rights (right to a fair and public hearing to determine a person's civil rights), there are well-established statutory procedures that give all of those likely to be affected by the CPO the right to be notified and the opportunity to object. Any such objections may cause a public inquiry where such objections can be heard. Disputes as to compensation can be referred for hearing by the Lands Chamber of the Upper Tribunal. For these reasons, Article 6 is complied with.

82. Article 8 Convention rights (right to respect for private and family life, a person's home and his correspondence) can potentially be relevant in compulsory acquisition. The rights guaranteed by Article 8 may include the right to respect for private and family life enjoyed at a company or individual's business premises. Since Article 8 guarantees the right to a "private social life", it covers private social life enjoyed at a place of work or in professional, business or commercial activities. Article 8 does, though, allow for interference if it is necessary in the public interest and proportionate to the legitimate aim being pursued (here, economic wellbeing). For this CPO, there is no evidence to show Article 8 is engaged but assuming conservatively that Article 8 is engaged by reason of any interference with business premises and to affected individuals' private social lives derived from the business setting, given the public benefits of the Scheme (even if limited to those specific benefits that the CPO will directly deliver) and the compensation which will be payable in respect of any acquisition of land or new rights over land or the overriding of rights, any interference with rights in this case is proportionate, in the public interest and in pursuit of a legitimate aim.

83. Regard has been had to whether Articles 9 (freedom of thought, conscience and religion), 11 (freedom of peaceful assembly and association) or 14 (freedom from discrimination) of the Convention are engaged and whether there is any infringement of them. In each case it is considered that they are not engaged and there is no infringement.

Equalities (including socio-economic) impact statement

84. The nature and effect of the Public Sector Equality Duty (PSED) is set out in Appendix G. In considering the recommendations herein the Cabinet must have due regard to the possible effects of them on any groups sharing a protected characteristic to discharge the PSED. This is an ongoing obligation.

85. The April 2020 Cabinet report set out the work that the Council had then done to consider the PSED and the impacts on those with protected characteristics. To assist the Council in meeting its duty, Council officers have undertaken an updated equalities impact assessment of the proposed CPO. As part of this, the Council appointed Tree Shepherd to independently gather information on the nature of the occupiers in 6 and 7 Farrell Court and their businesses. The full analysis by the Council's officers is set out in Appendix K. The key findings in respect of the exercise of the CPO powers now envisaged are in summary:

- There is a potential adverse effect on the Latin American and (in one case) Black African (protected characteristic of race) businesses who occupy 6 and 7 Farrell Court, which in a worst case scenario may include the closure and loss of those businesses. However, the Council and EC are seeking to acquire 4 and 5 Farrell Court to redevelop it into a relocation opportunity within the Scheme for Beset and their occupiers, and to relocate DistriAndina into the Scheme in a new unit on the East Site, thus mitigating the adverse impacts on those occupiers. Accordingly, it is considered unlikely that their businesses would close as a result of the exercise of CPO powers.

- In respect of Corsica Studios, and a worst case scenario of its business closing if the confirmed CPO does not include the acquisition of all necessary rights and interests in EC's northern arches for them to relocate to, it is not considered that any one group with protected characteristics would be disproportionately affected. However, the Council and EC's intention is to facilitate the redevelopment of the arches to the north of the railway station and to offer Corsica the opportunity to relocate to those new premises, avoiding any need for Corsica to close, even temporarily. If Corsica moved to those new premises it is likely that their clientele (and employees) would benefit from a unit with better internal access, which would benefit all users including those with disability.

- There will potentially be some temporary, short term (up to 3 months) adverse impacts on the Tabernacle due to the need to scaffold part of their land whilst works to decouple and demolish the immediately adjacent LCC building take place. This is explained in detail in Appendix K and potentially could disproportionately affect groups sharing the protected characteristics of religion, age, race, pregnancy and maternity, and disability. Any adverse impacts are considered to be minor. For the avoidance of doubt, the Tabernacle will be able to remain open and the main entrance on the front façade will remain open, and the disabled entrance within the front side arch will be available at all hours when the Tabernacle is being used.

- There will be benefits to all users of the East Site from the creation of surface level public access to create the Station Route, the Park Route and further public realm adjacent to the railway viaduct. This is likely to be particularly beneficial to the elderly, those with ambulant disability, pregnant women and families with young children. It will also ensure the permeability of the site for visitors to all parts of the East Site, including the replacement affordable retail floorspace and proposed replacement bingo facility, both of which are included in the East Site at least in part to address adverse equality impacts identified at the planning permission stage.

- In addition, the approved phasing plan under the July 2021 Permission requires the East Site (other than the current LUL Underground station) to be completed prior to works beginning on West Site. So the CPO will unlock the ability to develop West Site, including the affordable retail floorspace, new dwellings (including affordable housing units, and 10% wheelchair accessible units) and job opportunities associated with that phase of the Scheme, all of which are considered to have positive equality impacts.

- It is not considered that the daylight and sunlight impacts which could arise from the construction of tall buildings on the West Site would disproportionately affect any one group with protected characteristics.

86. The decision before Cabinet is whether to exercise the CPO powers now envisaged. Any PSED implications arising from the decision to close the Shopping Centre and its market area in 2020 (which was not a decision made by the Council) are not attributable to the decision now before members.

87. The recommendations in this report will facilitate the redevelopment of the East Site and the West Site. This will bring benefits to all, including groups sharing protected characteristics, as set out elsewhere in this report. Weighing up the relevant considerations and recognising the potential adverse impacts on those with protected characteristics as set out above, which the Council has sought and will continue to seek to mitigate, for the reasons summarised in this report there is a compelling case for the CPO and the benefits that will result to the community at large.

88. In terms of socio-economic impacts, as explained earlier in this report, the Council must not exercise the power under section 226(1)(a) unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:

    (a) the promotion or improvement of the economic well-being of their area

    (b) the promotion or improvement of the social well-being of their area

    (c) the promotion or improvement of the environmental well-being of their area.

89. For the reasons set out in detail in paragraphs 3-19 of Appendix J, it is considered that the redevelopment is likely to contribute to the achievement of all three of the well-being objects.

Health impact statement

90. If the recommendations of this report are adopted and a CPO is made and subsequently confirmed and implemented, this will facilitate development of the Elephant and Castle Town Centre. Whilst the making of a CPO has no direct health impacts it is considered that the development, with improved public realm, better housing, new facilities and access as described elsewhere in this report will have beneficial effects on the locality and the local population. The route through the railway arches will encourage greater pedestrian access.

Climate change implications

91. If the recommendations of this report are adopted and a CPO is made and subsequently confirmed and implemented, this will facilitate development of the Elephant and Castle Town Centre. Whilst the making of a CPO has no direct climate change implications the development which is facilitated by it will have climate change impacts.

92. One of the key purposes of the CPO is to secure the delivery of a new pedestrian link between the East site, Elephant Road and Elephant Park. This route will connect the town centre with adjoining communities providing a safe, convenient and sustainable option for residents to walk to retail and leisure facilities. The connection will also provide a convenient route to the new integrated underground station, Network Rail over ground station and to bus services helping to encourage the use of public transport and reducing the reliance on the car. This approach is consistent with the council's objectives in the adopted movement plan. The proposals for the rail arches will require planning permission

and the applicant will need to demonstrate how the scheme complies with the council's carbon reduction policies.

Resource Implications

93. The making of a CPO and, if there are objections, the resulting public inquiry, will require significant staff resources. This will come from various disciplines including Regeneration, Planning, Legal and Communications, as well as external advisors including Counsel. The making of the CPO is conditional on EC meeting theses costs in full, so there will be no negative cost implications, but the process will result in staff resources being diverted from normal duties as necessary. This will create some challenges that will be managed.

Legal Implications

Whether the use of the Council's CPO powers is justified

94. This question involves testing the proposed use of the powers against the legal and policy guidance framework set out in Appendix G of this report. A detailed analysis has been undertaken in Appendix J and in respect of human rights and the PSED in the preceding sections of this report. It is concluded all of the relevant legal and policy tests are met.

95. Cabinet will note that careful consideration has been given (at paragraph 12 of Appendix J) to the possibility of using Arches 113A/120 and 113B/121, to the north of the railway station, as an alternative route for the Park Route. However, for the detailed reasons given in that paragraph, this would be a much inferior route to that which has been approved under the planning permission (through 6 and 7 Farrell Court).

Financial implications

96. The Council's costs of the CPO process and all compensation payable to affected parties will be underwritten in full by EC, with Get Living Plc providing a guarantee. Accordingly, there should be no adverse financial implications for the Council.

Consultation

97. The parties directly affected by the making of a CPO have all been contacted and made aware of the Council's proposals. This follows engagement between them and the developer (and the Council) in relation to the arrangements for their relocation, details of which are given in Appendix F.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Governance

98. The acquisition of land through the use of compulsory purchase powers is a matter reserved to Cabinet by virtue of part 3C of the Council's constitution.

99. The purpose of this report is to seek authorisation for the making and (subject to confirmation by the Secretary of State) the implementation of a CPO under section 226(1)(a) of the 1990 Act. In addition, the Director of Regeneration is to be authorised to enter into CPO indemnity agreement, the purpose of which is to ensure that all of the Council's costs in using its CPO powers are underwritten by the developer.

100. A detailed summary of the legal powers available to the Council in connection with the use of its CPO powers and the curbs on the use of those powers is set out in Appendix G to this report. These include the tests to be met under sections 226(1)(a) and 226(1A) of the 1990 Act (among other legal requirements). The tests under those sections are also set out earlier in this report (paragraph 66).

101. Paragraphs 20 and 23 of this report set out a summary of the benefits of the Scheme and paragraph 25 summarises the specific benefits that the CPO would directly deliver.

102. Appendix I provides detail on the adverse effects which can be attributed to the CPO, and the preceding sections of this report detail the human rights and equalities implications of the use of CPO powers. Due regard must be had to the equality implications of the CPO, particularly on groups sharing a protected characteristic as defined in the Equality Act, including eliminating discrimination, harassment and victimisation, and advancing equality of opportunity and fostering good relations between persons who share a relevant protected characteristic and persons who do not share it. In terms of human rights, there needs to be a fair and proportionate balance struck between the adverse effects of the CPO and the public interest benefits which the CPO will directly deliver.

103. Appendix J provides a detailed analysis of the justification of the use of the Council's powers.

104. The Council has received advice from specialist legal counsel in the use of its CPO powers, including the impact on human rights and equalities. Further specialist legal advice will be sought as the matter progresses.

Strategic Director of Finance and Governance

105. The Strategic Director of Finance and Governance notes that the CPO is subject to the prior completion of the indemnity agreement with EC which will underwrite in full the Council's costs and liabilities associated with the proposed CPO. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

CONCLUSIONS

106. The town centre redevelopment comprised in the Scheme is a crucial component in meeting the Council's long held policy aims for the Elephant & Castle Opportunity Area.

107. The Council has been patient in allowing time for private negotiations to resolve land ownership issues but there is a significant risk these will not be successful.

108. The compulsory acquisition of land and new rights pursuant to a CPO will interfere with the human rights of those parties who hold the land interests. These rights have been carefully considered, as have the significant public benefits which are likely to arise from the exercise of the CPO powers and the fact that compensation is payable to anyone whose interests are acquired or whose rights are infringed.

109. Having regard to government guidance on the use of CPO powers, including the fit of the Scheme with the planning policy framework, the efforts made to acquire by agreement, the purpose for which the CPO is being made and whether that justifies the interference with human rights, the lack of likely impediments to the delivery of the Scheme if the CPO is made, resources and funding, and consideration of any alternative means of achieving the Council's objectives, the CPO proposals are no more than necessary to accomplish the objectives of the CPO and there is a compelling case in the public interest for making a CPO to facilitate the Scheme. Such a case is consistent with the statutory tests set out in the 1990 Act, the PSED and the Human Rights Act.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Reports to Cabinet April 2020	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
Cabinet report template 2012 (southwark.gov.uk) Report EC CPO.pdf (southwark.gov.uk) Report EC Property Rights.pdf (southwark.gov.uk)		
Elephant and Castle Supplementary Planning Document and Opportunity Area Planning Framework	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
https://www.southwark.gov.uk/assets/attach/1817/1.0.5-elephant-castle-spd-oapf.pdf		
Southwark Plan 2022	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
https://www.southwark.gov.uk/assets/attach/94325/Southwark-Plan-2022.pdf		
The London Plan 2021	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf		
Listed building consent report 16/AP/4525	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
http://moderngov.southwark.gov.uk/documents/s76029/ITEM%202%20-%20REPORT%2016AP4525.pdf		
Planning Committee report Application 16/AP/4458	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
Report - Shopping Centre site Elephant and Castle 26 28 30 and 32 New Kent Road Arches 6 7 Ele.pdf (southwark.gov.uk)		

APPENDIX D

THE PROGRESS OF THE SCHEME SINCE APRIL 2020

1. On 29 July 2020, planning permission 20/AP/0681 was granted for some connecting London underground tunnels. The construction of the connecting tunnels by LUL will be required to successfully bring into operation the new underground station box as part of the Scheme. The need for this planning permission was expressly referred to in the April 2020 Cabinet report (Agenda Item 24).

2. Highways stopping-up orders under the Town and Country Planning Act 1990 in respect of the Scheme were also made in summer 2020, one for the East Site (30 July 2020) and one for the West Site (4 June 2020). Those orders came into effect when demolition began on site (as to which see below). No challenge was brought to the orders.

3. On 27 July 2020, EC's group company, Elephant and Castle Development UK Limited ("EC Dev UK"), entered into an asset protection agreement with Network Rail, with EC guaranteeing it's group company's obligations. This was a requirement of Network Rail, to safeguard the railway infrastructure during the redevelopment.

4. On 5 August 2020 EC and its group companies entered into conditional agreements with UAL for (i) the relocation of UAL to a new university campus building to be built on the East Site and (ii) the purchase of the current LCC site by Elephant Three Properties Ltd (EC's group company). UAL is the anchor tenant for the East Site and without the acquisition of the current LCC site the West Site cannot be delivered. The entry into such agreements was a pre-requisite to the Council making any CPO or entering into any arrangements to override third party rights under the April 2020 CPO resolution.

5. The overriding rights mechanism approved by Cabinet as Agenda Item 25 in April 2020 was put in place for the large majority of the Scheme on 6 August 2020. The Council took interests in both the LCC site (from UAL) and in the large majority of the East Site (from EC). On 30 April 2021, the remaining areas to be built upon as part of the Scheme, owned by LUL and TfL, were also the subject of similar transactions. On each occasion, public notices were published in the Southwark News, advertising the intention and effect of the process. No complaint or challenge was raised to the use of those procedures. The interests held by the Council have been surrendered. As required by the Cabinet resolution, prior to the arrangements being entered into, indemnities were given in favour of the Council by EC with Get Living Plc providing a guarantee for any default liability the Council may have to pay compensation to affected parties. Accordingly, the objective of the Cabinet in overriding third party rights which may otherwise frustrate the Scheme has been achieved.

6. EC procured the discharge of the pre-demolition conditions on the 2019 permission and any pre-demolition obligations under the related section 106 planning agreement during 2020.

7. In September 2020 the affordable replacement retail units in Elephant One (50 New Kent Road, owned by a group company of EC), Perronet House (owned by the Council) and the temporary retail units at Castle Square (adjacent to 50 New Kent Road, on Elephant Road) were opened.

8. Following the opening of the Perronet House, Castle Square and other replacement retail units, on 24 September 2020 the Shopping Centre and the adjacent external market area within its grounds closed to the public.

9. The section 106 relocation fund (provided by EC) and the additional £200,000 fund made available by the Council to local independent traders from the East Site have largely been expended. The Council concentrated its additional £200,000 fund on making grants in 2020 to eligible local independent traders from the East Site without an offer of an affordable unit.

10. At the time of the April 2020 Cabinet meeting the High Court had dismissed (on all grounds) a judicial review claim against the Council's grant of the January 2019 planning permission for the Scheme. It was noted in the Cabinet report, though, that there might be an appeal of that decision by the claimant. On 22 October 2020 the Court of Appeal gave permission to appeal to the claimant on all grounds. The substantive appeal was heard by three Court of Appeal judges on 16-17 March 2021. The Court of Appeal judgment was given on 28 May 2021 and it unanimously rejected all grounds of the claim, upholding the High Court's decision. The unanimous decision of the Court of Appeal further vindicated the Council's (and EC's) position on the matter. The Council's consideration of the planning application was entirely lawful.

11. On 29 October 2020, EC and the Council agreed a variation to part of the section 106 agreement, so that EC would be allowed to demolish the existing buildings on the Shopping Centre without first entering into a development agreement ("DA") with LUL. The requirement to enter into the DA with LUL was left in place in the section 106 agreement but was relaxed so that demolition could take place beforehand. This variation of the section 106 agreement meant that no "Implementation" of the Scheme (ie works of piling or other substantive construction works) could take place pursuant to the section 106 agreement until the DA with LUL was in place, and that the DA had to contain (among other items) a requirement on LUL to enter into a further section 106 obligation, prior to Implementation, as to the fit-out of the station box and an agreed programme for the phasing and completion of the station box works. As explained below, this position was further amended.

12. On 1 October 2020, EC Dev UK entered into a funding and co-operation agreement with the Thameslink train operator, Govia Thameslink, to fund the required operational changes to the railway station, including the provision of a new surface level access to the new town centre scheme on the western boundary of the railway station.

13. In October 2020, a demolition contractor took possession of the Shopping Centre and the immediately surrounding land owned by EC. Demolition work on the Shopping Centre and the immediately surrounding buildings began in January 2021, implementing the 2019 permission.

14. On 27 October 2020, EC entered into an agreement with Network Rail to release existing easements over the Shopping Centre site. This allowed EC to remove the then existing footbridge from the railway station into the Shopping Centre.

15. On 1 December 2020, EC entered into an agreement with London Power Networks PLC, the electricity undertaker, for the surrender and re-grant of electricity sub-station leases on the East Site. The existing sub-station leases on the East Site were surrendered pursuant to that agreement on 27 September 2021.

16. In December 2020, a further planning application was submitted to amend the permitted Scheme under the 2019 permission, to allow for an enlarged station box, with enough capacity to potentially accommodate both Bakerloo and Northern Lines. This application, made by EC, was agreed in advance with LUL. The Council granted the permission (reference 20/AP/3675) on 12 March 2021. Again, the need for such a permission to further the Scheme was expressly envisaged in the April 2020 Cabinet report.

17. On 8 April 2021, a non-material amendment approval (reference 21/AP/1064) to the 12 March 2021 planning permission was granted. This simplified the description of development and removed references to building heights and unit numbers in that description. The purpose of this approval was to pave the way for a further planning application, for further minor material amendments to the East Site of the Scheme (reference 21/AP/1104), submitted on 25 March 2021. Those further amendments can be summarized as follows:

- Additional office accommodation within Building E2;
- Reduction in cinema area and provision of additional leisure area at basement level;
- Reduction in retail area in East Site, offset by an increase in retail area in West Site;
- Four additional residential units (representing a 0.4% increase);
- Reconfiguration of residential unit mix to provide additional 2-bed and 3-bed units;
- Amendments to residential communal amenity space;
- Provision of additional UAL floorspace;

- Minor alterations to building heights (reduction of up to 670 mm) and positioning (up to 700 mm);

- Alterations to pedestrian routes and walkways; and

- Reconfiguration of internal layouts and elevational changes.

- Amendments to conditions 1 (approved drawings – to reflect revised drawings), 19 (detailed construction drawings of the East Site), 20 (detailed construction drawings of the proposed new UAL building on the East Site), 25 (green roof –condition deleted as there is no green roof on Building E1), 26 (basement access design), 27 (western railway viaduct boundary –condition deleted as there is no proposed boundary treatment along the west-facing viaduct), 29 (public toilet), 31 (landscaping scheme), 45 (sound insulation in the proposed UAL building – condition deleted), 48 (external noise levels in private amenity areas – condition deleted), 51 (opening hours of cafes/restaurants/bars) and 54 (wind microclimate).

18. Some of these changes were the result of further discussions with UAL as to their requirements and had been discussed with the Council's planning officers and the GLA prior to submission. All of the changes are minor in nature. All of the main constituent parts of the Scheme (as envisaged in April 2020) are still present. The 35% affordable housing provision by habitable room was maintained. On 6 July 2021 the Council's Planning Committee resolved to grant planning permission for these changes, subject to completion of a section 106 deed of variation and no call-in by the Mayor. This further planning permission was granted on 29 July 2021. Works pursuant to this permission have now been implemented on the East Site.

19. On 7 May 2021 the Council received an application from EC (reference 21/AP/1581), supported by TfL, to further amend the section 106 agreement to remove the requirements for details of the timescales for the fit out and opening of the station box to be provided in the development agreement with LUL. TfL had advised in writing that owing to the long term funding uncertainty that TfL faces as a result of the global pandemic, which has had a significant impact on TfL revenue, TfL/LUL were unable to commit to the funding of the fit-out (and consequently the opening) of the new underground station box. That means that the DA could not be entered into, which would mean that Implementation of the Scheme could not take place once demolition had finished. EC therefore requested, with TfL support, that the terms which LUL could not commit to at this stage were removed from the section 106 agreement, thus enabling the DA to be entered into and EC to proceed with works beyond demolition.

20. This request was carefully considered by the Council's planning officers and they concluded that: the changes remove the certainty as to the fitting out and opening of the new station box; there is no guarantee that LUL will have the necessary funds in the future; it is possible that the entire site could be occupied without the new station box being opened, and if that happened it is likely that access to the existing underground station would need to be

managed more frequently; whilst the delivery of the new station box was a factor in the grant of planning permission, EC has no control over LUL funding; if the Scheme cannot be Implemented that will lead to a vacant site at the heart of the town centre, which would not bring the various other benefits of the Scheme; TfL/LUL do have funding for the enlarged station box (but not fit-out) and connecting tunnels; and when all of these factors are considered in the round, including the unprecedented situation that LUL finds itself in due to the pandemic, the amendment to the section 106 agreement was acceptable. The deed of variation to implement these changes was completed on 29 June 2021.

21. On 18 December 2021, EC Dev UK entered into a building contract with the major building contractor Multiplex for the substantive construction (ie beyond demolition phase) of the East Site.

22. On 23 December 2021 a further important milestone was reached when EC and EC Dev UK entered into the DA with LUL and TfL, with Get Living Plc providing a guarantee of the development obligations. The DA deals with the construction of the enlarged Underground station box on the East Site by EC Dev UK, which when completed will be handed over to LUL for fit-out. As can be seen from the preceding paragraphs, there is not absolute certainty that TfL/LUL will have the funds to fit-out the station once it is handed over, though there is a high likelihood that the station will be fitted out within a reasonable timescale of handover. In addition, the DA brings TfL's landholdings adjacent to the Shopping Centre site on the East Site into the Scheme by agreement, with EC having acquired several plots from TfL.

23. Also on 23 December 2021, EC entered into a debt facility agreement with Starwood Property Trust Inc, to provide the necessary debt funding (£365 million) to continue and complete the East Site redevelopment. This gives further confidence that the funding of the East Site is secured.

24. Following the entry into the facility agreement, notice to proceed with the substantive construction of the East Site redevelopment was given to Multiplex under the building contract on 23 December 2021.

25. On 18 January 2022, T3 Residential Limited, a group company of EC which has been set up to become a for profit registered provider of the affordable housing on the Scheme, entered into an affordable housing grant funding agreement with the GLA. This secured £9,631,750 of grant funding from the GLA to facilitate the provision of the 172 affordable housing units on the East Site.

26. On 17 March 2022, piling works began on the East Site, marking the commencement of the substantive construction of the East Site redevelopment. This also triggered the payment of the East Site grant funding to T3.

27. In May 2022, LUL and TfL granted crane oversail licences to facilitate works on part of the East Site.

28. In late 2021 and during 2022 the Council has granted several non-material amendment approvals under the July 2021 planning permission, permitting non-material amendments in respect of submissions under conditions 10, 24, 25 and 28 of that planning permission.

29. On 10 June 2022, the Council granted planning permission (reference 21/AP/4628) for the installation of underground heating pipework and associated works, to run from 50 New Kent Road to the East Site under Elephant Road and the railway station. The proposed connection will enable the East Site to benefit from heating produced at the 50 New Kent Road site. On 5 August 2022, Network Rail granted an easement in favour of EC to allow the heating pipework to run under the railway station.

APPENDIX F

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

STATUS UPDATE

SUMMARY ON DISCUSSIONS WITH THIRD PARTIES

(PROVIDED BY DEVELOPER)

1. This document provides a summary of the current status of agreements with the key third parties whose land interests need to be acquired or over whose land new rights are sought to facilitate the redevelopment.

Transport for London (as regards crane oversail rights on the West Site)

2. TfL and LUL's land interests generally are brought into the Scheme by way of the December 2021 agreement with the developer; crane oversail licences were also granted in May 2022 to facilitate works on part of the East Site. It is hoped that similar crane oversail rights will be granted in respect of the West Site by TfL - EC has approached TfL to provide these and negotiations are ongoing.

Network Rail - new rights to be granted

3. Station change proposals and asset protection agreements are already in place. EC has sought additional new rights to be granted by Network Rail to facilitate the Scheme. These are considered to be minor in nature. Network Rail owns the viaduct structure. EC is therefore seeking new rights from Network Rail, including: the right to remove the existing shopfronts and rear elevations from 6 and 7 Farrell Court to create the Park Route pedestrian walk-through and the carrying out of various minor works to the sides and undersides of the relevant viaduct arches, including the affixing of a kiosk within the walk-through; the right to affix apparatus and frontages and rear elevations to the sides and undersides of Arches 113A/120 and 113B/121 to bring them into beneficial use as a relocation premises for the cultural electronic and dance music club); the ability to carry out works to facilitate the conversion of 4 and 5 Farrell Court into relocation premises for the tenant and occupiers of 7 Farrell Court; and a right of way across the Network Rail station entrance to ensure that users of the East Site can access to and from the railway station, with a related right to pave and maintain that area. Again, EC's intention is to reach agreement with Network Rail by private treaty if practicable and discussions with Network Rail are ongoing.

The Arch Company

4. Arch Co was granted a long lease of all of the Elephant & Castle railway arch units by Network Rail in 2019. Discussions are ongoing regarding commercial and title terms with the Arch Co, having commenced in 2019. EC began by offering for the arch units and adjacent land envisaged by the CPO, but following a specific invitation from Arch Co, EC then offered to acquire Arch

Co's long lease for the entire run of arch premises in the railway viaduct at Elephant & Castle, with three offers having been made for that larger area. Although that larger area is not required for the Scheme, EC offered for it in the hope that would avoid the need for compulsory acquisition of Arch Co's land, due to Arch Co's desire to deal with all of the arch units at Elephant & Castle. The parties remain apart in their valuations on that and in relation to the smaller area required for the Scheme as envisaged by the CPO. Offers have also been made in respect of that smaller area.

5. A further proposal was put to Arch Co in June 2022 which would involve the collaborative working together of EC and Arch Co to redevelop the arch units and land adjacent to the viaduct in Arch Co's ownership covered by the CPO, without the need for compulsory acquisition. That proposal, if taken forward, would however rely upon all parties, including Arch Co, Network Rail and the affected tenants, agreeing matters and so it is envisaged that the CPO would still be pursued even if such an agreement was to be reached, because if any one of the parties defaulted on their contractual commitments the proposal could unravel. In that scenario, the Council could undertake not to use confirmed CPO powers in respect of the arches if all relevant parties comply with their obligations. It is not clear to the Council and EC whether Arch Co will engage with that proposal. Since it was submitted to Arch Co there has been no positive engagement on it and Arch Co have again referred to the possibility of an outright sale.

Occupational tenancies in some of the railway arches on Elephant Road

6. The Scheme envisages the use of what are currently 6 Farrell Court (DistriAndina) and 7 Farrell Court (Beset International) as the new pedestrian link to Elephant Road. In addition, the Scheme envisages the redevelopment of 4 and 5 Farrell Court (currently occupied by Corsica Studios) for use as a relocation opportunity within the Scheme for Beset and their occupiers displaced from 7 Farrell Court (with the proposal to relocate DistriAndina within the Scheme, to a new unit within one of the new blocks on the East Site).

7. An offer from EC had been accepted by DistriAndina in 2020 but the requisite agreement was not completed. No offer has been accepted by Beset and there has been difficulty finding a relocation opportunity which is suitable for their requirements. 4 and 5 Farrell Court would, however, be a suitable relocation opportunity for them and their occupiers.

8. Discussions with Corsica Studios for some time focussed on retro-fitting 4 and 5 Farrell Court with noise insulation and consequential remodelling of the units, but through the detailed discussions that ensued it became clear this was not feasible and would in any event require Corsica to close for a significant period of time whilst the works were undertaken. Discussions are progressing with Corsica Studios in respect of the proposed relocation to the northern arches 113A/120 and 113B/121, though no commitment or agreement in principle to move has been reached.

9. Discussions are ongoing with all of these tenants.

London Power Networks (surrender of electricity substations)

10. The leases of the current substations on the LCC Site will need to be surrendered and the substations relocated in due course. Discussions have commenced in this regard with the electricity undertaker and it is hoped that this will be done by private agreement but the CPO is necessary as a backstop should this fail.

Metropolitan Tabernacle (new rights to be acquired)

11. The Tabernacle has appointed a surveyor to act on its behalf and the parties are in discussion to address various practical aspects that the Tabernacle has raised in respect of EC's request to obtain some relatively minor new rights to facilitate the demolition of the adjacent LCC building and crane oversail. Whilst it is hoped that these discussions will result in an agreement by private treaty, and EC is working towards that objective, the CPO is required in case agreement cannot be reached.

Other crane oversail (West Site)

Crane oversail rights over some highway areas and to a small extent over The Castle Centre and Perronet House. The highway areas are unregistered but some of them are presumed to be owned by the Council. Perronet House is owned by the Council.

APPENDIX G

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

THE COUNCIL'S POWERS AND THE LEGAL AND POLICY GUIDANCE FRAMEWORK

1. It has been made clear repeatedly by the courts over the last few decades that special care needs to be undertaken when considering the justification for compulsory acquisition of land, given the draconian nature of the process of state appropriation of private property against the will of the owner. Compulsory purchase of land involves a serious invasion of the private proprietary rights of citizens. The power to dispossess a citizen of his land against his will is clearly not a power which should be exercised lightly and without good and sufficient cause. The use of statutory authority for the destruction of property rights in this way requires must be based on the right legal principles, adequate evidence and proper consideration. A CPO can only be confirmed when it is necessary in the public interest to do so and the public interest must demand the acquisition decisively. There must a clear case to justify depriving an owner of his land in the public interest.

2. Of central importance to the issue of whether CPO powers should be used are the provisions of Section 226(1)(a) of the 1990 Act, which give the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development/re-development, or improvement on, or in relation to, the land". Not only must this test be met, but in addition the Council must have regard to and apply Section 226(1A) of the 1990 Act so the Council must not exercise the power under section 226(1)(a) unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:

   (a) The promotion or improvement of the economic well-being of their area;

   (b) The promotion or improvement of the social well-being of their area;

   (c) The promotion or improvement of the environmental well-being of their area.

3. Section 227 of the 1990 Act gives the Council the power to acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land under section 226.

4. Acquisitions of land under section 226 or 227 engage the provisions of sections 203- 205 of the Housing and Planning Act 2016 ("the 2016 Act"). Section 203 enables third party rights over that land (such as easements, restrictive covenants and rights of light) to be overridden so that development may proceed (provided it is carried out in accordance with planning permission), with the third parties who hold the rights being entitled to

compensation under section 204 of the 2016 Act, based on the diminution in value of their property once their rights have been infringed. These provisions prevent the third party who holds the rights from preventing development from proceeding, because their right to obtain an injunction is translated into a right to compensation only.

5. Section 203 enables a development to proceed in accordance with a planning permission even though in doing so rights over the development site which benefit adjacent properties may be infringed. The pre-conditions to the engagement of section 203 are (i) there is planning consent for the development, (ii) the land on which the development takes place has at any time on or after 13 July 2016 become vested in or acquired by the local authority for planning purposes, or been appropriated to planning purposes, (iii) the authority could acquire the land compulsorily for the purposes of the development and (iv) the work is for purposes related to the purpose for which the land was vested, acquired or appropriated. The rights which the adjacent properties enjoy over the proposed development site are overridden under section 203 and under section 204, the holders of the rights are entitled to statutory compensation based on the loss in value of their land as a result of the infringement. The claim for compensation would be against the person who infringed the rights but under section 204 the acquiring local authority has a residual liability to pay that compensation.

6. Where rights are overridden, the right to compensation for interference with the rights does not occur until the right is actually interfered with, which (depending on the nature of the right) is usually at some point in the construction process and not when the acquisition is made by an acquiring authority.

7. This is a powerful tool in enabling developments as it means that third party holders of the rights cannot prevent the development proceeding (by way of an injunction) - their right to obtain an injunction is translated into a right to compensation only. It also provides certainty for a developer in estimating the basis upon which any compensation is due, as the compensation will be based on a loss in value basis of the property which has the benefit of the right, rather than on any other basis which might fall to be negotiated i.e. it stops the developer being held to ransom or having to pay a share of the development profits.

8. Section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976 provides that a local authority which may be authorised by a Minister of the Crown, by means of a CPO, to purchase any land compulsorily for any purpose may be authorised by that Minister, by means of such a CPO, to purchase compulsorily for that purpose such new rights over the land as are specified in the CPO; and "new rights" means rights which are not in existence when the CPO specifying them is made.

9. Once land has been acquired by the Council for planning purposes under section 226 or 227 of the 1990 Act, the land may then be disposed of to a third party pursuant to section 233 of the 1990 Act. Section 233(1) permits the Council to dispose of the land to such persons, in such manner and

subject to such conditions as appear to the Council to be expedient in order to:

(a) secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by the Council or by any other person), or

(b) secure the erection, construction or carrying out on it of any buildings or works appearing to the Council to be needed for the proper planning of its area.

In this case it is section 233(1)(a) that is relevant.

10. The consideration received by the Council for such disposals must be "the best consideration that can reasonably be obtained", unless the Secretary of State's consent is obtained to the contrary or unless the disposal is the grant of a lease of seven years or less or the assignment of a lease with seven years or less unexpired at the date of assignment. In judging what consideration can be achieved, account must be taken of the expediency as referred to in section 233(1).

11. The Council is required to exercise its powers of disposal under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land who wish to obtain accommodation on such land and are willing to comply with any requirements of the authority as to the development and use of such land (section 233(6)). A suitable opportunity for accommodation means, in relation to any person, an opportunity to obtain accommodation on the land in question which is suitable to his reasonable requirements, on terms settled with due regard to the price at which any such land has been acquired from him (section 233(7)).

12. Under section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in the exercise of its powers of disposal under section 233 of the 1990 Act, a local authority shall have regard to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings. The Metropolitan Tabernacle is a listed building and some minor works to that building are required and have received listed building consent. Those works would be the subject of the acquisition of new rights by the Council under the proposed CPO and those rights could be utilised by EC to undertake the redevelopment. The Faraday memorial is also a listed building and lies close by, though no works are planned to it and no new rights or acquisition of title by the Council are envisaged in respect of it as part of the CPO (and hence no disposal by the Council to EC of any such title or rights will occur). The same is true of Metro Central Heights (former Alexander Fleming House). Other designated heritage assets in the locality include listed buildings at West Square, and the West Square and Elliott Row Conservation Areas, though again no new rights over or acquisition of title to those areas is envisaged by the CPO and the Council will not be exercising powers of disposal over them under the CPO.

13. As regards human rights, the Human Rights Act 1998 incorporates into domestic law the European Convention on Human Rights. Article 1 Protocol 1 Convention rights have to be considered: every natural or legal person is entitled to the peaceful enjoyment of his possessions. This can cover, for example, enjoyment of existing assets with economic value, such as the marketable goodwill of a business. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law, and this must be done in pursuit of a legitimate aim. This does not impair, however, in any way the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. In respect of this right under Article 1 of the Protocol, a fair balance must be struck between the public interest and private rights.

14. Article 6 Convention rights are also relevant: in the determination of his civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

15. Article 8 Convention rights may also apply and may be engaged i.e. everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Any interference with this right must be proportionate. Article 8 covers family life and private social life enjoyed at a place of work or in professional, business or commercial activities. If children could be affected, then the best interests of the child shall be a primary consideration.

16. Consideration may also need to be given as to whether other Articles of the Convention are engaged, for example: Article 9 (freedom of thought, conscience and religion; Article 11 (freedom of peaceful assembly and association) and Article 14 (freedom from discrimination).

17. Section 149 of the Equality Act 2010 imposes a general equality duty on public sector authorities ("the PSED"), in the exercise of their functions, to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act.

- Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.

- Foster good relations between people who share a relevant protected characteristic and those who do not share it.

18. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

19. For the purpose of the PSED the following are '"protected characteristics":

- Age
- Civil partnership
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex and sexual orientation.

20. Case law has distilled a number of principles as regards the PSED. The duty is a continuing one. "Due regard" in the context of the PSED means the regard that is appropriate in all the particular circumstances, including the importance of the areas of life of the members of the protected group that are affected and the extent of the effects and such countervailing factors as are relevant to the function which the decision maker is performing. The PSED is not a duty to take specific steps - indeed the courts have warned against micro management of the PSED process - nor is it a duty to achieve results. It is a duty to have regard to the need to achieve the various objectives referred to above. A public body needs to be satisfied that it has sufficient information available to it to make informed decisions. It must be clear precisely what the equality implications are; there must be conscious directing of its mind to the obligations in the PSED, which requires consideration of the specific goals in play and consideration of the relevant materials with those goals in mind; and the "due regard" duty requires a proper and conscientious focus on the statutory criteria, which is more than simply giving consideration to the issue.

21. Policy guidance on the use of compulsory purchase powers is set out in the Minister for Housing Communities and Local Government's July 2019 Guidance on Compulsory Purchase Process and The Crichel Down Rules ("the Guidance"). The document's General Overview includes the following:

- Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental, and economical change;

- Acquiring authorities should use compulsory purchase powers where it is expedient to do so;

- However, a CPO should only be made where there is a compelling case in the public interest;

- The Secretary of State, as confirming authority for the CPO, will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the CPO by agreement.

- Compulsory purchase is intended as a last resort; but

- It may be sensible for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal proceedings to mitigate loss of valuable time and to encourage those whose land is affected to enter into meaningful negotiations; and

- When making a CPO acquiring authorities should be sure that the purposes for which the CPO is made justify interfering with the human rights of those affected.

- In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

22. The Guidance advises that the acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time and should have a clear idea of how it intends to use the land which it is proposing to acquire. It should be able to show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.

23. The Guidance also makes clear that an acquiring authority should provide substantive information about the sources of funding for acquiring any land and new rights and for implementing the scheme for which the land is required and that funding should be available now or early in the process. Evidence should also be provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

24. The Guidance advises that acquiring authorities will need to demonstrate that the scheme for which a CPO is made is unlikely to be blocked by any physical or legal impediments. These include:

- the programming of any infrastructure accommodation works or remedial works which may be required; and

- the need for planning permission for the scheme (or where planning permission has yet to be granted an acquiring authority should demonstrate that there are no obvious reasons why it might be withheld) or other consent or licence.

25. The Secretary of State, as confirming authority, has to be satisfied that the statutory procedures in respect of the CPO have been followed correctly, and so the Council will need to ensure these have been followed.

26. Paragraph 106 of the Guidance also gives an indication of those factors the Secretary of State can be expected to consider if the Council made a CPO and the Secretary of State was asked to confirm it. These include:

- 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 and the National Planning Policy Framework

- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area

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

- the potential financial viability of the scheme for which the land is being acquired. 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 scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.

APPENDIX H

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

Further detail on CPO process and compensation

1. The ability to make compulsory purchase orders is limited to predominantly public sector organisations. EC does not have these powers, hence its approach to the Council to utilise its powers to facilitate the Scheme.

2. Section 226(4) Town and Country Planning Act 1990 makes clear that it is a perfectly legitimate use of compulsory purchase powers for a local authority to make a CPO for planning purposes even though it is not the Council itself who is to undertake the development.

3. Since EC will be the beneficiary of the CPO it is therefore appropriate that it indemnifies the Council against all the costs arising from its making and subsequent execution.

The measure of compensation available to owners/occupiers

4. If compulsory purchase takes place the property or rights owner will be compensated on the basis of the statutory "land compensation code", which is a mixture of statute and case law based rules and principles for compensation in compulsory acquisition. Disputes about compensation can be resolved by referring the matter to the Upper Tribunal (Lands Chamber).

5. The statutory compensation code provides that commercial leaseholders are entitled to the following compensation following a compulsory acquisition:

   (a) The market value of the leasehold interest in the property;

   (b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property

   (c) Payment for loss of profits arising from the relocation or extinguishment of the business (as appropriate)

   (d) a disturbance payment to cover the leaseholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees

   (e) where the lease is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset

6. The freeholders of properties subject to statutory compensation are entitled to:

   (a) The market value of the freehold interest in the property;

(b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property

(c) Payment for loss of profits arising from the relocation or extinguishment of the business if the premises are occupied by the freeholder

(d) Where the freeholder is in occupation, a disturbance payment to cover the reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees

(e) Where the property is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset.

7. Where part only of an interest in land is acquired the owner of the land has the opportunity to claim compensation under section 7 of the Compulsory Purchase Act 1965 for severance or injurious affection.

8. Where new rights over land (as opposed to the title to the land) are acquired, such as an easement, the owner of the land over which the new right is acquired is entitled to compensation. For this purpose, section 7 of the 1965 Act is adapted so that in assessing compensation, regard shall be had not only to the extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.

Outline of Compulsory Purchase Procedure

Resolution

9. The Cabinet passes a resolution to make a CPO. This is the purpose of this report.

Land Referencing

10. Final details are assembled of all owners, tenants and occupiers that have land interests in the CPO land and of parties that may have rights over the CPO land. This is to both identify what interests need to be acquired and who is entitled to receive a notice of the publication of the CPO. These relevant interests will be set out in a Schedule that will be incorporated into the CPO. Formal requisitions for information have been served on all known owners and occupiers of each property to be subject to the CPO but with the Council having made very clear that this does not in any way pre-judge any decision by Cabinet as to the merits or otherwise of any CPO. It is important that the Council takes all reasonable steps to ensure that all interests are identified and included in the CPO. This stage will also enable the precise details of the CPO areas to be determined. The boundaries shown on the draft CPO map

at Appendix A may need amendment in the light of this and it is recommended that the Director of Regeneration is delegated authority to set the extent of the CPO.

Making the CPO

11. The Council makes the CPO, to a defined format. A schedule goes with the CPO identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the CPO. This document sets out the Council's reasoning and justification for the CPO.

Publication of the CPO

12. The Council serves notice of making of the CPO on all freeholders, leaseholders, tenants and occupiers affected by it, which may include persons outside the CPO land who have (or potentially have) rights over the CPO land. A notice of the making of the CPO has to be published for two successive weeks in a local newspaper.

13. The notices will advise that any objections to it can be made to the relevant government minister and specify an address for this purpose. The CPO is then passed to the government minister for confirmation.

Confirmation of the CPO

14. The CPO does not become effective unless and until it is confirmed by the Secretary of State. Where there are objections to the CPO they must be considered before confirmation. This is usually done by way of a public inquiry but can sometimes be dealt with by written representations.

15. After considering the objections (if there has been a public inquiry there will be an Inspector's Report) the Secretary of State may confirm, modify or reject the CPO. If it is rejected that is the end of the process and EC and the Council will need to revisit the Scheme, unless it is considered that the Secretary of State has erred in his decision in which case a statutory judicial review can be requested.

16. Following confirmation or if applicable, modification and confirmation, a notice advising that the CPO has been confirmed must be published in the local newspaper and served on all freeholders, leaseholders, tenants and occupiers affected by the Order. A confirmed CPO can only be implemented within three years to retain its validity, though if there is a statutory judicial review this time period is extended by (a) a period equivalent to the period beginning with the day the review challenge is made and ending on the day it is finally withdrawn or finally determined or (b) if shorter, one year.

Implementation of the CPO and taking possession

17. Implementation of the CPO can be achieved by either Notice to Treat/Notice of Entry or by using the General Vesting Declaration procedure under the Compulsory Purchase (Vesting Declarations) Act 1981. The creation of new

rights under section 13 Local Government (Miscellaneous Provisions) Act 1976 can only be done using the notice to treat route.

18. Section 8 and Schedule 2A of the Compulsory Purchase Act 1965, and section 12 and Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981, address circumstances where the acquiring authority propose to acquire part only of a house, building or factory under confirmed CPO powers. Broadly, these provisions allow a landowner to instigate a process whereby it can seek for the acquiring authority to acquire the whole of the house, building or factory. In the event of a dispute on that point, the Upper Tribunal (Lands Chamber) has jurisdiction to resolve such a dispute. The Tribunal must determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory cause material detriment to the house, building or factory. If the Tribunal determines that the severance of the land proposed to be acquired would have that consequence it must determine how much of the additional land the acquiring authority ought to be required to take in addition to the land proposed to be acquired. If the Tribunal does determine that additional land is required to be taken, the CPO has effect as if it included the owner's interest in that additional land. In certain circumstances the acquiring authority may be able to withdraw any notice to treat in respect of (and any vesting declaration is to have effect as if it did not include) the land proposed to be acquired together with the additional land required to be taken.

Indicative Timescale

19.

- Resolution to make the CPO *
- Making the Order to Publication 6 weeks
- Publication to Confirmation 40 weeks
- Confirmation to taking Possession 18 weeks

* will follow completion of prerequisite documentation, including the indemnity agreement.

20. It is therefore likely that it will take, say, around a year and a half between resolving to make a compulsory purchase order and obtaining possession but if there are complications it could be longer. It is assumed for the purpose of this indicative timescale that there will be objections to the CPO and that these will require protracted negotiations and/or a public inquiry to resolve. If a public inquiry is needed this will be called for and arranged by the Secretary of State, with an inspector presiding over the inquiry, so the Council has little control over this process. Resource availability at the Planning Inspectorate can cause this to be scheduled rather later than preferred and is a risk to be factored into project planning. If there are no objections or ones that are quickly resolved the period between publication and confirmation may be significantly reduced.

Property Acquisitions

21. Should the recommended resolution be passed, EC will continue to endeavour to acquire all interests by agreement. Once the CPO is confirmed the Council will have the ability to acquire properties by compulsion and any properties acquired compulsorily are vested in the Council. Again, these will be transferred to EC or its group company. Once the land vests in the Council, it becomes responsible for the payment of compensation. Any compensation agreed or determined by the Tribunal will be paid by the Council but funded by EC pursuant to the indemnity agreement. In certain circumstances, affected owners of land included in the CPO may be able to claim that their land is “blighted” because of the CPO that has been made and serve a “blight notice” on the Council, requesting that the Council purchases their interest. The costs of acquiring a property pursuant to a blight notice because of the making of the CPO (if appropriate) will be covered in the CPO indemnity agreement.

Cabinet

Tuesday 6 December 2022
11.00 am
Ground Floor Meeting Rooms, 160 Tooley Street, London SE1 2QH

Supplemental Agenda No. 2

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Date: 5 December 2022

Agenda Item 22

Item No: 22.	Classification: Open	Date: 6 December 2022	Meeting Name: Cabinet
Report title:		**ADDENDUM** Elephant and Castle Town Centre – Compulsory Purchase Order	
Ward(s) or groups affected:		North Walworth St. George's	
From:		Director of Planning and Growth	

PURPOSE

1. To advise members of further information or amendment.

RECOMMENDATION

2. That members note and consider any further information and amendments.

FACTORS FOR CONSIDERATION

3. An addendum in respect of the following item on the agenda is set out below:

4. Reference is made in the cabinet report (paragraphs 8, 13, 24, 25 and 85 of the main body of the report, paragraphs 2, 16 and 27 of Appendix J and paragraph 4 of Appendix K) to the approved phasing plan under the planning permission requiring the completion of the East Site (save in certain respects) before the West Site progresses. By way of correction, whilst the phasing plan does require the East Site to commence before the West Site, it does not require completion of the East Site before works can begin on the West Site. Accordingly, the comments to that effect within the report and to the effect that enabling compliance with the approved phasing plan would be a benefit of the CPO are to be disregarded. Nevertheless, the CPO is still required to facilitate the redevelopment of the West Site (and thus to bring about the benefits of the West Site) because of the need to compulsorily acquire title and new rights in relation to the West Site itself, to allow the demolition and construction on the West Site as explained in detail in the report. As the CPO is nonetheless necessary to unlock the redevelopment of the West Site and deliver the benefits of that redevelopment, and also to allow the completion of the redevelopment of the East Site in full in accordance with the planning permission and deliver the full benefits of that redevelopment, the merits of the case for the CPO are effectively unchanged in light of this correction. Allowing for this correction, it is considered that: the relevant legal tests and policy guidance are all still satisfied, including the tests as set out in sections 226(1)(a) and 226(1A) of the 1990 Act, with the redevelopment likely to contribute to all three of the well-being objects in section 226(1A); the CPO is essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring; there is a compelling case for the CPO and the

benefits that will result to the community at large; the use of the council's CPO powers is justified; and the conclusions in paragraphs 106-109 (inclusive) of the report remain correct.

REASON FOR URGENCY

5. Cabinet are considering this report on 6 December 2022 and need to be aware of this information.

REASON FOR LATENESS

6. The new information to the main report have been received since the committee agenda was printed. They relate to an item on the agenda and members should be aware of them.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
As set out in the cabinet report, item 22		

APPENDIX L

Elephant & Castle Town Centre Redevelopment
Proposed Compulsory Purchase Order
Equalities Impact Assessment (EqIA)[1]

1. Background

The Public Sector Equality Duty (PSED) created by the Equality Act 2010 imposes a continuing duty on the Council to consider equalities impacts to inform its decision making. Previous EqIAs were produced by AECOM in June 2016 prior to approval of the planning application for the development of the Elephant & Castle Shopping Centre and Town Centre area. Additional analysis was carried out by AECOM in March and August 2017 relating to the potential redevelopment of the Bingo Hall and Bowling Alley within the Shopping Centre and which helped to formulate the business relocation strategy and compensation package for affected businesses, which was put in place under the section 106 agreement. The developer (EC) has also carried out its own analysis as part of the planning application process.

A further report was commissioned by the Council in August 2019 with a detailed report being provided by AECOM in January 2020, to inform the Council's decision-making as to a Compulsory Purchase Order (CPO) at that time.

In line with the continuing duty, this report addresses the equalities impacts that may arise in the context of the now proposed CPO. It does not seek to duplicate the work done in connection with earlier reports. Rather, it addresses the potential equalities impacts on those businesses and stakeholders likely to be affected by the making and implementation of a CPO now that the Council's Cabinet has resolved on 6 December 2022 to approve this.

2. Legislative background

The Equality Act 2010, section 149 (Public Sector Equality Duty) sets out that a public authority must, in the exercise of its functions, 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 who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics for the purposes of the Act are –

[1] This document is the same document as formed Appendix K to the 6 December 2022 Cabinet report save that (i) in section 1 it refers to the resolution of Cabinet having now been made and (ii) in section 4, whilst pointing out that the title and new rights sought for the West Site will unlock the ability to develop the West Site, it does not contain an error as to the effect of the phasing plan of the planning permission (such error as to the effect of the phasing plan having been drawn to the attention of Cabinet and corrected by the addendum report in Supplemental Agenda Item 2 of the Cabinet papers). No other changes have been made.

Age
Disability
Gender reassignment
Pregnancy and maternity
Race
Religion or belief
Sex
Sexual orientation.

The EqIA aims to consider the effects of the Council's decision making (in this case to make a CPO) and whether these effects are likely to have a disproportionate or differential impact. A disproportionate impact will arise if an impact has a proportionately greater effect on groups who share a protected characteristic than on other members of the general population in a location. A differential impact will arise where members of a group sharing a protected characteristic are affected differently from the rest of the population because of specific needs, or a recognised sensitivity or vulnerability associated with their protected characteristic.

3. Current decision

The Council is proposing to make a CPO in order to acquire the remaining title and new rights required to facilitate the town centre redevelopment scheme. Further details of the remaining title and new rights required are set out in the main report to Cabinet seeking approval to the making and implementation of the CPO. The compulsory acquisition of these properties and new rights will directly impact the owners of the businesses and organisations thereby affected, their employees and their customers and clients. Mitigation measures will seek to reduce these impacts as far as possible.

The businesses and organisations that will be directly affected by the making and implementation of a CPO are those that currently occupy parts of the proposed order land who will need to relocate in order to enable redevelopment to take place, or, in the case of the Metropolitan Tabernacle, whose land will be the subject of new rights to facilitate the redevelopment. These have been identified as follows:

Units 4 & 5 Farrell Court – Corsica Studios

The business currently carried out in units 4 & 5 is that of a cultural venue hosting electronic and other genres of music and club nights and creative events, including techno and live alternative rock and art installations.[2] The business has a well-articulated inclusivity, equality and diversity policy whereby it aims to promote a positive environment where differences are respected and valued. It also aims to redress the gender, racial and sexuality balance within the industry. The venue welcomes disabled customers and aims to be accessible and inclusive.

The developer's proposal is to relocate the business to the railway arches to the north of the station, a short distance up Elephant Road, which will have been fitted out and soundproofed prior to the relocation taking place. In a worst case scenario

[2] Source : www.corsicastudios.com accessed 7 November 2022

of the business closing if the confirmed CPO does not include the acquisition of all necessary rights and interests in those northern arches for them to relocate to, it is not considered that any one group with protected characteristics would be disproportionately affected.

The clear intention, though, is that Corsica would be relocated as envisaged. The replacement premises would be better designed and would benefit from better access internally (which would benefit all users, including those with disabilities) whilst still being in very similar arch premises. The proposal, if implemented, would mean that the business would not need to close, even temporarily. It is considered that the likely equalities impact of the proposed relocation would be positive in terms of disability due to accessibility improvements, but otherwise neutral as the changes would help secure the future of Corsica Studios and overcome the uncertainties in relation to the extent of their current demise and the use of the fire escape.

It should also be noted that compensation is available under the CPO legislation for costs/losses of needing to relocate, so that the effect with the proposed mitigation would not affect Corsica Studios financially.

To the extent that any adverse equalities impacts could arise, the proposed mitigation is relocation as proposed above. As to the prospects of that proposed mitigation occurring, discussions are underway with Corsica and it is considered that there are good prospects that the proposed relocation will take place.

Unit 6 Farrell Court – DistriAndina

Unit 6 Farrell Court is occupied by DistriAndina which operates as a café, delicatessen and a Latin American supermarket which sells groceries both retail and wholesale and also delivers around England, Scotland and Wales. They describe themselves as “Serving the UK’s Latin American Community” [3] which previous EqIAs have identified as being a section of the population likely to be disproportionately affected by redevelopment at the Elephant & Castle, as there are several Latin American businesses in the area serving a large local population. DistriAndina themselves are part of that Latin American community, and therefore the protected characteristic of race is relevant. Redevelopment may potentially impact disproportionately and differentially on groups who benefit from the provision of specialist goods and services.

The worst case scenario is the closure and loss of this Latin American business. However, the developer’s proposal and clear intention is to relocate DistriAndina into one of the affordable retail units being constructed as part of the redevelopment and fronting Walworth Road. The unit envisaged for the relocation would be of a similar size to their existing unit and would benefit from a large shopfront onto Walworth Road, where there is high footfall and a large number of bus stops, thereby enabling the unit to be easily accessed both on foot and by public transport. Although not in Elephant Road itself, the replacement unit is

[3] www.distriandina.co.uk accessed 7 November 2022

within the scheme and would be located only a short distance away from the current unit, in an area with other Latin American businesses nearby. It is considered that this would provide adequate mitigation from the closure of unit 6. Again, relocation of the business would be organised such that the business did not have to close and there would be continuity of operation.

As referred to in the context of Corsica Studios above, compensation is available under the CPO legislation for costs/losses of needing to relocate, so that the effect with mitigation would not affect DistriAndina financially.

Accordingly, the proposed mitigation is relocation as proposed above. As to the prospects of that proposed mitigation occurring, discussions are underway with DistriAndina and it is considered that there are good prospects that the proposed relocation will take place. It is considered that the likely equalities impacts would be neutral with that mitigation (ie relocation) taken into account.

Unit 7 Farrell Court – Beset International Limited

Beset International Limited occupies unit 7 and operates a shipping and air freighting business as well as providing business space for a number of small businesses of varying types which occupy areas within the railway arch. These include hairdressing, international money transfer, assorted retail and a café. In the survey undertaken on behalf of the Council, the proprietor of Beset identified as being of Black African ethnic minority. The other business owners within the arch identified as being Latin American. The worst case scenario of a closure of this unit and the loss of the businesses would be likely to disproportionately affect these BAME groups.

However, again, the developer's proposal is to relocate these businesses into units 4 & 5 once these have been vacated by Corsica Studios. This would enable the businesses to continue to trade in the same immediate locality as currently, in very similar premises, as part of the scheme, but in a newly fitted-out unit. As with the other proposals for relocation, the intention is to ensure continuity of provision so that no interruption to the businesses would occur.

As referred to in the context of Corsica Studios above, compensation is available under the CPO legislation for costs/losses of needing to relocate, so that the effect with mitigation would not affect Beset financially.

Accordingly, the proposed mitigation is relocation as proposed above. As to the prospects of that proposed mitigation occurring, discussions are underway with Beset and it is considered that there are good prospects that the proposed relocation will take place. It is considered that the likely equalities impacts would be neutral with that mitigation (ie relocation) taken into account.

Metropolitan Tabernacle

The Metropolitan Tabernacle is an independent reformed Baptist church which occupies the Grade II listed Tabernacle building on the west side of Elephant & Castle. It holds services on Sunday mornings and evenings, prayer meetings on Monday evenings, bible study on Wednesday evenings, and a Sunday School on

Sunday afternoons for children and teenagers, as well as hosting a bookshop. That the Tabernacle serves a wide group of people and nationalities is evidenced by the fact that simultaneous translations of its Sunday services are available via headsets into Spanish, French, Portuguese, Chinese and Farsi[4]. The numbers of people using the building vary according to the time of day and the events taking place but can be as many as 1,000 including 500 children attending the Sunday school.

The building has disabled access to the front (in one of the side arches) which can be accessed either from the Elephant & Castle highway to the front or from the rear parking area along the north flank of the building. Some of the members of the church's congregation are mobility impaired.

Information about the congregation and staff was requested, in order that any groups sharing protected characteristics can be identified and their needs met as far as practicable. Effects of the CPO on the congregation and staff of the Tabernacle could potentially disproportionately affect groups sharing the protected characteristics of religion, age, race, pregnancy and maternity, and disability.

However, the effect of the CPO on the Tabernacle and its congregation is limited to the need to carry out demolition works to the adjoining London College of Communication building, and the Tabernacle is only included in the CPO in order to secure rights to carry out that work, to erect scaffolding on part of the Tabernacle site and to oversail a crane. Any effects of the CPO will be temporary and works will be carried out in such a way that the Tabernacle can remain open at all operational times.

Some disruption will be caused by the erection of scaffolding which is necessary to carry out the works to de-couple the LCC building from the Tabernacle and to demolish the LCC building, which is immediately adjacent to the Tabernacle. This may need to stay in place for up to three months. However, it will be erected in such a way as to ensure that access to the front side entrance of the building (which contains the disabled entrance) is still available, with access to the disabled entrance being maintained during operational hours. It is possible that persons with mobility impairments or parents pushing pushchairs may not be able to use the side accessway under the scaffolding to reach the disabled entrance at the front side entrance if they approach from Pastor Street, and instead would need to go round the other side of the Tabernacle to reach it from Elephant & Castle highway. This would cause inconvenience to disabled persons, the elderly and families with young children. It might also hinder, and cause inconvenience to, pregnant women. As to the scale of such inconvenience, it is considered that this would be minor.

It is likely that the scaffolding will also have an impact on vehicular parking to the rear and side of the building, within the Tabernacle grounds. It is understood that the vehicles parking there include minibuses which are used to facilitate travel to the venue for (among others) those with mobility impairments, whether through

[4] www.metropolitantabernacle.org accessed 7 November 2022

disability or age. Therefore the loss of those spaces, though temporary and for a relatively short period, may give rise to inconvenience, particularly to disabled persons, the elderly, families with young children and possibly to pregnant women. The developer is content to pay for alternative parking provision within the locality for the duration that spaces are not available due to the scaffolding. It may be that the minibuses would still be able to drop off visitors to the rear of the Tabernacle, without parking there, before then moving to the alternative parking provision, with drivers then returning to pick up later, in that way ensuring that those with mobility impairments would not need to move from the alternative parking to the Tabernacle. The movement of visitors dropped off at the rear of the Tabernacle to the disabled entrance in the front side arch would be as discussed above. Again, the scale of inconvenience arising is considered to be minor.

In terms of mitigation, the developer will need to submit a demolition management plan for the West Site in due course and so the Council will be able to assess and approve the detailed demolition methodology at that time. The Council will be seeking to ensure that disruption to the Tabernacle is kept to a minimum as part of that plan. Moreover, the developer will agree in the CPO indemnity agreement to procure that (a) the disabled entrance in the front side arch is available at all times when the Tabernacle is in operation and (b) reasonable endeavours are taken to keep open the side accessway route from the rear of the Tabernacle to that disabled entrance in the front side arch, under the scaffolding, for persons with (and without) mobility impairments if it is safe and practicable to do so.

The Council and the developer will continue to take steps to ensure that the adverse effects of the works on the Tabernacle building and its users are kept to a minimum. If it proves not practicable and safe to keep open the side accessway for those with (and without) mobility impairments during the period when the scaffolding will be in place, the residual equalities impacts of the temporary works are considered to be minor adverse. It is considered that, if the mitigation referred to above is put in place with the side accessway kept open, residual equalities impacts are unlikely to arise.

4. **Other impacts arising from the CPO**

East Site

There will be benefits to all users of the East Site from the creation of surface level public access to create the Station Route, the Park Route and further public realm adjacent to the railway viaduct. This is likely to be particularly beneficial to the elderly, disabled persons, pregnant women and families with young children. It will also ensure the permeability of the site for visitors to all parts of the East Site, including the replacement affordable retail floorspace and proposed replacement bingo facility, both of which are included in the East Site at least in part to address adverse equality impacts identified at the planning permission stage.

West Site

The title and new rights being sought in relation to the West Site are all necessary for the West Site redevelopment to proceed, so the CPO will unlock the ability to

develop the West Site, including the affordable retail floorspace, new dwellings (including affordable housing units, and 10% wheelchair accessible units) and job opportunities associated with that phase of the Scheme, all of which are considered to have positive equality impacts.

It is not considered that the daylight and sunlight impacts which could arise from the construction of tall buildings on the West Site would disproportionately affect any one group with protected characteristics.

Consideration has been given to the potential adverse impacts on the local community during the demolition and construction phase on the West Site, particularly to those people with protected characteristics who may be more sensitive to safety, security and accessibility construction impacts, including people with disabilities, children, older people and pregnant women. Similarly, consideration has also been given to the potential noise impacts that the demolition and construction of the West Site may have on groups with protected characteristics, who may be more sensitive to noise increases including people with certain disabilities, children and older people. Whilst the scale of any such impacts is considered to be minor, the Council has already sought to mitigate these impacts through securing demolition management plans and construction environmental management plans in the section 106 agreement.

5. Summary

The making and implementation of a CPO, following a resolution of Cabinet to do so, will have effects on those directly affected by it, details of which are summarised above. The provisions of the Equality Act are engaged, in that certain groups sharing protected characteristics are potentially disproportionately affected by the proposals.

However, the mitigation measures that are proposed, as detailed above, will play a significant role in minimising the effects of the CPO on those groups such that any negative impacts on them are minimised as far as possible. With the proposed mitigation in place, any residual effects would be limited.

Previous EqIAs have concluded that the mitigation measures proposed by the Council and the developer were likely to prove effective in minimising residual negative effects, and pointed out that the scheme facilitated by the CPO will enable affected businesses to share in the benefits to be delivered, in particular the creation of jobs, new retail space, improved transport links, the new campus for the London College of Communication and the provision of affordable housing.

The Council will need to ensure that the developer commits to and implements the mitigation measures outlined above and that these are monitored in order to help minimise the adverse effects and realise the positive benefits of the redevelopment proposals.

11 January 2023

APPENDIX M

THE LONDON BOROUGH OF SOUTHWARK (ELEPHANT AND CASTLE TOWN CENTRE) COMPULSORY PURCHASE ORDER 2023

STATEMENT OF REASONS OF THE LONDON BOROUGH OF SOUTHWARK

Section 226(1)(a) Town and Country Planning Act 1990

Acquisition of Land Act 1981

Section 13 Local Government (Miscellaneous Provisions) Act 1976

Date: 2 February 2023

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1. INTRODUCTION

1.1 The London Borough of Southwark (**"the Council"**) has made the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023 (**"the Order"**).

1.2 The Order has been made under section 226(1)(a) of the Town and Country Planning Act 1990 (**"the 1990 Act"**), as the Council thinks that the proposed acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to land.

1.3 Furthermore, pursuant to section 226(1A) of the 1990 Act, the Council thinks that such development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the Borough of Southwark.

1.4 The Order is also made under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to enable the Council to acquire new rights over land in order to enable the proposed works to be carried out, used and maintained.

1.5 This document is the non-statutory Statement of Reasons prepared on behalf of the Council in accordance with paragraph 196 of the Government's *Guidance on Compulsory Purchase Process and the Crichel Down Rules* (July 2019) (**"the Guidance"**).

1.6 The land comprised within the Order (**"the Order Land"**) is explained in detail in Section 4 below, but in summary the land to be acquired comprises: certain railway arch units very close to the site of the former Elephant and Castle Shopping Centre (**"the Shopping Centre Site"** and **"the Shopping Centre"** respectively); a corridor of land which lies immediately to the west of the railway viaduct (so immediately to the east of the Shopping Centre Site); a couple of small areas immediately adjacent to the London College of Communication site (**"the LCC Site"**); and a couple of electricity sub-stations located within the LCC Site. In addition, new rights are sought over various parcels, including in relation to the railway viaduct (but not so as to interfere with the operation of the railway). The Order Land falls within the Elephant and Castle town centre.

1.7 The schedule to the Order (**"the Schedule"**) lists the owners, lessees, tenants and occupiers of the Order Land. It also lists other parties with a qualifying interest in the Order Land as defined by section 12(2) of the Acquisition of Land Act 1981 (**"the 1981 Act"**), including those parties who have the benefit of rights within or over the Order Land or restrictive covenants that affect the Order Land.

1.8 The land proposed to be acquired pursuant to the Order is coloured pink on the map to the Order (**"the Order Map"**). The land on, over or under which new rights are to be acquired is coloured blue on the Order Map. Further information on the Order Map is contained in Section 4 below and a copy of it (unsealed) is annexed to this Statement at **Annex 1,** along with the accompanying location plan. The copy of the Order Map and location plan annexed to this Statement are provided at size A3; at

scale copies of the Order Map at size A2 are being provided to the Secretary of State and to qualifying persons, and are available for inspection at the Council's offices.

1.9 The Council's purpose in making the Order is to facilitate the development, redevelopment or improvement on or in relation to the Order Land, namely a mixed use town centre redevelopment scheme including residential, retail, offices, education, assembly and leisure, a new station entrance and station box for use as a London Underground operational railway station, nightclub, commercial, business and services, access and highway works, public realm and landscaping, car and cycle parking, plant and servicing and associated and ancillary works (**"the Scheme"**) on and adjacent to the Order Land. The Order Land forms an integral part of the wider piece of land required for the Scheme, with that wider piece of land encompassing the immediately adjacent Shopping Centre Site, 26-32 New Kent Road, the current London Underground Northern Line Elephant & Castle station, the LCC Site and a small part of Elephant Road and the railway station where a heating network pipe will be located ("**the Scheme Land**"). A plan of the Scheme Land is at **Annex 2**. Further details of the Scheme are contained in Section 6 below.

1.10 The Scheme will result in a substantial improvement in Elephant and Castle's retail and leisure offer, the provision of new housing (including affordable housing), a new home for Corsica Studios, a new campus building for LCC, relocation premises for displaced occupiers of the railway arch units 6 and 7 Farrell Court, and improvements to the town centre environment and connectivity, thereby contributing very significantly towards economic, social and environmental well-being improvements.

1.11 Full planning permission (reference 16/AP/4458) was granted by the Council in respect of the vast majority of the Scheme on 10 January 2019 (**"the 2019 Permission"**), subject to a comprehensive agreement under section 106 of the 1990 Act of the same date. In addition, listed building consent (reference 16/AP/4525) was granted on 10 January 2019 for that small part of the Scheme comprising minor amendments to the northern elevation of the Grade II listed Metropolitan Tabernacle building, which immediately abuts the current LCC building. A judicial review challenge against the 2019 Permission was dismissed on all grounds by the High Court (December 2019) and the Court of Appeal (May 2021).

1.12 Minor amendments to the Scheme have been approved since January 2019. A permission granted under section 73 of the 1990 Act on 12 March 2021 (reference 20/AP/3675) permits an enlarged new London Underground station box and associated amendments (**"the March 2021 Permission"**). A further section 73 permission granted on 29 July 2021 (reference 21/AP/1104) (**"the July 2021 Permission"**), contains minor amendments to the March 2021 Permission. Further information on the planning position for the Scheme is set out in Section 6 below.

1.13 The Scheme is being promoted by Elephant and Castle Properties Co. Limited (**"EC"**), a company incorporated in the British Virgin Islands, which is the freehold owner of the Shopping Centre Site and 26-32 New Kent Road. It is the planning applicant in respect of the 2019 Permission and the subsequent minor amendments which have been permitted.

1.14 EC is a subsidiary company of Get Living Plc, an English public limited company. Get Living's shareholders are "the Triangle Partnership". The Triangle Partnership comprises three parties: (1) Dutch pension fund Stichting Depositary APG Strategic Real Estate Pool, which has a 39% share in the Partnership and is the largest pension fund manager in the Netherlands; (2) QD UK Holdings Limited Partnership, a Scottish limited partnership, set up by Qatari Diar, the sovereign wealth fund of the State of Qatar, which has a 22% share in the Partnership; and (3) DOOR SLP, which has a 39% share in the Partnership. DOOR is a co-investment platform co-founded by Oxford Properties Group and DV4 Limited and it is a separate legal partnership registered in Jersey. All its assets are based in the UK. The Oxford Properties Group is the global real estate arm of the Ontario Municipal Employees Retirement System and based in Toronto, Canada. DV4 is a real estate investment vehicle based in the British Virgin Islands.

1.15 EC is advised by Delancey Real Estate Asset Management (**"Delancey"**). Delancey is an experienced developer and operator of major mixed use schemes.

1.16 EC already owns the freehold title to a substantial part of the land required for the Scheme, namely the Shopping Centre Site and 26-32 New Kent Road (inclusive). EC also owns long leasehold titles to Units 113A and 120, and 113B and 121 Elephant and Castle Arches described in Section 4, though its leasehold interest in these arches is constrained to be used only for access. EC has acquired various titles and occupational interests over the course of the last 6 years. All interests in 26-32 New Kent Road were acquired by agreement, and vacant possession of the Shopping Centre Site was achieved through agreement, by way of exercising agreed break clauses in occupational tenancies and agreeing tenancies with occupiers that were contracted out of the security of tenure provisions of Part II of the Landlord and Tenant Act 1954.

1.17 In December 2021, EC entered into an agreement with Transport for London (**"TfL"**) and London Underground Limited (**"LUL"**), whereby TfL agreed to transfer to EC several plots of land around the periphery of the Shopping Centre Site and the LCC Site, and the construction of a new London Underground station box, to house the Northern Line and with capacity to also house the Bakerloo Line, will be undertaken by EC and its group company for LUL. When that station box is handed over to LUL, the intention is that LUL will then fit it out for its new operation (subject to having the funding to do so). When the new Underground station is operational, EC will then be able to redevelop the current LUL Elephant & Castle Northern Line station (immediately adjacent to the Shopping Centre Site). In this way, the interests of TfL and LUL have been brought into the Scheme by agreement. Some new crane oversail rights are sought over TfL highway areas adjacent to the LCC Site under the Order.

1.18 In addition, Elephant Three Properties Limited (a group company of EC) already has a contract to purchase the freehold title to the LCC Site from its owner, University of the Arts, London (**"UAL"**). It is through that contractual arrangement that EC proposes to bring the LCC Site within the Scheme, which is why the LCC Site is not included in the Order Land.

1.19 The Shopping Centre was closed in September 2020. This was a decision taken by EC and the immediate landlord of the tenants, a group company of EC, and it did not require any compulsory acquisition. Accordingly, any adverse effects flowing from that decision do not flow from the proposed Order and had already occurred well before the Order was made. A range of relocation measures were put in place by EC and the Council to support the relocation of occupiers of the Shopping Centre and adjoining land and to mitigate the impact of the closure of the Shopping Centre on local traders and residents. These included: relocation for some traders to affordable retail units in the adjacent 50 New Kent Road (now known as Elephant Central), owned by a related company to EC; relocation of some traders to Elephant Arcade at ground floor level of the nearby Perronet House (owned by the Council); the provision of temporary retail units at Castle Square on Elephant Road, also owned by a related company to EC; the payment of a £647,836 relocation contribution (inclusive of indexation) by EC to the Council under the section 106 agreement; the provision of an additional £200,000 fund by the Council to assist traders who were relocating onto the open market or who chose to close their business and change careers and trade; the provision of 10% affordable retail units within the Scheme pursuant to the section 106 agreement; and the assistance of an independent business relocation advisor for traders (funded by EC).

1.20 Work pursuant to the 2019 Permission began by way of demolition of the Shopping Centre in January 2021. Following completion of demolition of the Shopping Centre, on 17 March 2022 substantive construction work (in the form of piling) began on the Shopping Centre Site pursuant to the July 2021 Permission.

1.21 Notwithstanding the significant landholdings that EC (and its group companies) already have or control, and the works that have been undertaken to date, the carrying out and completion of the Scheme requires the acquisition of property interests currently owned by third parties and the acquisition of new rights over land held by third parties.

1.22 The Council and EC will continue to negotiate with those third parties to acquire their interests and the new rights by agreement wherever practicable, but compulsory purchase powers are required to ensure that the redevelopment may be achieved, with the consequent benefits.

1.23 As per the Guidance, the Council acknowledges that a compulsory purchase order should only be made as a last resort and if there is a compelling case in the public interest, which justifies the interference with the human rights of those with an interest in the land affected. The Council considers that a clear and compelling case in the public interest exists for making the Order, as described in this Statement of Reasons.

1.24 Accordingly, the Council has submitted the Order to the Secretary of State for Levelling Up, Housing and Communities for confirmation pursuant to the 1981 Act. If confirmed by the Secretary of State, the Order will enable the Council to acquire compulsorily the land and new rights included in the Order.

2. ENABLING POWERS

2.1 The Council has made the Order pursuant to section 226(1)(a) of the 1990 Act and section 13 of the Local Government (Miscellaneous Provisions) Act 1976.

2.2 Section 226(1)(a) of the 1990 Act enables the compulsory acquisition of land where an acquiring authority thinks the acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to land. Section 226(1A) of the 1990 Act requires a local authority not to exercise its powers under section 226(1)(a) unless the acquiring authority thinks the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the economic well-being of their area.

2.3 The Council is satisfied that the purpose of the Order falls within the powers set out above. The purpose in seeking to acquire the land is explained in Section 7 below.

2.4 The exercise of powers under section 226(1)(a) is appropriate because it has not been possible to acquire by agreement all interests that are required for the Scheme, and it is not clear that all remaining land interests can be acquired by agreement.

2.5 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to acquire new rights which are not in existence when the Order is made and are specified in the Order. The new rights to be created and acquired are reasonably required to enable the demolition of existing properties on the LCC Site, the construction of significant parts of the Scheme and the reasonable use of the completed Scheme. The rights are set out in detail in the Schedule and are explained in Section 4.

2.6 The General Overview section of the Guidance provides that there must be a compelling case in the public interest for making a compulsory purchase order. Paragraph 2 of the Guidance provides that compulsory purchase is intended as a last resort to secure the assembly of the land needed for the implementation of projects. However, paragraph 2 of the Guidance also acknowledges that:

> *"… if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*
>
> - *plan a compulsory purchase timetable as a contingency measure; and*
> - *initiate formal procedures.*

This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."

2.7 The Council has had regard to that advice, and the Guidance in general, and is satisfied that it may lawfully exercise its compulsory purchase powers, as there is a compelling case in the public interest for doing so which justifies the interference with private rights.

2.8 The Council is satisfied that the Guidance and legal requirements to ensure the statutory procedures have been followed correctly have been met.

3. BACKGROUND AND CONTEXT FOR THE ORDER

3.1 The Order Land, and the Scheme Land, fall within what historically was Walworth, a long-standing London district with a proud history. The main focal point in Walworth has traditionally been Walworth Road that links Camberwell Road with the Elephant and Castle and has been the main retail thoroughfare which in the past contained civic buildings including a town hall.

3.2 Historically, Walworth Road generally provided day to day shopping, with occasional/luxury goods being provided at the Elephant and Castle. The area was, however, extensively bombed during the Second World War and was followed by the post-war modernist re-planning of the area centred around a major highway with subways. This resulted in the construction of the Shopping Centre, which opened in 1965 and was Europe's first covered shopping mall. The mall provided a range of stores including those selling goods for occasional purposes as well as national retailers selling convenience goods. The redevelopment of traditional streets and terraced housing to the east of the centre to create the Heygate Estate followed this intervention. This comprehensive redevelopment resulted in the removal of the historic street pattern and the disconnection of the Elephant & Castle from the neighbourhoods surrounding it, including the retail premises of Walworth Road.

3.3 The Shopping Centre struggled to attract retailers from the outset. Records show that when it opened only 29 of the 120 units were occupied. It was designed to provide retail on three floors but this was too much and in 1978 the second floor was converted to offices.

3.4 In the 1980s both Walworth Road and the Shopping Centre went into decline. There were a number of factors that caused this, including: initial depopulation, changing consumer habits and requirements, external competition and the lack of locational focus giving potential shoppers a reason to visit.

3.5 Walworth Road in retail terms emerged as a provider for goods and services needed by the local community and has managed to retain some national multiples e.g. Marks and Spencer, Iceland, Boots and Morrisons, as well as a Tesco Express. Market forces saw the Shopping Centre following in the same way and it was predominantly also a provider of local goods and services, but it had some national multiples, such as WH Smith, Iceland, Peacocks, Clarks, Co-Op, Superdrug, Greggs and Boots.

3.6 Walworth Road and the Shopping Centre effectively competed against each other for the same custom, whereas the Council's aspiration has been for businesses complementing each other and delivering different retail offers.

3.7 Historically, the north of Southwark lacks an area for comparison goods shopping and this results in this type of retail expenditure going elsewhere, often out of the Borough, to the detriment of the local economy and employment opportunity. The report to Planning Committee on 3 July 2018 for the 2019 Permission stated "*a retail study completed on behalf of the Council in June 2015 (the Southwark Retail Study) advises that just under 50% of comparison goods spend is made outside the borough. The redevelopment of the site to include a new shopping centre presents an opportunity to claw some of this back and although the uplift in retail floorspace would not be significant, the floorspace would be of a higher quality and could be designed to suit the needs of modern, comparison retailers.*" It is therefore appropriate that the Council supports a more diverse retail offer being available at the Elephant and Castle.

3.8 The Shopping Centre was Elephant and Castle town centre's primary retail location. However, it was a single use monolithic structure which was badly outdated and did not stand the test of time well. Physically, the environment immediately around the Shopping Centre is poor, with outdated buildings, poor linkages and low quality public realm.

3.9 The buildings on the LCC Site are outdated and in need of significant redevelopment. LCC have publicly confirmed their requirement for a new building. The provision of a new building for LCC is included within the Scheme.

3.10 The lack of ground level active frontages in the LCC Site also contributes to poor quality public realm in which there is little incentive to linger. The large footprints of the Shopping Centre (when present) and the buildings on the LCC Site also contribute to poor connectivity for pedestrians and cyclists.

3.11 As well as being a visual barrier, the railway viaduct separates the central area of the town centre from residential areas to the east, particularly the former Heygate Estate (now the Elephant Park development). A key aspect for the Council has been to improve connectivity with a new, attractive through route to Elephant Road, linking the Shopping Centre with Elephant Park.

3.12 The Shopping Centre had suffered from limited investment under previous owners and was in need of substantial redevelopment. Many of the retail units were small and no longer fit for purpose for retailers' current requirements in respect of unit size and configuration.

3.13 Elephant and Castle does not have the range of retailers compared to its competing centres, including a lack of more upmarket retailers. The Council’s retail study referred to above reported Elephant & Castle to have fewer retail units, less convenience, comparison and food & beverage floorspace than the Borough's three other major centres – Peckham, Canada Water and Walworth Road.

3.14 The Scheme Land does not currently contain any homes. Such a key town centre site should be contributing a significant number of much needed homes in line with well-established national and local planning policies to reuse and vitalise brownfield land.

3.15 The Council accordingly recognised many years ago that regeneration was needed to bring about a significant change in the town centre's fortunes and to allow Elephant and Castle town centre to fulfil its potential. The achievement of this is a key and long-standing aim of the Council.

3.16 The Council has been pursuing an ambitious plan to regenerate Elephant and Castle since 1997. The objective from the outset has been to address the legacy of the 1960s redevelopment of the area which resulted in a traffic dominated centre, encompassed by poorly connected, monolithic, buildings which in combination result in a disconnected public transport system. Pedestrians were directed to use a network of subways which were prone to flooding, confusing to navigate, and perceived as being unsafe particularly for vulnerable groups such as women and the elderly. The roundabouts created some of the most dangerous and hostile roads conditions for cyclists in London resulting in high levels of fatalities and serious injuries.

3.17 The 2004 Elephant & Castle Supplementary Planning Document (**"2004 SPD"**) promoted the regeneration of the area by building on the Elephant's strengths in the form of its close proximity to the central London economy and public transport connections in the form of two tube stations, an overground rail station and numerous bus routes. The vision it set out was to establish a new town centre on a 55 acre core area which included the former Heygate Estate site (now Elephant Park), the Shopping Centre Site and land along Walworth Road and Elephant and Castle. Subsequently this site (site 39P) was incorporated into the 2007 Southwark Plan.

3.18 The 2004 SPD proposed that the core area be comprehensively redeveloped to provide new market and affordable homes, commercial, community and leisure uses, based around an integrated public transport hub and an open network of pedestrian/cycling friendly routes and public spaces. The vision specifically set out to address the legacy of the 1960s re-planning of the area which had resulted in the central area of Elephant & Castle becoming disconnected from the neighbourhoods surrounding it. The creation of new pedestrian routes at grade to achieve this was therefore central to the Council's vision for the area from the outset. A wider 170 acre opportunity area was also defined, with the capacity to accommodate further growth in new homes and jobs on under-utilised and vacant land. The opportunity area was subsequently incorporated into the 2007 Southwark Plan, 2010 Core Strategy and the London Plan 2011 (and 2015). While the 2004 SPD was replaced in 2012 by the Elephant & Castle SPD the vision for the area remained substantially the same.

3.19 Over the intervening period significant progress has been made towards the delivery of the Council's plan. This includes the continuing redevelopment of Elephant Park (including Trafalgar Place), with over 1,000 homes occupied and establishing new routes and public spaces, most notably Sayer Street which includes new retail and affordable retail units and which links the newly formed Walworth Square with Castle Square/Elephant Park. A number of significant sites within the core area have been redeveloped for mixed use schemes consistent with the original town centre

vision, including Strata (former Castle House), Uncle (former London Park Hotel), Printworks (Amelia Street), Steadman Street, 50 New Kent Road (former Castle Industrial Estate) and Elephant One (formerly part of the Leisure centre).

3.20 In parallel, significant improvements have been made to the area's social infrastructure. The Castle Centre has been completed, providing new public leisure facilities including a swimming pool, 4 court sports hall and gym. The inner ring road has been remodelled, reducing its dominance and the severance it had created for residents living in the area. The roundabouts have been removed, creating a new peninsula, and the network of subways closed. Pedestrians can once again move around safely at surface level via signalised crossings. The new road layout has created safer conditions for cyclists. New public spaces are being created resulting in a marked increase in the numbers of people visible at the centre of the Elephant.

3.21 The delivery of the regeneration of the area has taken place in phases across large and small sites that required the coordination of a number of private and public sector partners. While much of the plan has been achieved, the central area of the core site, focused on the Shopping Centre Site, remains to be implemented in line with the Council's original and current vision to establish a new town centre. This site has been central to the delivery of the vision since the adoption of the 2004 SPD. Given its prominent location the Scheme represents the most important regeneration opportunity in the town centre. It would greatly enhance Elephant and Castle's retail, leisure and housing offer, allow further major public transport improvements, provide an enhanced public realm, and secure a modern educational establishment. In short, the Scheme would transform the town centre.

3.22 Both the London Plan and the Council's planning policies recognise the need to revitalise Elephant & Castle town centre, and the need for the comprehensive redevelopment of the Order Land and the Scheme Land. The Scheme has the benefit of planning permission (except in the relatively minor respects referred to in paragraph 12.3) and is in accordance with national, London and Council planning policies.

4. DESCRIPTION OF THE ORDER LAND

Description of the Order Land

4.1 The Order Land comprises approximately 2.55 acres (1.03 hectares), of which 1.74 acres (0.70 hectares) are attributable to the new rights areas on sheet 1 of 2 of the Order Map.

4.2 The Order Land is in a variety of ownerships. Full details of the ownership of each interest in the land and the new rights comprised in the Order are contained in the Schedule and shown on the Order Map.

4.3 The Order Map comprises two sheets: sheets 1 of 2 and 2 of 2. Sheet 1 of 2 comprises parcels 1-20 and Sheet 2 of 2 comprises parcels 21-59. Although not forming part of the Order Map, a location plan showing the site in the context of the locality is also provided for convenience and is also included at Annex 1. The land proposed to be

acquired is shown coloured pink on the Order Map (**"the Pink Land"**). The Pink Land comprises:

4.3.1 the railway arch premises underneath the railway viaduct, and to the north of the Elephant & Castle railway station, known as Units 113A and 120, and 113B and 121 Elephant and Castle Arches (parcels 25 and 28 on the Order Map), which have been used to provide access to and from the Shopping Centre Site via Elephant Road. EC currently owns long leasehold titles in respect of those arch premises. However, its lease is constrained to providing access, so it does not allow for any beneficial, occupational uses. Arch Co owns a long leasehold interest in those arches which is not so constrained, and the freehold title, while unregistered, is accepted to be owned by Network Rail. This land is required so as to create a new home for Corsica Studios, or if that use was not instigated in those arches, for retail/café uses (as explained further in Section 7);

4.3.2 to the south of the Elephant & Castle railway station, the railway arch premises underneath the railway viaduct known as Units 127/133 Elephant and Castle Arches (7 Farrell Court) and Units 128/134 Elephant and Castle Arches (6 Farrell Court), which are accessed via Elephant Road (parcels 41 and 48 respectively). These units have occupational tenants, Beset International Limited (7 Farrell Court) and DistriAndina UK Limited (6 Farrell Court), with Beset having shared occupation of that unit with other small businesses. The long leasehold title to these units is owned by Arch Co, with Network Rail again owning the unregistered freehold title. This land is required so as to create the Park Route, an important pedestrian link between the Scheme, Castle Square and the Elephant Park redevelopment as well as providing a more direct link to the retail areas and new library on Walworth Road (as explained further in Section 7);

4.3.3 immediately to the south of 6 Farrell Court, railway arch premises underneath the railway viaduct known as Units 129-130 and 135-136 Elephant and Castle Arches (4 and 5 Farrell Court), which are accessed via Elephant Road. 4 Farrell Court is parcel 58 on the Order Map, 5 Farrell Court is parcel 52. These units are occupied by the occupational tenant, Corsica Studios, which operates an electronic and dance music venue (nightclub). The long leasehold title to these units is owned by Arch Co, with Network Rail again owning the unregistered freehold title. Bisecting 4 and 5 Farrell Court is an access way (for fire escape purposes) (parcel 53) which is owned freehold by Network Rail, with the long leasehold title being owned by Arch Co. Although Corsica Studios do not have a tenancy of that access way, they do have a right to use it as an access route via their tenancy. In practice they occupy the accessway. This land is required so as to create a relocation opportunity for displaced occupiers of 7 Farrell Court (as explained further in Section 7). It is proposed that the tenant of 6 Farrell Court would relocate to a new unit elsewhere within the Scheme, fronting Walworth Road;

4.3.4 a corridor of land running along the western side of the railway viaduct (but excluding the Thameslink railway) (parcels 22, 25 (part), 28 (part), 29-31 (inclusive), 36, 40, 46 and 56). The freehold title to this corridor is largely unregistered, but accepted by all parties to be owned by Network Rail (who also own a registered freehold title to part of the corridor). The long leasehold title to the corridor is held by Arch Co,

though EC also has a long leasehold title to parcel 22. On one part of the corridor, immediately to the west of 4 and 5 Farrell Court (parcel 46), an external smoking shelter has been erected which is used by Corsica Studios. This shelter may also impinge on the immediately adjacent title EC owns to the Shopping Centre Site, and so a very small part of that title is included in the Order (parcel 50), though the Schedule excludes EC's title from acquisition (as it does with parcel 22). This corridor of land is required to complete important areas of new public realm in the Scheme, including the Park Route;

4.3.5 adjacent to the corridor of land running along the western side of the railway viaduct, a tiny fragment of land which juts into the vehicular access road which led to the basement of the Shopping Centre (parcel 37). The freehold title to this fragment is owned by Network Rail Infrastructure Limited. It is not clear why this land remained with Network Rail's predecessors (the British Railways Board) given that it has for many years formed part of the access into the Shopping Centre and for that reason it is not considered to be operational land nor would its acquisition affect the operation of the railway. This land is required as part of the new public realm.

4.3.6 two ground floor electricity sub-stations within the LCC Site, close to Oswin Street (parcels 3 and 4). This land is required because new proposed buildings will be located where the sub-stations are located;

4.3.7 a very small piece of footway and an area of hardstanding and structures to the immediate north of the LCC Site, adjacent to St George's Road (parcel 2). This small area of unregistered land is required as part of the paved public realm of the Scheme;

4.3.8 an area of hardstanding immediately to the north of Pastor Street and forming part of the southern access into the LCC Site (parcel 15). This small area of unregistered land is required so as to form the beginning of a corridor of new public realm running northwards from Pastor Street. The proposed basement of the new buildings which will be erected on the LCC Site as part of the Scheme also marginally protrudes into this area.

4.4 The Council is seeking the power to acquire all the interests in the Pink Land unless expressly stated in the Schedule. EC's (and its group companies') ownership and control of large parts of the land required for the Scheme is summarised above.

4.5 The land over which new rights are sought is shown coloured blue on the Order Map (**"the Blue Land"**). These rights are being acquired pursuant to section 13 of the Local Government (Miscellaneous Provisions) Act 1976. Not all of the new rights are required in respect of each plot within the Blue Land. The Schedule provides full details of the rights to be acquired with respect to each plot. By way of broad summary of the areas affected and the new rights sought:

4.5.1 the railway viaduct structure enclosing railway arch premises 113A and 120, and 113B and 121 Elephant and Castle Arches (parcel 21), for the purposes of affixing apparatus to the sides and undersides of the railway viaduct and to install new frontages and rear elevations at the end of these arches. By way of explanation, the Council is seeking the acquisition of title (or, in the case of these specific arches, better title than EC already owns) to the arch premises within the Pink Land, as

referred to in paragraph 4.3, but the title being acquired relates to the arch premises and will exclude the railway viaduct structure itself. Some works to the viaduct are required to facilitate the Scheme, which in this case include the affixing of apparatus to the sides and underneath of the viaduct structure, and the ability to install new frontages and rear elevations at either end of these arches for the new home for Corsica Studios, hence these new rights. The railway viaduct structure is owned by Network Rail and so these new rights are sought in respect of Network Rail's title;

4.5.2 a pedestrian right of way over a small area of land owned by Network Rail to the immediate west of the Elephant and Castle railway station (parcels 34, 35 and 38), and the right to pave and to repair and maintain the paving on that area, to ensure that the surface level access to and from the Scheme into the railway station occurs;

4.5.3 a right to pave and repair and maintain the paving on a small area to the immediate west of the railway station, underneath an external staircase (parcel 39), to ensure that the area is finished in the same manner as the adjacent public realm areas;

4.5.4 the railway viaduct structure enclosing railway arch premises 4 – 7 Farrell Court (parcel 59), to enable (in summary): the removal of the existing shopfronts and rear elevations (and any related signage and other apparatus) and the internal premises of 6 and 7 Farrell Court in so far as they are affixed to the viaduct, and to attach apparatus to the sides and undersides of the railway viaduct (including a retail kiosk), so that 6 and 7 Farrell Court can become the Park Route, the pedestrian route from the Shopping Centre Site to/from Castle Square, Elephant Road and the Elephant Park development and which will provide a more direct link to the retail areas and new library on Walworth Road; and for the purposes of affixing apparatus to the sides and undersides of the railway viaduct, and the installation of revised shopfronts and rear elevations for the premises at 4 and 5 Farrell Court in so far as the same are or will be affixed to the sides and undersides of the railway viaduct;

4.5.5 the railway viaduct structure abutments next to the relevant railway arch premises (see for example, parcels 23, 24 , 26 and 27, etc) for the same reasons as referred to at paragraphs 4.5.1 and 4.5.4 above);

4.5.6 a very small piece of unregistered land (parcel 12) adjacent to the Metropolitan Tabernacle and part of the Metropolitan Tabernacle (parcel 13), for entry onto the land and works required to de-couple the current LCC building from the northern façade of the Tabernacle, and carrying out any consequential amendments to that façade as a result, to erect scaffolding over that land (and to manage access thereto) whilst demolition on the adjacent LCC Site takes place, and to oversail a crane over these parcels and a further part of the Tabernacle site (parcel 14). A right of entry is also sought in respect of parcel 14 to facilitate the installation and removal of scaffolding on parcels 12 and 13;

4.5.7 a small part of The Castle Centre (leisure centre) to the south of the LCC Site, part of the grounds of Perronet House to the north of the LCC Site, and parts of highways adjoining the LCC Site being Elephant and Castle, St George's Road, Oswin Street, and Brook Drive, and the entirety of Pastor Street, in each case for crane oversailing. These crane oversail areas are shown as parcels 1, 5-11 (inclusive) and 16-20 (inclusive) on the Order Map.

The Order Map & Schedule

4.6 The Order Map identifies the Order Land and within it the Pink Land and Blue Land. Individual parcel boundaries and numbers on the Order Map correspond with the Schedule. Sheet 1 of 2 of the Order Map identifies areas of the Order Land to the west of Elephant and Castle highway and Sheet 2 of 2 of the Order Map identifies areas of the Order Land to the east of Elephant and Castle highway. The Location Plan for the Order Map (though not forming part of the Order Map itself) shows the wider site context.

4.7 As well as owners, lessees, tenants and occupiers, the Schedule also lists other parties who may have a qualifying interest in the Order Land where known after reasonable enquiry. Section 12(2A) of the Acquisition of Land Act 1981 identifies that a "qualifying person" in relation to a CPO is "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) provides that a "relevant claim" is a claim for compensation under section 10 of the Compulsory Purchase Act 1965. Such claims can include claims for interference with rights held over a site that is the subject of a CPO. Table 2 of the Schedule includes any potential entries that the Council is aware of in this regard in respect of the Order Land. It is not considered that Arch Co have any title to the railway viaduct structure itself (that being owned by Network Rail) but for the avoidance of any doubt Arch Co are listed as a lessee in relation to that structure in Table 1 of the Schedule.

4.8 The Schedule has been based on information gathered through Land Registry documents, site inspections and enquiries and responses to notices issued under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. The Council is satisfied that it has undertaken all reasonable enquiries to ensure that the Schedule is as accurate as possible.

Location and topographical features of the Order Land

4.9 The Order Land is located right in the heart of Elephant and Castle town centre. The area includes a complex road junction system, which forms part of the London Inner Ring Road, with the convergence of Walworth Road (A215), Elephant and Castle (the A3), New Kent Road (A201) and St George's Road (A302). The Order Land falls either side of the Elephant and Castle road. Essentially the Shopping Centre Site (and its immediate surroundings) and the LCC Site occupy two individual sites in prominent positions, opposite each other across Elephant and Castle, with the Shopping Centre Site (and its immediate surroundings) being immediately east of Elephant and Castle, and the LCC Site being immediately west of Elephant and Castle.

4.10 As can be seen on Sheet 1 of 2 of the Order Map, the Order Land is bounded by (and includes part of) Elephant and Castle on its western side (i.e. adjacent to the LCC Site). Elephant and Castle is administered by TfL as highway authority.

4.11 Adjacent to the LCC Site, the Order Land is bounded to the north by (and includes part of) St George's Road. St George's Road is administered by TfL as highway authority.

4.12 Adjacent to the LCC Site, the Order Land is bounded to the west by (and includes part of) Oswin Street, administered by the Council as highway authority.

4.13 Also adjacent to the LCC Site, the Order Land is bounded to the south by (and includes part of) Brook Drive and to the south/south east by (and includes) Pastor Street, both of which are administered by the Council as highway authority. Immediately south of part of the LCC Site, fronting Elephant and Castle, is the Metropolitan Tabernacle. The Order Land extends over part of the Metropolitan Tabernacle, the grounds of Perronet House and The Castle Centre for the reasons at paragraphs 4.5.6 - 4.5.7 above.

4.14 The Order Land on Sheet 2 of 2 of the Order Map is bounded to the west and north by the Shopping Centre Site and 26-32 New Kent Road (including the site of the former Charlie Chaplin pub and the former Coronet Theatre). These are owned by EC and currently form a construction site.

4.15 The railway arch units which are intended to be acquired under the Order are bounded to the north and south by other railway arch units.

4.16 The Order Land on Sheet 2 of 2 is bounded to the east by Elephant Road. Elephant Road is administered by the Council as highway authority. To the east of the Order Land is Porchester House and the other parts of the Elephant Central development at 50 New Kent Road, and Castle Square which houses temporary retail units. To the south of the Order Land is Walworth Road, which is administered by TfL as highway authority and by the Council as highway authority to the south and east of the railway viaduct.

Uses of the Order Land

4.17 The railway arch premises at Farrell Court are in a variety of commercial uses, with 4 and 5 Farrell Court being used as a venue for electronic and dance music; 6 Farrell Court is used as retail/café/restaurant; 7 Farrell Court is used for a variety of uses comprising retail, café, hair and beauty salons, logistics, legal office, office and a money transfer service. The arch units 113A and 120 and 113B and 121 were formerly used for access to the Shopping Centre Site and the rear of the former Coronet Theatre and are currently being used as site access gates to the construction site. The corridor of land to the immediate west of the railway viaduct comprises areas of hardstanding and structures at the rear of the railway arch units and the railway station, with an area immediately to the west of 4 and 5 Farrell Court being used by Corsica Studios as an ad hoc covered external smoking area and store for cloaks. The Metropolitan Tabernacle is used as a church. The Castle Centre is used as a leisure centre. The grounds of Perronet House are used for access to the retail/café restaurant uses at ground floor of that building and the residential uses above it. Some parcels form vacant hardstanding and other parcels are in public highway use.

5. RELEVANT PLANNING POLICY

5.1 The Guidance (paragraph 95) makes clear that acquiring authorities may use compulsory purchase powers to assemble land where necessary to implement

proposals in the Local Plan. The Order is necessary to implement and complete the Scheme as a whole. There is considerable policy support for the Scheme at all levels i.e. local, London and national level and, indeed, for specific elements of the Scheme which the Order would facilitate.

National Planning Policy Framework

5.2 The NPPF is a material consideration in planning applications. It sets out the Government's strong commitment to delivering sustainable development. It advises that there are three elements to sustainable development; economic, social and environmental. Sustainable development is the principal theme underpinning both London-wide and Southwark Plan policies, where the regeneration of areas such as the Elephant and Castle is of high priority.

5.3 Paragraph 60 of the NPPF sets out the Government's overarching objective of significantly boosting the supply of homes, whilst paragraph 81 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

5.4 Paragraph 86 of the NPPF acknowledges the important role that town centres play at the heart of local communities and requires planning policies to define a network and hierarchy of town centres and promote their long-term vitality and viability by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses, including housing and reflects their distinctive characters.

5.5 Paragraph 92 of the NPPF provides that planning policies and decisions should aim to achieve healthy, safe and inclusive places which (a) promote social interaction for example through street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages, (b) are safe and accessible, for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, which encourage the active and continual use of public areas; and (c) enable and support healthy lifestyles – for example through the provision of safe and accessible green infrastructure and layouts that encourage walking and cycling.

5.6 With regards to public realm and pedestrian connectivity, paragraph 112 of the NPPF seeks to ensure that development gives priority first to pedestrian and cycle movements and create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards.

5.7 At paragraph 119, 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.

5.8 Paragraph 121 of the NPPF recognises that local planning authorities should take a proactive role in identifying and bringing forward land that may be suitable for development needs, using the full range of powers available to them. This includes identifying opportunities for land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.

5.9 Paragraph 187 of the NPPF provides that planning decisions and policies should ensure that new development is integrated effectively with existing businesses and community facilities, which should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or facility could have a significant adverse effect on new development in its vicinity, the applicant (or "agent of change") should be required to provide suitable mitigation before the development has completed.

London Plan

5.10 The London Plan was adopted on 2 March 2021. It supports the continued growth of London, focussing the development of new homes and jobs within identified Opportunity Areas, being "*significant locations with development capacity to accommodate new housing, commercial development and infrastructure (of all types), linked to existing or potential improvements to public transport connectivity and capacity…[they] typically contain capacity for at least 5,000 net additional jobs or 2,500 net additional new homes or a combination of the two*" (paragraph 2.1.1).

5.11 The Scheme Land falls within the allocated Elephant and Castle Opportunity Area, which has the potential for 5,000 new homes and 10,000 new jobs. Policy SD1 of the London Plan seeks to ensure that Opportunity Areas fully realise their growth and regeneration potential, and inter alia, promotes agencies working together to promote and champion Opportunity Areas and identify those that require public investment and intervention to achieve their growth potential.

5.12 The Central Activities Zone ("**CAZ**") and the network of Town Centres are identified as the primary locations for commercial activity in the capital. The Scheme Land sits within the CAZ, the strategic priorities and functions for which are set out in Policy SD4 of the London Plan; this includes promoting and enhancing the roles of the CAZ based on an agglomeration and rich mix of strategic functions and local uses.

5.13 The Scheme Land is also allocated within the Elephant and Castle Town Centre, which is defined as a Major Town Centre in the London Plan, with medium commercial growth potential and high residential growth potential. Policy SD6 seeks to promote and enhance the vitality and viability of London's varied town centres, by inter alia encouraging strong, resilient, accessible and inclusive hubs with a diverse range of uses including main town centre uses, night time economy, civic, community, social and residential uses.

5.14 Elephant and Castle is classified as an NT2 in the night-time economy classification. The town centre is of regional or sub-regional significance with regard to the night-time economy, which attracts visitors from across and beyond London and tend to feature smaller venues and premises.

5.15 The Scheme Land sits within London transportation zone 1 and has a Public Transport Accessibility Level rating of 6b (excellent). Elephant and Castle sits in the background of townscape view 23A.1 looking from the Serpentine Bridge in Hyde Park to Westminster (London View Management Framework 2012).

5.16 A summary of the London Plan planning policies relevant to the Scheme is provided below:

- GG1 (Building strong and inclusive communities) requires those involved in planning and development to (among other things): seek to ensure changes to the physical environment to achieve an overall positive contribution to London; provide access to good quality community spaces and infrastructure that accommodate, encourage and strengthen communities, increasing active participation and social integration; ensure that streets and public spaces are consistently planned for people to move around and spend time in comfort and safety; ensure that new buildings and the spaces they create are designed to reinforce or enhance the identity, legibility, permeability and inclusivity of neighbourhoods; and support and promote the creation of a London where all Londoners, including those with protected characteristics, can move around with ease.

- GG2 (Making the best use of land) states that those involved in planning and development must (among other things): enable the development of brownfield land, particularly in Opportunity Areas; and plan for good local walking, cycling and public transport connections to support a strategic target of 80% of all journeys using sustainable travel, enabling car free lifestyles that allow an efficient use of land, as well as using new and enhanced public transport links to unlock growth.

- Policy SD1 (Opportunity Areas) seeks to ensure that Opportunity Areas fully realise their growth and regeneration potential.

- Policy SD4 (The Central Activities Zone) requires promotion and enhancement of the unique international, national and London-wide roles of the CAZ, based on an agglomeration and rich mix of strategic functions and local uses.

- Policy SD6 (Town centres and high streets) requires the vitality and viability of London's varied town centres to be promoted and enhanced through appropriate town centre development.

- Policy D2 (Infrastructure requirements for sustainable densities) states that the density of development proposals should consider the provision of future planned levels of infrastructure rather than existing levels, and be proportionate to the site's connectivity and accessibility by walking, cycling, and public transport to jobs and services.

- Policy D3 (Optimising site capacity through the design-led approach) promotes the Mayor's ambitions for a design-led approach, where all development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations.

- Policy D6 (Housing quality and standards) requires housing development to be of high quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures.

- Policy D8 (Public realm) states that development should ensure that public realm is well-designed, safe, accessible, inclusive, attractive, well-connected, related to the local and historic context, and easy to understand, service and maintain. In particular, they should demonstrate an understanding of how people use the public realm, and the types, location and relationship between public spaces in an area, identifying where there are deficits for certain activities, or barriers to movement that create severance for pedestrians and cyclists. Desire lines for people walking and cycling should be a particular focus, including the placement of street crossings, which should be regular, convenient and accessible.

- Policy D9 (Tall buildings) sets out the design criteria which all tall building proposals should meet, and requires Boroughs to determine if there are locations where tall buildings may be an appropriate form of development.

- Policy D13 (The Agent of Change) places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of e.g. the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as a music venue like Corsica Studios) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue.

- Policy H1 (Increasing housing supply) seeks to optimise the potential for housing delivery on all suitable and available brownfield sites.

- Policy H4 (Delivering affordable housing) requires major developments which trigger affordable housing requirements to provide affordable housing in line with the relevant policy thresholds.

- Policy S1 (Developing London's social infrastructure) states that boroughs should ensure the social infrastructure needs of London's diverse communities are met, informed by a needs assessment of social infrastructure.

- Policy E1 (Offices) supports improvements to the quality, flexibility and adaptability of office space of different sizes (for micro, small, medium-sized and larger enterprises) through new office provision, refurbishment and mixed-use development.

- Policy E9 (Retail, markets and hot food takeaways) supports a successful, competitive and diverse retail sector, which promotes sustainable access to goods and services for all Londoners, should be supported in line with the wider objectives of the London Plan, particularly for town centres.

- Policy HC1 (Heritage conservation and growth) states that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.

- HC6 (supporting the night-time economy) states that the night-time economy should be promoted, where appropriate, particularly in the CAZ, strategic areas of night-time activity, and town centres where public transport such as the Night Tube and Night Buses are available. The policy seeks to protect and support evening and night-time cultural venues such as pubs, night clubs, theatres, cinemas, music and other arts venues.

- Policy T1 (Strategic approach to transport) requires Development Plans to support, and development proposals to facilitate the delivery of the Mayor's strategic target of 80% of all trips in London to be made by foot, cycle or public transport by 2041, requiring all development to make the most effective use of land, reflecting its connectivity and accessibility by existing and future public transport, walking and cycling routes, and ensure that any impacts on London's transport networks and supporting infrastructure are mitigated.

- Policy T2 (Healthy Streets) states that development proposals should deliver patterns of land use that facilitate residents making shorter, regular trips by walking or cycling. Part D of the policy states that development proposals should be permeable by foot and cycle and connect to local walking and cycling networks as well as public transport.

Southwark Plan 2022

5.17 At borough level, the Southwark Plan notes that Elephant and Castle has the potential to provide significant amounts of new offices, shops, leisure and cultural uses, university facilities, parks, homes and a community health hub. The site allocations in Elephant and Castle (inclusive of the Elephant Park development) will deliver around 135,000 sq m offices and employment workspace, 37,000 sq m retail, community and leisure floorspace and around 2,369 homes (Policy ST2). Policy ST1 provides the targets for the distribution of jobs, which for the Elephant and Castle Opportunity Area is 10,000. 10,000 sq m of net new retail floorspace is also a target within the Elephant and Castle Major Town Centre.

5.18 Policy AV.09 requires development in the area to support the area's function as a major town centre for all Southwark residents and a central London location that attracts global business, research, teaching, shopping, flexible business spaces and cultural activities. It sets out the vision for Elephant and Castle Area, which is to provide an attractive destination for visitors with a strong daytime and night-time economy which provides a range of cultural and entertainment spaces alongside a lively and diverse retail environment for local residents. It states that development in this location should (among other things) provide: opportunities for existing small businesses to relocate and continue trading; for the creation of open spaces and quality public realm to provide greenery, safety and connectivity; new transport infrastructure links with the surrounding areas by providing safe and accessible walking routes.

5.19 Site allocation NSP48 comprises the Shopping Centre Site and the immediate buildings around it on New Kent Road, and the railway arches along Elephant Road, and the LCC Site. The allocation identifies an indicative capacity for 977 new homes, and the site requirements include employment uses (identified as Class E(g)(i)) and F1(a) education space, in each case to at least an equivalent amount to what was on the site. The allocation also supports new homes, civic space, public realm enhancements including along the railway viaduct, a new tube station entrance, and high quality active frontages. The site allocation also advises that a new community health hub may be provided. The site designation plan shows two improved pedestrian connectivity routes: one linking the Elephant and Castle peninsula and Underground station with the railway station and out onto Elephant Road, and the other providing a link from Elephant Road through arches to the south of the railway station into the East Site and beyond, towards the open space of St Mary's Churchyard Newington.

5.20 Design and accessibility guidance provided in NSP48 states that the allocation site represents one of the most significant growth opportunities in Southwark, taking advantage of the site's potential to deliver a comprehensive mixed-use development in this highly accessible location, with substantial areas of landscaping and high quality public realm enhancements. Redevelopment should enhance the connectivity to the existing cycle network and walking routes, improving the accessibility to the bus, tube and station interchange and enable the Low Line walking route along the railway viaduct.

5.21 A summary of the other Southwark Plan 2022 planning policies relevant to the Scheme is provided below:

- Policy SP1 (Homes for all) sets out the Council's target to deliver at least 40,035 homes between 2019 and 2036 (2,355 new homes per annum).

- Policy SP4 (A green and inclusive economy) states that the Council will target the delivery of at least 460,000 sq m of new office space between 2019 and 2036 (equating to around 35,500 jobs), with around 80% of new offices delivered in the CAZ.

- Policy P1 (Social rented and intermediate housing) requires development that creates 10 or more homes to provide the maximum viable amount of social rented and intermediate homes.

- Policy P13 (Design of places) seek to ensure height, scale, massing and arrangement respond positively to the existing townscape, character and context, and better reveal local distinctiveness and architectural character.

- Policy P14 (Design quality) requires development to provide high standards of design, innovative design solutions that are specific to the site's historic context, topography and constraints, and adequate daylight, sunlight and outlook for new and existing residents.

- Policy P15 (Residential Design) states that development must achieve an exemplary standard of residential design.

- Policy P17 (Tall buildings) identifies areas where the Council expect tall buildings, which is typically within Major Town Centres, Opportunity Area Cores, Action Area Cores and the Central Activities Zone.

- Policy P18 (Efficient use of land) states that development will be permitted that optimises land use and does not unreasonably compromise development potential or legitimate activities on neighbouring sites.

- Policy P27 (Education places) supports development of educational facilities where proposals provide further education places to meet identified needs.

- Policy P30 (Office and business development) requires development to promote the successful integration of homes and employment space in physical layout and servicing in areas that will accommodate mixed use development.

- Policy P33 (Business relocation) provides that where existing small or independent businesses or small shops may be displaced by development, a business relocation strategy, written in consultation with affected businesses, must be provided. The strategy must set out viable relocation options.

- Policy P34 (railway arches) supports commercial or community uses in railway arches.

- Policy P35 (Town and local centres) states that town centres should be the main focus for new developments providing new shops, education, healthcare and community facilities, offices and workspaces, leisure facilities and entertainment venues. This includes encouraging a diverse night-time economy with a range of appropriate activities throughout the evening and night-time.

- Policy P46 (Leisure, arts and culture) seeks to ensure development retains or re-provides existing leisure, arts and cultural uses.

- Policy P49 (Public transport) requires development to demonstrate that the public transport network has sufficient capacity to support any increase in the number of journeys by the users of the development, whilst improving accessibility to public transport by creating and improving walking and cycling connections to public transport stops or stations.

- Policy P51 (Walking) states that development must enhance the borough's walking networks by providing footways, routes and public realm that enable access through development sites and adjoining areas.

2012 Elephant and Castle Supplementary Planning Document ("2012 SPD")

5.22 The 2012 SPD provides a framework to guide development in the area until 2027. It is a material consideration in planning applications. The Elephant & Castle Opportunity Area is divided into character areas and the Shopping Centre Site and the LCC Site form part of the central character area. The strategy for this area is to:

- Use development opportunities to redevelop or remodel the shopping centre and expand its appeal to a larger catchment.

- Provide a range of unit sizes and affordable retail units which are made available to existing occupiers displaced by development from across the opportunity area.

- Provide a range of arts, cultural, leisure and entertainment uses, including food and drink uses which make a positive contribution to the evening economy.

- Support the growth of the LCC.

- Strengthen links between the shopping centre and Walworth Road ensuring that it becomes a key shopping axis.

- Require developments to be mixed use and introduce active uses at ground level wherever possible.

- Ensure that development opportunities provide opportunities for existing and future small and medium sized businesses.

- Transform leisure opportunities by building a new leisure centre.

- Make significant improvements to the interchange between buses, tube and rail and increase capacity in the Northern Line station.

- Replace subways with surface level crossings.

- Improve east-west pedestrian connections by providing direct links through the shopping centre site and railway viaduct.

- Take opportunities to activate and soften key public spaces around the central area and provide a new civic space at the front of the shopping centre.

- Ensure all development and public realm enhancements are of the highest quality to provide a positive perception of the area.

- Use tall buildings to signal the regeneration of the area, help define gateways into the central area and create an interesting skyline.

- Potential sites for tall buildings include the shopping centre and leisure centre sites. However, they must not detract from heritage assets, including the view of the Palace of Westminster from the Serpentine Bridge.

- Provide the potential to link key sites, including the shopping centre and leisure centre, within a district CHP/communal heating network.

5.23 With regard to land use, guidance note SPD21 advises that a redevelopment/remodelling of the Shopping Centre will be supported. Proposals for the Shopping Centre should:

- Support the objective of consolidating the Elephant and Castle as a major town centre.
- Improve the retail offer by providing a range of types of retail, including comparison goods floorspace.
- Provide a range of unit sizes and affordable retail units which are made available to existing occupiers displaced by development.
- Increase the number of employment opportunities on the site and ensure that there is no net loss of non-residential floorspace.
- Provide a range of arts, cultural, leisure and entertainment uses, including food and drink uses which make a positive contribution to the evening economy.
- Introduce residential use as part of mixed-use development where feasible.
- Provide space for an increase in the capacity of the Northern Line ticket hall.

5.24 SPD 6 states that proposals involving arts, cultural, leisure and entertainment uses which contribute towards consolidating Elephant and Castle and Walworth Road as a major town centre will be supported. Paragraph 4.3.5 of the supporting text acknowledges that the development of the evening and night-time economy in the area will help keep the town centre lively and safe at different times of the day and provide more leisure opportunities for local people, visitors and people working in the area.

5.25 Regarding public realm and connectivity, SPD 11 requires development to provide convenient, direct, safe, and attractive pedestrian and cycle links which follow desire lines, whilst facilitating east-west pedestrian and cycle movement through the opportunity area and reducing severance created by the railway viaducts and main roads.

Conclusion on planning policy

5.26 All levels of planning policy strongly support a high density, mixed use development on the Scheme Land, which comprises a large, brownfield site. The comprehensive redevelopment of the Scheme Land for new and improved retail, leisure, education, community facilities and employment space, which contribute to the daytime and night-time economy, alongside high quality new homes, as comprised in the Scheme, is supported by planning policy at all levels. In addition, there is clear policy support for the delivery of high-quality public realm improvements and the creation of permeable pedestrian and cycle routes within the town centre which enhance pedestrian experience and connectivity. It can be seen that there is specific planning

policy support not just for the Scheme as a whole but also for the creation of the Park Route, pedestrian connectivity, connectivity between public transport nodes, public realm improvements and protecting the night-time economy (in relation to the electronic and dance music use). The Scheme will also provide relocation opportunities for the occupiers of 7 Farrell Court, at 4 and 5 Farrell Court (and, it is proposed, for the tenant of 6 Farrell Court in a new unit within the Scheme fronting Walworth Road), in line with policy to enable existing small businesses to relocate and continue trading. The proposal to use the otherwise vacant arches to the north of the railway station for the new home for the electronic and dance music use is also in line with policy to utilise railway arch space for commercial purposes. All of these important aspects will be facilitated by the Order.

6. PROPOSALS FOR THE USE OR DEVELOPMENT OF THE LAND - THE SCHEME

Planning Position

6.1 The 2019 Permission permits the "*phased, mixed use redevelopment of the existing Elephant and Castle shopping centre and London College of Communication sites comprising the demolition of all existing buildings and structures and redevelopment to comprise buildings ranging in height from single storey to 35 storeys (with a maximum building height of 124.5m AOD) above multi-level and single basements, to provide a range of uses including 979 residential units (use class C3), retail (use class A1-A4), office (use class B1), Education (use class D1), assembly and leisure (use class D2) and a new station entrance and station box for use as a London Underground operational railway station; means of access, public realm and landscaping works, parking and cycle storage provision, plant and servicing areas, and a range of other associated and ancillary works and structures*". The approved drawings for the 2019 Permission clearly show that the proposed works extend beyond the Shopping Centre and the LCC Site.

6.2 The listed building consent dated 10 January 2019 permits *"minor amendments to the northern elevation of the grade II listed Metropolitan Tabernacle building by virtue of the demolition of the immediately adjacent/abutting London College of Communications building (subject to planning application reference: 16-AP-4458)"* This consent has not been implemented yet – it will be necessary to implement it once the redevelopment begins on the LCC Site. It has a 10 year time limit for beginning work.

6.3 The March 2021 Permission permits *"minor material amendment under [section 73 of the 1990 Act] to vary condition 1 (approved drawings) of the [2019 Permission]…comprising the enlargement and reconfiguration of the consented station box, including the provision of an additional basement level and minor elevational changes to the station entrance to: enable the new station entrance to serve as the single point of entry/exit for both Northern and Bakerloo lines in the future; facilitate future connection with the Bakerloo line platforms from the ticket hall, through the provision of space for three additional escalators; provide simpler step free access routes between the ticket hall and the Northern line platforms; provide an extension to the firefighters' lift shaft to the Bakerloo line connection*

level; and secure revisions to retain access to an existing London Underground ventilation shaft".

6.4 On 8 April 2021, a non-material amendment approval (reference 21/AP/1064) to the March 2021 Permission was granted. This simplified the description of development, removing references to building heights and unit numbers. The amended description of development permitted was "*phased, mixed use redevelopment of the existing Elephant and Castle shopping centre and London College of Communication sites comprising the demolition of all existing buildings and structures and redevelopment to comprise buildings ranging in height from single storey to 35 storeys above multi-level and single basements, to provide a range of uses including residential (use class C3), retail (use class A1-A4), office (use class B1), Education (use class D1), assembly and leisure (use class D2) and a new station entrance and station box for use as a London Underground operational railway station; means of access, public realm and landscaping works, parking and cycle storage provision, plant and servicing areas, and a range of other associated and ancillary works and structures*".

6.5 The July 2021 Permission permits "*minor material amendments to [the March 2021 Permission]"*. The substantive amendments permitted can be summarised as follows: amendment to condition 1 (approved plans) to secure the following changes:

Amendments to the office, leisure, retail, and educational floorspace areas,

Amendments to the residential unit mix and quantum

Alterations to the residential communal amenity space, Minor alterations to the building heights, elevations and positioning

Alterations to pedestrian routes and walkways and associated ancillary works

Deletion of Conditions 27 (Western Viaduct Boundary) and 48 (External Noise Levels in Private Amenity Areas)

Amendments to conditions 19 (Detailed Construction Drawings East Site) 20 (Detailed Construction Drawings Education Building), 26 (Basement Access Detailed Design), 29 (Public toilets), 31 (Landscaping Scheme), 45 (Sound Insulation: Education Building), 51 (A3/A4 Opening Hours) and 54 (Wind Microclimate) to amend the trigger for submitting information for conditions 19, 20, 26 and 31, to change condition 29 to a compliance condition under condition 54 (now condition 31), to increase the consented opening hours under condition 51, and to amend wind speed levels (it is now condition 50).

6.6 Discharge of pre-demolition conditions pursuant to the 2019 Permission took place and demolition on the Shopping Centre Site and 26-32 New Kent Road began pursuant to the 2019 Permission in January 2021. Further discharge of conditions, and the applicable section 106 obligations, continues.

6.7 On 29 October 2020, EC and the Council agreed a variation to paragraph 1.3 of Part 7 of Schedule 2 of the section 106 agreement, so that EC would be allowed to demolish the then existing buildings on the Shopping Centre Site without first

entering into a development agreement (**"DA"**) with LUL. The requirement to enter into the DA with LUL was left in place in the section 106 agreement but was relaxed so that demolition could take place beforehand. EC was to use reasonable endeavours to enter into the DA with LUL within 6 months of beginning demolition, but if the DA was not exchanged by that time EC was still permitted to undertake demolition works. This variation of the section 106 agreement meant that no "Implementation" of the Scheme (i.e. works of piling or other substantive construction works) could take place pursuant to the section 106 agreement until the DA with LUL was in place, and that the DA had to contain (among other items) a requirement on LUL to enter into a further section 106 obligation, prior to Implementation, as to the fit-out of the station box and an agreed programme for the phasing and completion of the station box works.

6.8 On 7 May 2021 the Council received an application from EC (reference 21/AP/1581), supported by TfL, to further amend the section 106 agreement to remove the requirements for details of the timescales for the fit out and opening of the station box to be provided in the DA. TfL advised in writing that owing to the long term funding uncertainty that TfL faces as a result of the global pandemic, which has had a significant impact on TfL revenues, TfL/LUL were unable to enter into a binding commitment to fund of the fit-out (and consequently the opening) of the station box. That means that the DA could not be entered into, which would mean that Implementation of the Scheme could not take place once demolition had finished. EC therefore requested, with TfL support, that the terms which LUL could not commit to at this stage were removed from the section 106 agreement, thus enabling the DA to be entered into and EC to proceed with works beyond demolition.

6.9 That request was carefully considered by the Council, which concluded that: the changes remove the certainty as to the fitting out and opening of the new station box; there is no guarantee that LUL will have the necessary funds in the future; it is possible that the entire site could be occupied without the new station box being opened, and if that happened it is likely that access to the existing underground station would need to be managed more frequently; whilst the delivery of the new station box was a factor in the grant of planning permission, EC has no control over LUL funding; if the Scheme cannot be Implemented that will lead to a vacant site at the heart of the town centre, which would not bring the various other benefits of the Scheme; TfL/LUL do have funding for the enlarged station box (but not fit-out) and connecting tunnels; and when all of these factors are considered in the round, including the unprecedented situation that LUL finds itself in due to the pandemic, the amendment to the section 106 agreement was acceptable. The deed of variation to implement these changes was agreed on 29 June 2021. Though the current position with TfL funding as a result of the pandemic means TfL is not currently in a position to enter into a binding commitment to undertake the fit out of the station box, the Scheme will deliver the enlarged station box and it is very unlikely that, with the new box in existence, TfL/LUL will not fund its fitting out within a reasonable timescale, i.e. the fitting out may at worst be delayed but not lost. All parties are still working towards the provision of the new station box and EC and TfL/LUL have entered into the DA as envisaged.

6.10 LUL obtained planning permission 20/AP/0681 on 29 July 2020 for *"the construction of tunnelled connections to the existing Northern Line platforms from a new station box for the Elephant and Castle London Underground Northern Line Station"*, thereby authorising those works. It is envisaged that these works will be undertaken when the completed LUL station box is handed over to LUL, which is scheduled to be in February 2025.

6.11 Further non-material amendment approvals in respect of the July 2021 Permission have been granted on 2 December 2021 (reference 21/AP/3848), 4 February 2022 (references 21/AP/4180 and 22/AP/0109) and on 1 June 2022 (reference 22/AP/1090).

6.12 On 10 June 2022, the Council granted planning permission (reference 21/AP/4628) for the installation of underground heating pipework and associated works, to run from 50 New Kent Road to the East Site under Elephant Road and the railway station. The proposed connection will enable the East Site to benefit from heating produced at the 50 New Kent Road site.

6.13 Accordingly, save as set out in Section 12.3 below, planning permission exists for the Scheme.

The Scheme-overview

6.14 Having begun demolition work under the 2019 Permission, EC has begun the substantive construction of the Scheme on the Shopping Centre Site under the July 2021 Permission. The description of the Scheme in the remainder of this section incorporates the minor amendments that are authorised through the July 2021 Permission (which include the amendments to the 2019 Permission secured by the March 2021 permission) and the non-material amendment approvals granted in respect of the July 2021 Permission to date.

6.15 The 2019 Permission pre-dates the changes to the Use Classes Order and introduction of the new Use Class E. As such, the former use classes continue to apply to the uses permitted under that permission and the March and July 2021 Permissions. The July 2021 Permission (as amended by the non-material amendment approvals) comprises a total of 196,675 sq.m. (GIA) of floorspace:

Use	**Consented Floorspace (sq m, GIA)**
A1-A4 Retail, cafes/restaurants	18,210
B1 Business	7,019
C3 residential	104,438
D1 non-residential institutions (education)	43,870
D2 Assembly and Leisure	6,462

Use	Consented Floorspace (sq m, GIA)
Sui Generis London Underground use	9,046
Shared plant floorspace	3,275
Shared circulation floorspace	3,793
Basement ramp	562
Total	**196,675**

6.16 The Scheme essentially comprises two main parts: "the East Site", comprising the Shopping Centre Site and its immediate surroundings on New Kent Road, Walworth Road and some of the arches under the adjacent railway viaduct; and "the West Site", comprising the LCC Site and its immediate surroundings.

6.17 The Scheme includes the demolition of all existing buildings on the Shopping Centre Site and 26-32 New Kent Road, and (once the new station box is ready and operational) the current London Underground Northern Line station. A new LCC campus building will be provided on the East Site and once that is complete, UAL will move into the new LCC campus building on the East Site, allowing the demolition of the existing LCC buildings on the West Site and their replacement by new buildings.

6.18 In broad terms, the redevelopment under the July 2021 Permission includes:

- new retail (including affordable space);
- new leisure facilities, including a multi-screen cinema;
- a new cultural venue;
- 983 high quality new residential flats (with 35% affordable housing provision by habitable room, including 119 flats at social rent levels);
- new offices (including affordable workspace);
- a new London Underground station box and entrance on the East Site, to replace the current Northern Line station adjacent to the Shopping Centre. The new station box will allow for an enlarged ticket hall, to accommodate the Northern Line and with capacity to house the Bakerloo Line too, thereby facilitating the London Plan's aim of extending the Bakerloo Line from Elephant and Castle to Lewisham;

- a new modern campus building for the LCC on the East Site, to replace its current outdated buildings on the West Site;

- the Park Route, a new pedestrianised route from Elephant Road into the heart of the new development, through some of the railway viaduct arches to the south of the railway station, thereby improving the connectivity of the new centre with Elephant Park to the east;

- significant improvements in public realm.

6.19 On the East Site, the consented development is laid out as four plots, E1 to E4, which would be set around a new public realm square at the centre of the site described as "The Court". There would be two new public realm routes leading to The Court: the Station Route, which would connect the peninsula with The Court and Elephant and Castle railway station; and the Park Route, which would connect Elephant and Castle with The Court and beyond through what are currently the railway arch premises 6 and 7 Farrell Court, which would be knocked through to create a new connection from the site to Elephant Road and the new Elephant Park beyond, with a small retail kiosk unit also being provided in one of the arches.

6.20 A third route would be created on the southern part of the site, connecting Walworth Road with The Court, running parallel with the railway viaduct. The plots would sit above a large servicing basement, with a new vehicular access from New Kent Road. Plot E1 includes the new campus building for the LCC and the new station box and ticket hall. There would be three residential towers on the East Site, in plots E2 and E3.

6.21 Under the July 2021 Permission (as amended), the East Site comprises buildings ranging from 4-32 storeys, providing 485 new residential units, 14,248 sq m GIA A1-4 retail floorspace, 7,019 sq m GIA B1 business floorspace, 43,870 sq m D1 educational institution floorspace, to be occupied by LCC, and 3,614 sq m D2 leisure floorspace.

6.22 Further development within some railway arch units, beyond that consented by the July 2021 Permission, is also proposed.

6.23 First, the redevelopment of two arches to the north of the railway station (units 113A and 120 and 113B and 121) to provide a new home for the electronic and dance music venue, so that Corsica Studios can relocate there. Corsica currently operate from two railway arch units to the south of the railway station, 4 and 5 Farrell Court. As explained in Section 7 below, it is necessary to retain the electronic and dance music use on Elephant Road, but the only practical way to do so consistent with the residential use proposed is for the electronic and dance music use to be rehoused in these units to the north of the railway station, and to do this the Council needs to exercise powers of acquisition both in respect of title and in the creation of new rights.

6.24 Second, the relocation of Corsica Studios to the arches to the north of the railway station would leave 4 and 5 Farrell Court vacant. The creation of the Park Route in 6-7 Farrell Court would lead to the displacement of the tenants and occupiers of those units. As explained further in Section 7, to mitigate adverse impacts on these tenants

and occupiers, the Council and EC propose to redevelop 4 and 5 Farrell Court to create a relocation opportunity for the occupiers of 7 Farrell Court. The tenant of 6 Farrell Court is being offered the opportunity to relocate to a new unit elsewhere within the Scheme, fronting Walworth Road.

6.25 A plan showing indicatively the locations of these railway arch units and briefly describing the proposals for them is at **Annex 3**.

6.26 On the West Site, the consented development is laid out as three plots, W1, W2 and W3 which would sit either side of Pastor Street. Pastor Street would effectively be extended northwards by way of an additional public realm through route, to meet St George's Road, effectively creating a new central street through the site providing a through-route for pedestrians and limited vehicular access to a servicing yard at the centre of the site. The West Site would be served by a single level basement accessed via a one-way ramp at the northern end of Oswin Street. The basement would predominantly sit beneath plot W1 and would contain 34 accessible parking spaces, cycle parking, an energy centre, refuse storage and plant space. The West Site would also contain three residential towers.

6.27 The West Site comprises a range of buildings of varying heights up to 35 storeys, providing 498 new residential units, 3,962 sq m GIA A1-4 retail floorspace, and 2,848 sq m D2 leisure floorspace.

Mix of Town Centre Uses

6.28 The July 2021 Permission (as amended) will provide 75,561 sq m of new 'town centre' uses comprising retail (A1-A4), B1 and D class floorspace. The resulting uplift in town centre uses as compared to the buildings which were previously in use will be in excess of 6,000 sq m.

6.29 The July 2021 Permission (as amended) will provide 18,210 sq m of retail (Class A1-A4) floorspace across both sites, representing an increase of 3,078 sq m of retail floorspace within use classes A1-A4 overall as compared to the previous buildings. The July 2021 Permission meets the requirements of the Council's Supplementary Planning Guidance by providing 10% affordable retail space on the site (a minimum of 1,861 sq m).

6.30 The majority of the retail floorspace will be located on the East Site. This site will have excellent connections to Castle Square and Elephant Park, and will therefore integrate with the retail elements there, and with those along Walworth Road where the retail frontage is being extended towards the East Site to create a continuous retail high street.

6.31 The high quality retail space within the Scheme provides an opportunity to claw back some of the comparison expenditure currently leaking out of the borough. The 2015 Southwark Retail Study found that just under 50% of comparison goods spend is made outside the borough.

6.32 EC proposes to develop a vision for Pastor Street on the West Site to provide a cluster of affordable retail and commercial spaces as part of the formal affordable retail offer.

6.33 The new LCC campus on the East Site will secure LCC's long-term future in the area and is a significant positive aspect of the Scheme.

6.34 LCC serves over 5,800 full and part-time students and 454 (full-time equivalent) staff at its current home on the West Site and specialises in creative courses in fields such as journalism, publishing, film, television and sound, graphic communication and photography. It is an important asset to the Opportunity Area, attracting large numbers of visitors in addition to the students, and forms part of a hub for the creative clustering which is apparent in the Elephant and Castle area. The numbers of staff employed at the site may increase to approximately 900 as a result of the proposal (an increase of 446 jobs).

6.35 The brief for the building includes making it more open and accessible to the local community. The lower floors of the education building would be publicly accessible and capable of delivering a cultural function for the area, with flexible space for exhibitions, events and the Stanley Kubrick archive. There is sufficient space to accommodate UAL's core university service at the site including its international language centre, training, conference and student union facilities. The building will incorporate a 3-storey exhibition space for student work and archive collections, which can also be hired by the local community.

6.36 The second element of the new D class floorspace is the proposed cultural venue which will be located on the West Site. This space has been designed to be a multi-functional space that will occupy a prominent position in the area, with a frontage to Elephant and Castle and facing the peninsula. The ground floor will comprise a lobby with ticketing and reception desk, an event space with capacity for 300 people and ancillary spaces which can be used as recording studios and rehearsal space. At first floor level there will be a foyer, bar and entrance to the main performance space which will have capacity for 500 people. The plans incorporate music rehearsal and recording studios with the potential for events to be held every night to complement the creative uses at the LCC.

6.37 The Scheme incorporates 6,462 sq m of assembly and leisure (Class D2) floorspace, split between the East and West sites. This includes provision for a multi-screen cinema and offers flexibility to bring forward other leisure uses. The East Site previously housed a bingo facility which closed before the other units in the Shopping Centre. In order to mitigate the loss of this facility, the section 106 agreement includes an obligation on the Developer to offer first refusal to a bingo operator, on commercial terms, to lease approximately 1,453 sq m of the leisure floorspace within the Scheme.

6.38 The 7,019 sq m of new office (Class B1) floorspace located on the East Site would include 10% affordable workspace.

6.39 The proposed new home for the electronic and dance music use to the north of the railway station will ensure that this use, an important part of the local night-time economy, is secured at Elephant Road, in keeping with the requirements in policy AV.09 to facilitate cultural activities and to offer relocation opportunities to existing small businesses so that they may continue to trade. It is also in keeping with Policy D13 of the London Plan (The Agent of Change) in placing the onus onto the

residential developer to provide solutions to enable the harmonious co-existence of the noise emitting use and the proposed new residential use.

6.40 The proposed redevelopment of 4 and 5 Farrell Court will offer refurbished premises for (and suitable to) the small, local businesses which currently use 7 Farrell Court. Again, this is in keeping with policy AV.09.

New Homes

6.41 The Scheme will provide 983 residential units in a highly accessible location, on a brownfield site at the heart of the opportunity area which is a focus for new development. 983 homes equates to 42% of the borough's annual housing target and 20% of the minimum target for the Opportunity Area; a significant contribution to the borough's housing stock.

6.42 The Scheme provides 35% affordable housing by habitable room in perpetuity. This equates to 337 affordable units, of which 119 will be social rent level (35% of the affordable), 57 at London Living Rent level and 161 discount market rent. The section 106 agreement includes a review mechanism to provide additional affordable housing benefits if the Internal Rate of Return (the measure of developer profit) is above the 11% which has been agreed.

6.43 As agreed with the Council, the Scheme will have a unit mix of 1.5% studio units, 29.8 % 1 bed units, 56% 2 bed units, 12.4% 3 bed units and 0.2% 4 bed units.

6.44 The scheme complies with wheelchair policy which requires ninety percent of new housing to meet Building Regulation requirement M4 (2) "accessible and adaptable dwellings" and ten per cent of new housing to meet Building Regulation requirement M4 (3) "wheelchair user dwellings", i.e. designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users.

6.45 The Scheme provides a good standard of accommodation in line with the Council's requirements set out in the Residential Design Standards SPD. The majority of units (60.3%) on the East Site will be dual aspect. The majority of units (80.6%) on the West Site will also be dual aspect. All of the units will comply with the minimum floor areas including for storage space.

Transport

6.46 The Scheme includes the construction of a station box which will become a new ticket hall for the Northern and Bakerloo Lines, with a prominent new entrance to the new facility in Plot E1 directly fronting on to the peninsula. From here, the new 'Station Route' will extend into the centre of the site, providing a direct surface pedestrian connection to the overground station. From the new entrance to the underground station, escalators will descend to a new ticket hall level where further escalators will link to platform level, allowing for the removal of the existing lifts and closure of the current ticket hall once the new ticket hall is opened. This will in turn allow for redevelopment of the current ticket hall site as part of the Scheme.

6.47 The works proposed will increase the operational capacity, efficiency and accessibility of the Underground station and greatly improve the transition from street to platform level. This represents a significant improvement in strategic transport infrastructure at Elephant and Castle and is a key part of unlocking the growth required by planning policy in the town centre. All parties are working towards the provision of the new Underground station as referred to earlier in this Statement.

6.48 The layout of the East Site has been planned to improve the transition between the national rail station, the tube station and the wider town centre, improving the efficiency of this location as a major transport interchange. The Scheme includes bus stop upgrades and real-time public transport information.

6.49 The removal of the existing basement ramp from Elephant Road allows for a new ground level access to be created between the shopping centre and the existing overground rail ticket hall (from which stairs go to the platforms above). The diagonal "Station Route" forms an axis running from the peninsula to the heart of the site, providing a very direct link between the rail station and the new Underground ticket hall and the wider town centre.

6.50 The Scheme includes a substantial investment in cycling infrastructure within the buildings and the public realm amounting to 2,115 long-stay and 302 short-stay cycle parking spaces. The scheme will deliver an additional 60 cycle hire docking points, split between 2 new locations: one primarily serving the East Site and one the West.

Public Realm

6.51 As referred to above, the Scheme delivers significant public realm benefits in the form of a network of new routes through the site and completes the network of routes, reknitting the centre to the surrounding neighbourhoods as required by policies AV.09 and NSP48 and as envisaged by the 2012 SPD. The Scheme also includes hard and soft landscaping, tree planting, and the provision of new public toilets.

6.52 In combination these connections – particularly the Park Route – greatly improve the permeability of the site and by improving connections with the wider town centre fulfil a key ambition of the local plan.

6.53 Whilst it is recognised that there will be some loss of existing trees as a result of the Scheme, including 4 category B trees, the most valuable will be retained, with no category A trees requiring removal. 10 additional trees will be planted in the public realm across both sites, together with 94 new trees in the communal gardens on the East Site and 81 on the West Site, resulting in a significant increase in the number of trees on the site.

7. PURPOSE AND JUSTIFICATION FOR THE ORDER

7.1 The purpose of the Council in making the Order is to facilitate the development, redevelopment or improvement on or in relation to the Order Land, by way of the Scheme.

7.2 The Council thinks the making and confirmation of the Order will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the Order Land. The Scheme has already begun on part of the East Site, adjacent to the Order Land, and EC has shown through all of its progress its continued intention to proceed with the Scheme so as to complete the East Site redevelopment and then carry out the West redevelopment if CPO powers are utilised. Despite considerable effort being expended in seeking to acquire the requisite land interests for the Scheme as a whole by agreement, this has not occurred to date. Without the use of CPO powers, it will not be possible to deliver key areas of public realm on the East Site, including the Park Route, nor to complete the East Site redevelopment of the Scheme. The title and new rights sought in respect of the West Site are necessary to enable demolition of the current LCC buildings and construction in respect of the West Site. Further detail on these aspects is included at paragraphs 4.3 (title acquisition) and 4.5 (acquisition of new rights) of this Statement.

7.3 In addition, in respect of the proposed acquisition of title to and rights in respect of the railway arch units 113A and 120 and 113B and 121 to the north of the railway station, the Council's purpose in doing so is (save as referred to in paragraph 7.10) to facilitate their redevelopment as an electronic and dance music venue to allow Corsica Studios to move there. Corsica currently occupy 4 and 5 Farrell Court as a cultural venue specialising in electronic and dance music. London Plan policy D13 (The Agent of Change) places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of e.g. the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as Corsica Studios) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue. Corsica Studios is on the GLA's Cultural Use at Risk register, so some intervention by the Council has been envisaged to ensure Corsica can continue to operate successfully.

7.4 Accordingly, condition 28 (as amended) of the July 2021 Permission envisages the need for some acoustic mitigation to take place in the new residential units on the East Site in addition to any measures to be applied at source in 4 and 5 Farrell Court, with noise limits needing to be complied with at the boundary of the residential units by way of condition. The Council's approval to an acoustic assessment and the requisite noise insulation measures under the condition will be required prior to above grade works on the residential buildings on the East Site (except for Plot E3 where the details must be submitted prior to the commencement of façade works on tower E3). EC proposed two methods of mitigation – high specification glazing on its new buildings and soundproofing of 4 and 5 Farrell Court which, taken together, would mitigate the noise impacts. The related section 106 planning agreement requires a payment to be made to the Council of £125,000 to be used for the purposes of funding the soundproofing works within 4 and 5 Farrell Court, which has been paid to the Council by EC in accordance with the agreement. EC and the Council's intention in so doing has always been (and remains) to ensure that the music and residential uses can subsist harmoniously together.

7.5 In April 2020, when the Council first resolved to back the Scheme with compulsory purchase powers, it was envisaged that the Council would acquire new rights to undertake the sound insulation works within 4 and 5 Farrell Court. However, as detailed technical discussions have progressed between Corsica and EC as to the location of the sound-proofing within 4 and 5 Farrell Court and the consequential works that would be required to the units, it has become clear that the sound insulation required would be so considerable (costing far in excess of the money secured under the section 106 agreement) and so extensive physically that the work would (in effect) require the complete remodelling of 4 and 5 Farrell Court - but would still result in a significant loss of useable floorspace, below that required by Corsica. The position is also complicated by the fact that, running through the centre of 4 and 5 Farrell Court, is a fire escape route, which Corsica have a right to use but which is not currently part of the demised area of their tenancy. To make the remodelling of their units work, this fire escape area would need to be leased to Corsica too. This cannot be done by the creation of new rights. Furthermore, to achieve the required remodelling of 4 and 5 Farrell Court would require physical works that will take circa 6 months to carry out, during which time Corsica would not be able to trade and would need to be closed during that period.

7.6 EC therefore analysed whether, alternatively, it would be feasible to install further, additional acoustic insulation (beyond the higher specification glazing which had already been planned for the residential units) within the new residential units on the East Site. However, the detailed analysis demonstrated that further façade treatment of the residential units was not feasible, with the increased thickness of wall required on the residential tower leading to numerous apartments being impacted and the considerable loss of residential floorspace, including lost bedrooms (the majority being within the affordable units). It was also established that the increased façade treatment would not work on its own, with the mitigation at source, including the acoustic lining, still being required in 4 and 5 Farrell Court.

7.7 As with the delivery of the new residential units, the retention of the electronic and dance music use in this location also attracts strong planning policy support and the retention of that use as an important part of the night-time economy is needed. However, it is practically impossible for a satisfactory noise solution which leaves Corsica at 4 and 5 Farrell Court.

7.8 Faced with these facts, the only practical solution which enables the retention of the electronic and dance music use on Elephant Road, and one which would allow for Corsica to continue trading throughout, is for the set of railway arches to the north of the railway station, Arches 113A/120 and 113B/121, which are currently vacant (see the plan at Annex 3), to be developed into new premises for Corsica by EC. These units could accommodate the necessary sound insulation and would give Corsica the requisite floorspace. Once that new space is ready for Corsica, they could then move their operation seamlessly the short distance up Elephant Road, with no need to close their operation. This would also have the added benefit that Corsica would be able to operate entirely within an area clearly let to them – at present they are using areas which fall outside their tenancy area (to the rear of 4 and 5 Farrell Court, and within the fire escape) and the basis for their doing so is unclear.

7.9 EC owns a long leasehold title to Arches 113A/120 and 113B/121 which are proposed for the rehoused electronic and dance music club, but the leasehold title EC owns is constrained to be used for access purposes only. It does not allow for any beneficial occupational uses, and so would not allow for the proposed redevelopment of these arches. Arch Co owns a long leasehold interest in these arches which is not so constrained (other than by the EC leases) and the freehold title is accepted to be owned by Network Rail. To achieve the development of the Arches 113/120 and 113B/121 for the music use it will be necessary for the Council to acquire Arch Co's long leasehold title to the units, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works (such as the affixing to the viaduct arches of new frontage and rear elevations for the club). So the acquisition of title and new rights in respect of Arches 113A/120 and 113B/121 is justified as it is the means by which the only practical way of retaining the electronic and dance music use, harmoniously with the new residential use, can be achieved.

7.10 If, for some reason, the music use was not instigated in Arches 113A/120 and 113B/121, the Council would not want to see those arches left vacant, as a gap in the arch units fronting Elephant Road, and EC would still wish to have some other beneficial use of those arches in that scenario. In April 2020, Cabinet approved the use of CPO powers for those arches on the basis that the intention was that these units would be converted into retail/café units. If the relocated music use was not instigated in those arches, the acquisition of greater title from Arch Co, and related rights from Network Rail, would still be justified to bring about retail/café uses and the Council would seek to acquire those arch premises for that purpose.

7.11 The relocation of Corsica Studios to the northern arches would leave 4 and 5 Farrell Court vacant. As discussed above, the creation of the Park Route in 6 and 7 Farrell Court would displace the occupiers of those units. The Council is mindful that the occupiers of the units are small, local businesses. There is a need to mitigate any adverse impacts on those tenants and occupiers. Although efforts have been made to secure the relocation of the tenants and their occupiers elsewhere in the vicinity this has not been achieved. No suitable alternative relocation premises has been found which meets the requirements of the tenant of 7 Farrell Court (Beset). Accordingly, the Council and EC intend to acquire 4 and 5 Farrell Court, immediately next door to 6 and 7 Farrell Court, as a relocation opportunity within the Scheme for Beset and the other occupiers of 7 Farrell Court. This would be the best mitigation against their displacement (and the potential adverse effects arising therefrom) as the units are suitable for their uses and are immediately adjacent. For DistriAndina, EC also proposes to relocate them within the Scheme, into a new unit fronting Walworth Road on the East Site.

7.12 It is not practicable to house both DistriAndina and Beset within 4 and 5 Farrell Court as there is not enough space to do so and in any event DistriAndina meet the eligibility criteria to move into new premises on the East Site under the terms of the existing section 106 planning agreement whereas Beset do not (as Beset are not a retailer), so DistriAndina have that option available to them.

7.13 This proposal would require redevelopment of 4 and 5 Farrell Court by way of physical works and change in use from its current electronic and dance music venue use to the uses currently carried on by the occupiers of 7 Farrell Court.

7.14 The long leasehold title to 4 and 5 Farrell Court is owned by Arch Co, with Network Rail again owning the unregistered freehold title. The fire escape which bisects the two units is in the same ownership. To achieve the development of 4 and 5 Farrell Court referred to above it will be necessary for the Council to acquire Arch Co's long leasehold title to the units and the fire escape, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works.

7.15 So the Order will facilitate the carrying out of redevelopment on, or in relation to, the Order Land and thus the test in section 226(1)(a) is satisfied.

7.16 In terms of the test under section 226(1A), the Scheme represents a vital, comprehensive redevelopment of Elephant and Castle town centre. In this case, the Council thinks the development, re-development or improvement is likely to contribute very significantly to the improvement of all three well-being objects.

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

7.17 The Scheme is likely to result in *economic* well-being improvements, including a material increase in the quantity and quality of town centre uses, including providing additional and better quality retail, leisure, education and office provision, consistent with the long term strategy to regenerate the Town Centre and enhance its vitality and viability. The Scheme will create enhanced linkages, and assist in the regeneration of the wider centre. The Scheme includes the provision of affordable retail and office floorspace. The education facility will secure LCC's long-term future in the area.

7.18 The Scheme will create 1,230 construction jobs per year over the 10 year build programme. The completed Scheme will generate up to 2,085 new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward, an increase of over 600 when compared with the estimated 1,418 full time equivalent jobs on the East and West Sites before the development commenced. Measures to secure jobs for unemployed borough residents are contained in the section 106 agreement and will deliver significant economic benefits to the local population.

7.19 The Scheme will secure key new transport infrastructure, including a new station entrance, create enhanced linkages between existing transport provision, and provide a comprehensive package of measures to enhance the connectivity of the new town centre. These measures will make the town centre more competitive, better able to retain and attract trade from within its catchment, including meeting the needs of the additional local residents, workers and students, and encourage the use of sustainable means of transport.

7.20 As regards the fitting-out and opening of the underground station box, the amendments made to the section 106 agreement due to TfL's funding position means

that there is an increased chance (as compared to the position in April 2020, when the Council originally resolved to use CPO powers) that the new station box will not be fitted out and come into operation, but the likelihood of the new station being fitted out and becoming operational at a reasonable point in the future is still high. Even if reduced weight was given to the new station box due to the TfL funding uncertainty, the Order would still be justified for all the other economic, social and environmental well-being improvements that the Scheme would bring.

7.21 The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally. It is also estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are given. The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and £11,230,308 Southwark CIL.

7.22 The Scheme will deliver significant *social* well-being improvements. These include the creation of a more balanced mix of uses, creating quality homes, offices, education and community facilities, including the provision of affordable retail, workspace and homes. The Scheme includes the provision of cultural and community facilities, including new and enhanced public realm and public toilets which will benefit all sections of the community. It will include a new home for Corsica Studios, thus giving the opportunity to safeguard the longer term future of the electronic and dance music use on Elephant Road. It will also include relocation premises for the small, local businesses which will be displaced by the creation of the Park Route.

7.23 The Scheme will also deliver significant *environmental* well-being improvements. In addition to providing well designed buildings and well connected spaces, the Scheme will contribute to securing more sustainable travel patterns, by better serving the needs of current and future residents, workers and students. The Scheme includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements, including additional landscaping and tree planting. The Scheme also includes a new home for Corsica Studios which will have better sound insulation than the current premises.

7.24 Notwithstanding that there will be negative effects to those affected by the Order, as considered fully by the Council's Cabinet in December 2022 (Appendix I to the Cabinet Report, which details the negative effects attributable to the Order, is reproduced at **Annex 4**) and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.

7.25 The specific economic, social and environmental well-being improvements that the Order will deliver directly are in themselves sufficient to satisfy section 226(1A) of the 1990 Act. Firstly, without the Order, the Park Route as shown in the planning permission approved drawings cannot be delivered. It has been a key aspect of the Council's planning vision for a long time that the redeveloped Shopping Centre Site should be opened up for pedestrians to what is now Elephant Park, thus facilitating

the connection of these two key sites. EC is under an obligation in the section 106 agreement to use reasonable endeavours to open the Park Route prior to the East Site opening. Although the section 106 agreement allows for an alternative route for the Park Route through one of the arches to which EC has some long leasehold, or such other alternative route that the Council may approve, the July 2021 Permission only shows the route through 6 and 7 Farrell Court, so that is the approved route under the permission. That route was chosen for the planning application, after analysis of likely pedestrian footfalls, and what would be the optimum route through the East Site because it forms a natural pedestrian "desire line", as it aligns with a boulevard from Elephant Park and so represents the optimum connection to Elephant Park and Lendlease's new redevelopment around it. From the chosen Park Route, pedestrians will be able to continue west through the new town centre to Elephant & Castle highway with its bus services (and Brook Drive and the open space of St Mary's Churchyard Newington beyond), or to move northwest to the new Underground station. This route is also close to Castle Square and Walworth Road. By contrast the arch EC has long leasehold title to is situated further away from Walworth Road and Elephant Park and so would be inferior as a direct pedestrian link to those areas. In addition, it is located close to (and opposite) the proposed new building for the LCC, Building E1, and for pedestrians to emerge opposite building E1 and close to the railway station, when considered along with users of the rail station, risked creating a pinchpoint. Building E1 would likely have had to have been smaller to accommodate additional pedestrian circulation space, losing mass from its south eastern corner. Reduced footprint of that building would be problematic due to UAL's requirements for the new educational facility to achieve critical mass in order to retain the LCC at Elephant & Castle. Shifting Building E1 to the west would have impacted on the Station Route, making it too narrow and affecting the clear and permeable route through the East Site to the Elephant & Castle peninsula.

7.26 Secondly, areas of new public realm adjacent to the railway viaduct are also at risk of not being delivered without the Order, including the ability to complete the Station Route from the new Underground station box to the railway station for pedestrians, via the new right sought in that respect. Again, this is a key aspect of the East Site.

7.27 Thirdly, the Order will facilitate the only practical solution for the retention of the electronic and dance music use in this location, as explained earlier in this Statement of Reasons.

7.28 Fourthly, the Order will facilitate the redevelopment of 4 and 5 Farrell Court to provide a suitable and immediately adjacent relocation opportunity for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them.

7.29 Fifthly, the title and new rights being sought in relation to the West Site itself are all necessary for the West Site redevelopment to proceed, thus the Order unlocks all the benefits associated with the West Site, including 498 residential units (165 of which are to be affordable), new retail floorspace (including affordable retail) and a new cultural venue.

7.30 The Order is therefore essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring.

Whether the purpose for which the Council is proposing to acquire the land could be achieved by other means

7.31 The purpose for which the Council is proposing to acquire is explained above. Due to the number of third party interests in the proposed Order Land and the fact that negotiations have been taking place with affected parties for some time, the prospects of acquiring all the remaining interests by agreement to enable comprehensive redevelopment within a reasonable timescale or at all are unlikely.

7.32 All of the elements included in the Order Map are essential to the successful implementation, completion and use of the Scheme. The Order will address the last few pieces of the jigsaw in terms of land assembly.

7.33 The Council has considered whether redevelopment in accordance with the planning policy objectives might be achieved without the need for compulsory purchase. However, any proper redevelopment needs the interests/rights covered by the Order, and certainly any development in line with planning policy does. The Scheme, as per planning policy, is an holistic concept which cannot be delivered on a piecemeal basis and any attempt by third parties to redevelop parts of the land on a piecemeal basis avoiding the use of CPO powers would destroy the additional benefits that come from a co-ordinated, holistic regeneration in line with planning policy.

7.34 As to the prospect of achieving the planning objectives at a different location, the scope for alternative locations is absent due to the purposes of the Order, which seeks to achieve the regeneration of the town centre core area. The Scheme is to regenerate this area of land, which cannot be achieved on another area of land.

7.35 The Council has considered whether there are any alternative proposals for this land and whether such proposals would be appropriate. There are no known alternative proposals that the Council is aware of, and even if there were, such alternatives would not be appropriate as they would not (1) meet the objectives of planning policy for a comprehensive redevelopment of the Scheme Land and (2) provide the benefits of the Scheme.

7.36 The Council has also considered whether the Scheme could be delivered by means of alternative proposals which would involve less interference with property rights. This not practicable. EC has already procured numerous interests by agreement over the course of 6 years, which shows that the use of the CPO powers envisaged is justified. As regards the Park Route, although the section 106 agreement does provide that an alternative route may be provided in one of the arches that EC already has some leasehold title to, or another route approved by the Council, the reason why the route is inferior to that which was chosen is explained above.

7.37 The Council has considered whether the acquisition of new rights only would be sufficient to achieve the sound insulation works in the Corsica units at 4 and 5 Farrell Court but, as explained above, this was not feasible, nor was seeking to include the requisite sound attenuation measures in the new residential units. For the reasons explained above, the only practical solution for the retention of the electronic and dance music use is for arches 113A and 120, and 113B and 121 to be redeveloped for that purpose, and the Council needs to acquire title and rights to achieve this.

7.38 The Council needs to acquire title to the corridor of land within Arch Co's demise to the west of the railway viaduct to ensure that control of the public realm areas is achieved.

7.39 The Council needs to acquire title to the two unregistered areas on the West Site to ensure these are brought into the Scheme, and it is not possible to negotiate the acquisition of those areas by agreement given their unregistered nature.

7.40 In summary, there is no credible alternative which could deliver a comprehensive scheme which meets the planning policy objectives within a reasonable timeframe.

8. SPECIAL CONSIDERATIONS AFFECTING THE ORDER LAND

Listed buildings and conservation areas

8.1 The Metropolitan Tabernacle is a Grade II listed building and a part of it is included within the Order Land (for the acquisition of new rights only) for the reasons set out in Section 4 above. The Michael Faraday Memorial located on the peninsula is also a Grade II listed building and is located adjacent to the Order Land. Metro Central Heights is Grade II listed and is located to the north of the Order Land.

8.2 No part of the Order Land is within a conservation area. The LCC Site (and part of the Order Land adjacent thereto) is adjacent to the Elliot's Row Conservation Area.

Special categories of land

8.3 There is no land within the Order Land which is owned by another local authority, by the National Trust or which forms part of a common, open space land or fuel or field garden allotment.

8.4 The Order Land includes land owned by statutory undertakers:

8.4.1 Network Rail – the corridor of land to the west of the railway viaduct is owned by Network Rail, as are the railway viaduct (including the railway station) and the Thameslink railway on it. The railway arch occupational units are also owned freehold by Network Rail. The Schedule is careful to exclude the railway viaduct and the Thameslink railway (i.e. Network Rail's operational land) from the Pink Land, i.e. the land to be acquired. Moreover the Schedule will exclude Network Rail's interest from being acquired, save in respect of the tiny fragment of land owned by Network Rail which juts into what was the vehicular access into the old Shopping Centre (and which for that reason is not viewed as operational land). As with the railway arch occupational units (including those at 4-7 Farrell Court), the corridor of Pink Land to the west of the railway viaduct is not, in the Council's view, operational land, as Network Rail has granted a long lease of it to Arch Co along with the occupational units. The Council is willing to undertake that, in acquiring the long leasehold title in these strips adjacent to the viaduct from Arch Co, for the avoidance of doubt it will grant (by way of a lease of easements) any necessary rights of access along the corridor to the west of the viaduct to any occupational tenants of the railway arch units whose interests are not being acquired and who currently have such access rights within their tenancies, simultaneous with the acquisition of the corridor. In

terms of the new rights sought over the railway viaduct and the Network Rail land immediately to the west of the station, these are considered to be relatively minor and are in any event caveated so as not to cause interference with the operation of the railway. In these ways, no detriment to Network Rail's statutory undertaking should arise;

8.4.2 TfL – several plots of highway land adjacent to the LCC Site are owned by TfL. Crane oversailing of these plots is envisaged. However, the oversailing will take place far above the highway and there should be no detriment to the operation of the highway;

8.4.3 Electricity substations operated by London Power Networks. Two substations on the West Site will need to be removed in due course; given that agreement was reached on the surrender of the East Site substation lease it is hoped such an agreement will be reached in respect of the West Site substations, but those two substations are included in the Schedule.

8.4.4 The Order Land also contains statutory undertaker and telecommunications operator apparatus.

8.5 Statutory undertakers have a separate and additional power to make representations to the Minister responsible for their undertaking in accordance with section 16 of the 1981 Act. However, for the reasons given above, the Council does not envisage any detriment to the operation of any of the statutory undertakers.

9. HUMAN RIGHTS

9.1 The Human Rights Act 1998 requires a public authority to act in a way which is compatible with the European Convention on Human Rights ("**the Convention**").

9.2 The following rights under the Convention are potentially relevant in the process of considering, making, confirming and implementing a compulsory purchase order:

9.2.1 Article 6 (right to a fair and public hearing to determine a person's civil rights);

9.2.2 Article 1 of the First Protocol (right to peaceful enjoyment of possessions);

9.2.3 Article 8 (right to respect for private and family life, including a person's home).

9.3 The requirements of Article 6 (right to a fair and public hearing) are satisfied by the well-established statutory procedures under the 1981 Act, including rights to object and to be heard at any public inquiry and the right to statutory challenge. Disputes as to compensation can be referred to the Lands Chamber of the Upper Tribunal.

9.4 In respect of Article 1 of the First Protocol, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This does not impair, however, the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or

other contributions or penalties. A fair balance must be struck between the public interest and private rights. Interferences under Article 1 of the First Protocol must be in pursuit of a legitimate aim.

9.5 The acquisition of land (and the creation and acquisition of new rights) as envisaged by the Order will interfere with rights under Article 1 of the First Protocol. The Order will give rise to the acquisition of property interests against the will of the owner and may also in certain instances infringe the enjoyment of existing assets with economic value, such as the goodwill of a business (which could happen in a worst case scenario in respect of the tenants and occupiers of 4 and 5 Farrell Court and 6 and 7 Farrell Court). It will also interfere with rights over the Order Land. However, Article 1 of the First Protocol allows for such interference if it is in the public interest and subject to the conditions provided for by law and the principles of international law. The interference must also be in pursuit of a legitimate aim, which is the case here. Therefore, the exercise of compulsory purchase powers pursuant to the Order is lawful in Article 1 terms provided that the Council strikes a fair balance between the public interest and the private rights protected by Article 1. It is also relevant that compensation is available to persons affected by compulsory acquisition in certain instances. By way of the very considerable benefits that will arise from the Scheme (even limited to those specific benefits that the Order would directly deliver), it is considered the compelling benefits in the public interest, when weighed against the private rights of individuals, and indeed the wider adverse implications set out in Annex 4, justify the interference with Article 1 rights in this case.

9.6 Under Article 8, everyone has the right to respect for private and family life, his home and his correspondence; there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Any interference with this right must be proportionate. Article 8 covers family life and private social life enjoyed at a place of work or in professional, business or commercial activities. If children could be affected the best interest of the child shall be a primary consideration.

9.7 Article 8 Convention rights can potentially be relevant in compulsory acquisition. The rights guaranteed by Article 8 may include the right to respect for private and family life enjoyed at a company or individual's business premises. Since Article 8 guarantees the right to a "private social life", it covers private social life enjoyed at a place of work or in professional, business or commercial activities. Article 8 does, though, allow for interference if it is necessary in the public interest and proportionate to the legitimate aim being pursued (here, economic well-being).

9.8 For this Order, there is no evidence to show Article 8 is engaged but assuming conservatively that Article 8 is engaged by reason of any interference with business premises and to affected individuals' private social lives derived from the business setting, given the public benefits of the Scheme (even if limited to those specific benefits that the Order will directly deliver) and the compensation which will be payable in respect of any acquisition of land or new rights over land or the overriding

of rights, any interference with rights in this case is proportionate, in the public interest and in pursuit of a legitimate aim.

9.9 Regard has been had to whether there is any infringement of Articles 9 (freedom of thought, conscience and religion), 11 (freedom of peaceful assembly and association) or 14 (freedom from discrimination) of the Convention; in each case it is considered that these rights are not engaged and there is no infringement.

9.10 If a compelling case in the public interest can be demonstrated then this will meet the requirements of the Convention. In making the Order, the Council has carefully considered the balance to be struck between individual rights and the wider public interest. Having regard to the matters set out above a compelling case in the public interest exists for the making and confirmation of the Order.

9.11 Interference with rights under the Convention is considered to be justified to secure the benefits which the Scheme will bring, including the economic, social and environmental well-being improvements referred to above. The purpose of the Order justifies the interference with human rights that the Order would cause and the public benefit outweighs the private loss.

9.12 In addition, appropriate compensation will be available to those entitled to claim it under the relevant statutory provisions.

10. EQUALITY ACT 2010

10.1 The Council has a statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to:

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

10.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

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

10.2 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) and sexual orientation.

10.3 By way of historical background, in October 2015 the Council commissioned an equalities impact assessment from AECOM to inform future decision making. That equalities work identified a range of positive and negative impacts on groups with protected characteristics and the findings were reported to the Council's Cabinet in May 2017 and were then used to formulate the business relocation and mitigation package that was subsequently incorporated into the section 106 agreement. The AECOM work was supplemented by further analysis by EC's consultants, Quod, which was submitted with the planning application for the 2019 Permission, and the July 2018 Planning Committee report, which led to the 2019 Permission, set out and analysed in considerable detail the potential equalities impacts relevant to the planning application.

10.4 The analysis highlighted the potential adverse risk to older people using the then bingo hall at the Shopping Centre. Secondary analysis found that a significant proportion of users of the facility were aged over 45 and that 62% identified themselves as being of Black/African/Caribbean/Black British descent. Subsequently, in 2018 the operator of the bingo facility agreed to sell its lease to EC and the bingo hall closed. The Order will not therefore be the cause of the loss of the bingo facility. Notwithstanding this, the section 106 agreement includes an obligation requiring the developer to give first refusal to a bingo operator to take a portion of the leisure space in the consented scheme. Other section 106 agreement measures were secured to mitigate potential adverse effects on local independent businesses (including those with protected characteristics) then operating from the East Site, including a relocation strategy, a business support advisor, a relocation fund, and affordable retail premises within the Scheme itself (on both East and West Sites).

10.5 Prior to the Cabinet meeting of 7 April 2020, AECOM were asked to update their analysis. AECOM found that the mitigation package put in place through the section 106 agreement had had positive outcomes, and noted the positive impacts the engagement activities EC had undertaken in terms of resolving issues around relocation of businesses. AECOM found that the mitigation package, while not able to fully recreate the then current clusters of businesses, contributes to resolving many of the potential adverse equality impacts of the development.

10.6 In addition to the section 106 measures, the Council assisted local traders by offering market pitches at East Street and making £200,000 available to help local operators who had been unsuccessful in finding alternative locations to trade from or who had decided not to seek alternative premises. The £200,000 was largely expended by way of grants.

10.7 The Council further considered the equalities position in respect of the planning application for the July 2021 Permission. Quod submitted an Equality Statement Addendum on behalf of EC which concluded that there were no new negative adverse impacts arising from the amendment planning application, and the findings of this, along with the analysis of officers, were considered by the Council's Planning

Committee on 6 July 2021. Officers concluded that the changes to the land use quantum, distribution of uses across the site and the layout and design changes would raise no equality issues of a greater scale or significance than those arising from the consented schemes. The additional affordable retail, leisure, education, employment floorspace and residential units were all considered to have positive equality impacts. It was noted that the potential bingo hall is smaller than secured under the 2019 Permission but it has the potential to be brought forward earlier in the development programme, thereby reducing the period that the facility would not be available. On balance, this was considered to be acceptable in terms of the impact on the groups with protected characteristics who were identified as the main users of the former bingo hall.

10.8 Under the section 106 agreement, local people are to be provided with opportunities for training and employment. The Council will work with EC to ensure that protected groups are able to take the full benefit of these opportunities.

10.9 All of the above is by way of historical background. The Shopping Centre was closed, without any need for a CPO to be made or implemented, in 2020, and so the potential equalities impacts previously identified (unless referred to below) are not relevant to the Council's decision to make the Order in 2023. The Council is very aware of its continuing duty under the 2010 Act, and so a further equalities impact assessment, assessing the potential equalities impacts of making and implementing the Order, was undertaken and considered by Cabinet in December 2022 prior to making the Order. The impact assessment is available as part of the documentation accompanying the Order but in summary the key findings are:

(a) There is a potential adverse effect on the Latin American and (in one case) Black African (protected characteristic of race) businesses who occupy 6 and 7 Farrell Court, which in a worst case scenario may include the closure and loss of those businesses. However, the Council and EC are seeking to acquire 4 and 5 Farrell Court to redevelop it into a relocation opportunity within the Scheme for Beset and their occupiers, and to relocate DistriAndina into the Scheme in a new unit on the East Site, thus mitigating the adverse impacts on those occupiers. Accordingly, it is considered unlikely that their businesses would close as a result of the exercise of CPO powers.

(b) In respect of Corsica Studios, and a worst case scenario of its business closing if the confirmed CPO does not include the acquisition of all necessary rights and interests in the northern arches for them to relocate to, it is not considered that any one group with protected characteristics would be disproportionately affected. However, the Council and EC's intention is to facilitate the redevelopment of the arches to the north of the railway station for the electronic and dance music use and to offer Corsica the opportunity to relocate to those new premises, avoiding any need for Corsica to close, even temporarily. If Corsica moved to those new premises it is likely that their clientele (and employees) would benefit from a more modern and well-designed unit, with better access internally, which would benefit all users including those with disability.

(c) There will potentially be some temporary, short term (up to 3 months) adverse impacts on the Tabernacle due to the need to scaffold part of their land whilst works to decouple and demolish the immediately adjacent LCC building take place. This is explained in detail in the equalities impact assessment and potentially could disproportionately affect groups sharing the protected characteristics of religion, age, race, pregnancy and maternity, and disability. Any adverse impacts are considered to be minor. Proposals for mitigation are explained in the equalities impact assessment. For the avoidance of doubt, the Tabernacle will be able to remain open and the main entrance on the front façade will remain open, and the disabled entrance within the front side arch will be available at all hours when the Tabernacle is being used.

(d) There will be benefits to all users of the East Site from the creation of surface level public access to create the Station Route, the Park Route and further public realm adjacent to the railway viaduct. This is likely to be particularly beneficial to the elderly, those with disability, pregnant women and families with young children. It will also ensure the permeability of the site for visitors to all parts of the East Site, including the replacement affordable retail floorspace and proposed replacement bingo facility, both of which are included in the East Site at least in part to address adverse equality impacts identified at the planning permission stage.

(e) The acquisition of title and new rights in respect of the West Site will unlock the ability to develop West Site, including the affordable retail floorspace, new dwellings (including affordable housing units, and 10% wheelchair accessible units) and job opportunities associated with that phase of the Scheme, all of which are considered to have positive equality impacts.

(f) It is not considered that the daylight and sunlight impacts which could arise from the construction of tall buildings on the West Site would disproportionately affect any one group with protected characteristics.

10.10 The equalities position will continue to be monitored and reviewed throughout the progression of the Scheme.

10.11 In summary, steps are being taken to ensure that the processes pursuant to the Order are applied in a fair and non-discriminatory manner. The Scheme will bring a range of benefits to protected groups, including enhanced access, housing provision, employment and training opportunities, public realm and public transport improvements. Weighing up the relevant considerations and recognising the adverse impacts on those with protected characteristics, which the Council has sought and will continue to seek to mitigate, for the reasons summarised in this Statement of Reasons there is a compelling case for the Order and the benefits that will result to the community at large.

11. RESOURCES AVAILABLE FOR THE SCHEME

11.1 Paragraph 14 of the Guidance states that in preparing their justification, acquiring authorities should address:

*"(a) **sources of funding** – the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme …*

*(b) **timing of that funding** – the funding should generally be available now or early in the process … "*

11.2 The Council has entered into an agreement with EC which gives a complete indemnity to the Council in respect of all compensation to be paid pursuant to the Order and/or through the operation of section 203 of the Housing and Planning Act 2016 and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the Order will also be borne by EC. EC has a proven track record of acquiring (and paying for) interests required for the Scheme by way of private agreements. Furthermore, EC's obligations in the agreement are backed by a guarantee from Get Living Plc, a major English public limited company. The Council is satisfied that Get Living has good covenant strength to meet its obligations in the unlikely event that EC defaulted.

11.3 Moreover, the East Site redevelopment is already fully funded. EC has procured a major loan in the sum of £365 million for the development stage funding and has procured grant funding from the GLA in respect of affordable housing for the East Site in the sum of £9,631,750. In addition, ongoing contracted payments from UAL and LUL will be made in respect of the East Site.

11.4 In respect of the West Site, the Council is satisfied that the funding is likely to be available in good time to commence the West Site redevelopment as envisaged. It is anticipated that around 40% of the West Site redevelopment cost (including land acquisition) will be financed by equity payments from the Triangle partners and a further affordable housing grant in respect of the West Site, with around 60% being provided through debt financing. Understandably, the developer will not seek that debt funding for the West Site until closer to the time that the West Site redevelopment is begun, otherwise it would incur significant and unnecessary interest charges in the interim period. (By way of example, the East Site debt funding for the construction of new buildings on East Site was put in place in December 2021, and piling began in March 2022.) As to whether the West Site debt funding is likely to be obtainable on reasonable commercial terms to the developer, it is considered that this is likely to be the case given: the identity of EC's backers; the central London location and prestige of the redevelopment, with which lenders are likely to wish to be associated; that Delancey, who advise EC, are experienced in and have obtained significant debt funding on other large scale redevelopment projects for their clients; and the fact that EC was able to procure debt funding to fully fund the East Site redevelopment. Similarly, there is no reason to think that affordable housing grant for the West site will not be available given that such grant was procured for the East Site.

11.5 It is unnecessary, as part of the indemnity agreement, to include an obligation on EC to build the Scheme. In April 2020 the Council took the considered view that the heavy investment and commitment to the Scheme then shown by EC meant it was likely that EC would progress with the Scheme, such that an obligation on EC to build the Scheme was unnecessary. That view has been borne out (and reinforced)

by the considerable progress that EC has subsequently made with the Scheme. The numerous commitments and heavy investment since April 2020 lend further weight to the conclusion that the Scheme will progress and be completed subject to the Council using CPO powers. Moreover, the reality of the situation is that once the new UAL campus building is completed on the East Site, this triggers the transfer of the LCC Site to EC's group company (subject to an arrangement whereby UAL can continue to occupy the current LCC buildings whilst they fit-out the new building on the East Site). Having spent a considerable sum in procuring the LCC Site and its vacant possession, it is very likely that EC would continue with the Scheme on the West Site subject to the Order having been confirmed.

11.6 Paragraph 106 of the Guidance refers to the Secretary of State taking into account "*the potential financial viability of the scheme…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 scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be."*

11.7 The potential viability of the Scheme has been examined as part of the planning application process in the context of the maximum level of affordable housing that can be provided. Discussion took place during the original planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as well as costs advice from cost advisors. The advice from GVA (now Avison Young), advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.

11.8 In June 2021, as part of consideration of the revised planning application, DS2 (advising EC) concluded that there had been a notional increase in viability so that the ungeared IRR had risen to 10.23% but pointed out this was derived only from the fact that the East Site value had reduced due to the demolition of buildings, and that in real terms there was a reduction in retail values due to the COVID-19 pandemic, and the general decline in high street retailing, increased construction costs and the pandemic's effect meant that development economics were extremely challenging. Avison Young concurred that the target level of profit was not predicted to be met with the requisite level of affordable housing.

11.9 Some time has passed since the grant of the July 2021 Permission. Accordingly, the viability position has been the subject of further expert work by Avison Young for

the Council. Avison Young have carried out a high level review of the viability of the Scheme. The exercise took the form of a review of the updated proposed Scheme appraisals and commentary upon whether the inputs are reasonable at this point in time. This high-level review has been undertaken on a desktop basis to inform the Council's decision making. Avison Young advise that this exercise would likely have to be reviewed again in the run up to a CPO inquiry. The review also included a sensitivity analysis of the IRR, commercial rents and yields.

11.10 On the basis of their high level analysis, Avison Young have concluded that the Scheme is viable. Avison Young advise that the following points further reinforce their conclusion that the Scheme is viable: the East Site works have been procured under a fixed price Design and Build Contract with a major building contractor, Multiplex; full funding for the East Site has been secured; the existence of the contractual agreement with UAL/LCC; the Scheme has commenced and is proceeding; whilst the current macro-economic situation is challenging, there nevertheless remains underlying demand for high quality professionally managed residential stock, and rental forecasts remain positive.

11.11 Viability is a moot point in respect of the East Site because EC has chosen to proceed, has funded it and has a contractor appointed and on site to build it (subject in the case of the Order Land to being able to do so). As regards the West Site, the reality is that once the new university campus building has been completed on the East Site for UAL, the completion of the sale of the LCC site is triggered, albeit UAL will have some time in which to move across to the East Site. So, having paid a very considerable sum to acquire the West Site at that point, it is highly likely that EC's group company, Elephant Three Properties Limited, would then proceed with the West Site redevelopment (subject to the Order enabling it to do so), to recoup a return on its investment. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case, the Council has the benefit of Avison Young's updated expert advice that they believe the Scheme is viable. Moreover, officers do not consider there is any real uncertainty that the West Site will proceed given the factors above but, even if there was such uncertainty, the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.

12. HOW THE COUNCIL WILL OVERCOME ANY OBSTACLE OR PRIOR CONSENT NEEDED TO IMPLEMENT THE SCHEME

12.1 Investigations to date have not revealed any physical factors which would impede the Scheme.

12.2 Agreements with statutory undertakers are either in place or expected to be in place shortly.

12.3 EC envisages that the railway arches to the north of the railway station shall be brought into beneficial occupational use for the electronic and dance music use. The July 2021 Permission does not include a change of use to those purposes for those units. EC has instructed planning consultants to formulate an application for such planning consent in respect of those arches. There is no reason why the requisite consents for the proposed use of these arches will not be forthcoming, subject to

suitable conditions, as such uses will be in keeping with the current uses on Elephant Road and the planning policies for the Opportunity Area. The relocation of Corsica Studios to those arches would then free up 4 and 5 Farrell Court and the Council's and EC's intention is to offer the current tenant and occupiers of 7 Farrell Court the opportunity to move to those immediately adjacent arches, thus minimising any adverse impacts upon them. This would require a planning permission for the refurbishment and change in use of 4 and 5 Farrell Court to allow for the commercial, business and services uses being undertaken in 7 Farrell Court. Again, EC advises that such an application will be submitted for the same and in the Council's view there is no reason why such consent will not be forthcoming.

12.4 Agreements between the Developer and TfL and the Developer and the Council under section 278 and/or 38 of the Highways Act 1980 will be required in respect of proposed highway works. However, such agreements are routinely entered into in respect of all manner of development proposals and the Council does not envisage any problems in these agreements being concluded. Some of those agreements have already been entered into in connection with the East Site.

12.5 Licences may be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments and have already been entered into in respect of the development to date of East Site.

12.6 Stopping-up orders for both East and West Sites were made in summer 2020 and came into effect once demolition began on the East Site. Accordingly no further stopping-up orders are required.

12.7 In summary the Council is satisfied that there are no physical or legal impediments to the Scheme proceeding and there is at the very least a reasonable prospect it will proceed to completion if the Order is made and confirmed.

13. STEPS TAKEN BY THE COUNCIL TO NEGOTIATE FOR THE ACQUISITION OF LAND

13.1 EC has been acting in collaboration with the Council in making offers to third parties, with the common aim of acquiring the necessary land interests by agreement wherever practicable and reducing the areas required to be compulsorily acquired. Officers have been kept regularly appraised of negotiations by EC. The Council is satisfied that genuine and reasonable attempts to acquire interests by agreement have been made. Credible and reasonable offers have been made by EC to acquire land interests over several years. The extent of agreements already reached with various other parties over several years is further evidence that EC has been acting reasonably.

13.2 EC will be obliged to continue to negotiate for acquisitions by agreement under the CPO indemnity agreement. The Council will also take an active role, in collaboration with EC, in making offers and to facilitate negotiations. The making of a CPO will assist in these negotiations as it will make all parties aware of the seriousness of the Council's intentions, as is recognised in the Guidance. The Order is being used as a

last resort to underpin the remaining negotiations that need to be concluded to enable the full implementation and completion of the Scheme.

13.3 Details of the discussions to date with the remaining parties were included in the Cabinet papers of December 2022 (including Appendix F thereof), which are available as part of the documentation associated with the Order. By way of summary, discussions with the Arch Co for its long leasehold interest were taking place for some considerable time before the previous Cabinet meeting of April 2020. Following the April 2020 resolution, EC has been seeking to agree commercial terms with the Arch Co and Council officers have been kept informed as to the negotiations. The Council's surveyor also wrote to Arch Co on 28 August 2020 to make plain the Council's intentions and to stress the importance of the Scheme to the Council. Council officers also met with Arch Co representatives in May 2022 to again impress on Arch Co the importance of the Scheme and to try to encourage Arch Co to reach agreement with EC. The offers put to Arch Co include a range of options which include, but went beyond, simply acquiring what is included in the CPO. Despite reasonable offers having been made by EC, the parties remain apart in their valuations.

13.4 Heads of terms were agreed by EC and DistriAndina for the acquisition of its interest as far back as summer 2020, and documentation settled to acquire that interest at an agreed price, but the documents were not signed. Discussions are ongoing with DistriAndina for them to take a new unit within the East Site of the Scheme.

13.5 A reasonable offer to acquire Beset’s occupational tenancy interest in 7 Farrell Court was made in February 2021 but was rejected by the tenant, due to the difficulty in finding another site which meets its requirements. The Council and EC believe that the current proposal of relocating Beset and their occupiers to 4 and 5 Farrell Court solves that issue. Discussions are ongoing with Beset in this respect.

13.6 The Council is also satisfied that positive attempts have been (and are being) made by EC to agree matters with Corsica Studios as to (previously) the sound insulation works and, more recently, for their relocation to the arches to the north of the railway station. Again, those discussions are ongoing.

13.7 EC remains in discussions with the Tabernacle to acquire the requisite new rights over the Tabernacle site for some time, but no agreement has yet been reached.

13.8 EC is currently in discussions with Network Rail to acquire the requisite new rights envisaged by the Order to facilitate the works to the railway arch premises and to complete the pedestrian access to the railway station, and to acquire the tiny fragment of land (parcel 37). EC has also requested that TfL grant a crane oversail licence in respect of the West Site.

13.9 Accordingly, the making of the Order and its confirmation by the Secretary of State is necessary to acquire the outstanding land interests and rights for the Scheme.

14. DETAILS OF ANY RELATED ORDERS ETC. WHICH MAY REQUIRE A CO-ORDINATED DECISION BY THE CONFIRMING MINISTER

14.1 No such orders are required.

15. EXTENT OF THE SCHEME TO BE DISREGARDED FOR THE PURPOSES OF ASSESSING COMPENSATION IN THE "NO SCHEME WORLD"

15.1 The Scheme is described above. It covers the Order Land, the Shopping Centre Site, 26-32 New Kent Road, the LCC Site, and part of Elephant Road and the railway station where a proposed heating network pipe will be located. The extent of the Scheme Land is shown on the plan at Annex 2.

16. OVERALL JUSTIFICATION - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST FOR THE ORDER

16.1 The need for comprehensive redevelopment of the Order Land and the Scheme Land is acknowledged and supported in the adopted national, London and local planning policy framework. Delivery of the Scheme would fulfil key planning policy objectives and transform Elephant and Castle town centre and its retail and housing offer. It would contribute very significantly to the improvement of the economic, social and environmental well-being of the area as outlined above. Given that work under the July 2021 Permission has already begun, there are good prospects that the Scheme will proceed further. There are no likely realistic alternatives to compulsory purchase to achieve the purposes of the Order.

16.2 It is genuinely a matter of last resort that the Council and EC are pursuing compulsory acquisition. Whilst the Scheme is already underway, through the beginning of work on the Shopping Centre Site and 26-32 New Kent Road, that has occurred because EC has been able to acquire titles on New Kent Road and third party leases in the Shopping Centre by agreement. The Order is needed to enable the Scheme to continue and be completed. The Order is essential to the successful implementation and conclusion of the Scheme. The fact that development has commenced means it is all the more important that the Order is made and confirmed so as to complete the Scheme, and shows that the Council and EC are genuinely committed to the Scheme. EC would not have begun the works if it was not intending to complete the Scheme. Many of the numerous benefits will not be realised if the Scheme cannot continue and be completed as envisaged, so the Order is necessary to unlock those benefits.

16.3 As vacant possession of the Shopping Centre and the New Kent Road properties were obtained by agreement, confirming the Order will not have many of the potential adverse impacts that may otherwise have been caused, as the Council had originally envisaged. And in any event, the impacts of obtaining vacant possession of those areas by agreement is being satisfactorily mitigated. In other words, there is less private loss to be outweighed by the numerous public benefits than may have otherwise been the case.

16.4 The impacts on the human rights of those likely to be affected by the Order and under the Equality Act 2010 have been considered and the Council concludes that the considerable public benefits to be derived from the Order outweigh the harm caused

by interference with the human and other rights of those likely to be affected by compulsory purchase.

16.5 A full assessment of the justification for the Order, including analysis of the key statutory tests and the requirements of the Guidance, was contained in Appendix J to the Council's Cabinet report of 6 December 2022 and in the addendum report to Cabinet, and is reproduced at **Annex 5**.

16.6 In the Council's view, there is a compelling case in the public interest to justify making the Order.

17. FURTHER INFORMATION FOR PERSONS AFFECTED BY THE ORDER

17.1 Those parties affected by the Order who wish to discuss matters with a representative of the Council should contact:

Jon Abbott, Head of Sustainable Growth
(general queries)
(Tel: 020 7525 4902)
E-mail: jon.abbott@southwark.gov.uk

OR

Katharine Reed, Solicitor
(legal queries)
(Tel: 020 7525 3206)

E-mail: katharine.reed@southwark.gov.uk

Both at the Council.

17.2 Owners and tenants of properties affected by the Order who wish to negotiate a sale and/or relocation or discuss matters of compensation should contact:

Richard Palmer
Development Director
Delancey
Lansdowne House
Berkeley Square
London W1J 6ER

E-mail: Richard.Palmer@delancey.com

Tel: 020 7448 1482

OR

Jon Abbott at the Council (as above).

18. INSPECTION OF THE ORDER AND ORDER DOCUMENTS

18.1 A copy of the Order and Order Map (and accompanying location plan) may be seen at:

18.1.1 the Council's offices at 160 Tooley Street, Southwark, London SE1 2QH on Monday to Friday between 9am to 4pm; and

18.1.2 Southwark Heritage Centre and Walworth Library, 145-147 Walworth Road, London SE17 1RW on Monday to Friday between 10am and 8pm, on Saturday between 10am and 5pm, and on Sunday between 12pm and 4pm; and

18.1.3 on the Order website at https://gateleyhamer-pi.com/en-gb/elephant-and-castle

19. FURTHER REFERENCE DOCUMENTS TO BE REFERRED TO OR PUT IN EVIDENCE IN THE EVENT OF AN INQUIRY

19.1 Documents referred to below may be inspected at the Council's offices at 160 Tooley Street at the same times as referred to in paragraph 18.1.1 above. They are also available to view on the Order website as referred to in paragraph 18.1.3 above.

19.2 List of Documents

19.2.1 The Order including the Order Schedule

19.2.2 Order Map and Location Plan

19.2.3 London Borough of Southwark Cabinet Report for 6 December 2022 Cabinet meeting

19.2.4 Addendum report for London Borough of Southwark Cabinet meeting of 6 December 2022

19.2.5 Minutes from Cabinet meeting of 6 December 2022

19.2.6 London Borough of Southwark Equality Act 2010 impact assessment for the Order, January 2023

19.2.7 High level viability review by Avison Young for the Council, November 2022

19.2.8 CPO Indemnity Agreement (redacted) dated 1 February 2023

19.2.9 Funding Intentions Letter (redacted) dated 10 November 2022

19.2.10 Section 226 Town and Country Planning Act 1990

19.2.11 The Acquisition of Land Act 1981

19.2.12 Section 13 Local Government (Miscellaneous Provisions) Act 1976

19.2.13 Compulsory Purchase Act 1965

19.2.14 Compulsory Purchase (Inquiries Procedure) Rules 2007

19.2.15 MHCLG Guidance: Compulsory Purchase Process and the Crichel Down Rules (July 2019)

19.2.16 Planning permission 16/AP/4458 dated 10 January 2019 and associated application documents

19.2.17 Listed building consent 16/AP/4525 dated 10 January 2019 and associated application documents

19.2.18 Section 73 minor material amendments planning permission 20/AP/3675 dated 12 March 2021 and associated application documents

19.2.19 Non-material amendment approval 21/AP/1064 dated 8 April 2021

19.2.20 Section 73 minor material amendments planning permission 21/AP/1104 dated 29 July 2021 and associated application documents

19.2.21 Non-material amendment approval 21/AP/3848 dated 2 December 2021

19.2.22 Non-material amendment approval 21/AP/4180 dated 4 February 2022

19.2.23 Non-material amendment approval 22/AP/0109 dated 4 February 2022

19.2.24 Non-material amendment approval 22/AP/1090 dated 1 June 2022

19.2.25 Section 106 Agreement dated 10 January 2019 and related deeds of variation

19.2.26 Discharge of obligation to notify the Council of "implementation" works under permission 21/AP/1104 pursuant to section 106 agreement 28 June 2022

19.2.27 Planning permission 21/AP/4628 dated 10 June 2022 for heating network pipe and approved drawings

19.2.28 Planning permission 20/AP/0681 dated 29 July 2020 for underground link tunnel works and associated application documents

19.2.29 London Plan 2021

19.2.30 Southwark Plan 2022

19.2.31 Elephant and Castle Opportunity Area Supplementary Planning Document (2012)

19.2.32 National Planning Policy Framework

19.2.33 London Borough of Southwark Cabinet Reports, for 7 April 2020 Cabinet meeting

19.2.34 Minutes from Cabinet Meeting of 7 April 2020

Dated 2 February 2023

ANNEX 1

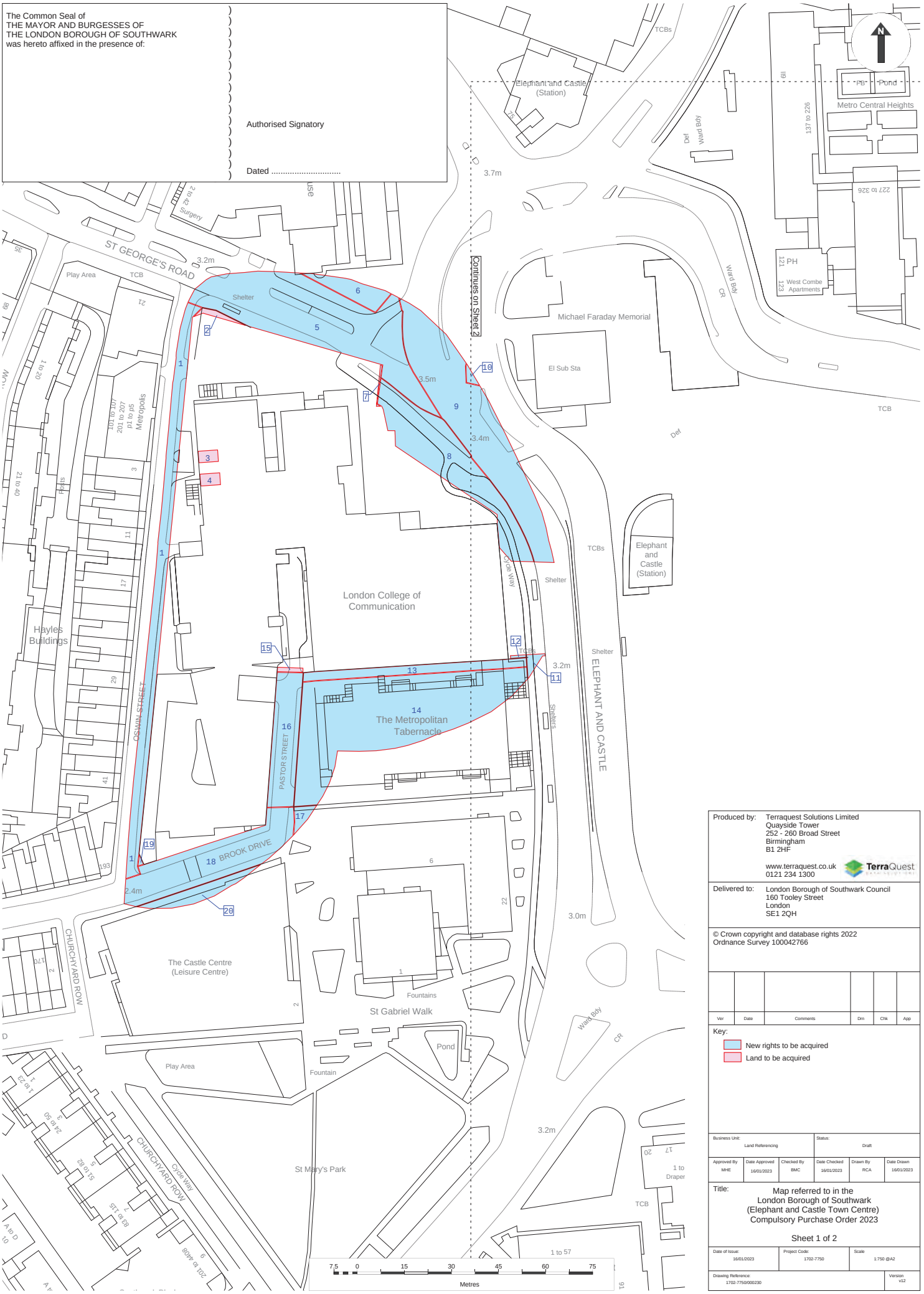
CPO MAP AND LOCATION PLAN

Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023

The Common Seal of
THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF SOUTHWARK
was hereto affixed in the presence of:

Authorised Signatory

Dated .....



Produced by: Terraquest Solutions Limited
Quayside Tower
252 - 260 Broad Street
Birmingham
B1 2HF

www.terraquest.co.uk
0121 234 1300

Delivered to: London Borough of Southwark Council
160 Tooley Street
London
SE1 2QH

Ver	Date	Comments	Drn	Chk	App

Key:
- New rights to be acquired
- Land to be acquired

Business Unit:	Status:
Land Referencing	Draft

Approved By	Date Approved	Checked By	Date Checked	Drawn By	Date Drawn
MHE	16/01/2023	BMC	16/01/2023	RCA	16/01/2023

Title: Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023

Sheet 1 of 2

Date of Issue:	Project Code:	Scale
16/01/2023	1702-7750	1:750 @A2

Drawing Reference:	Version
1702-7750/000230	v12

Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023

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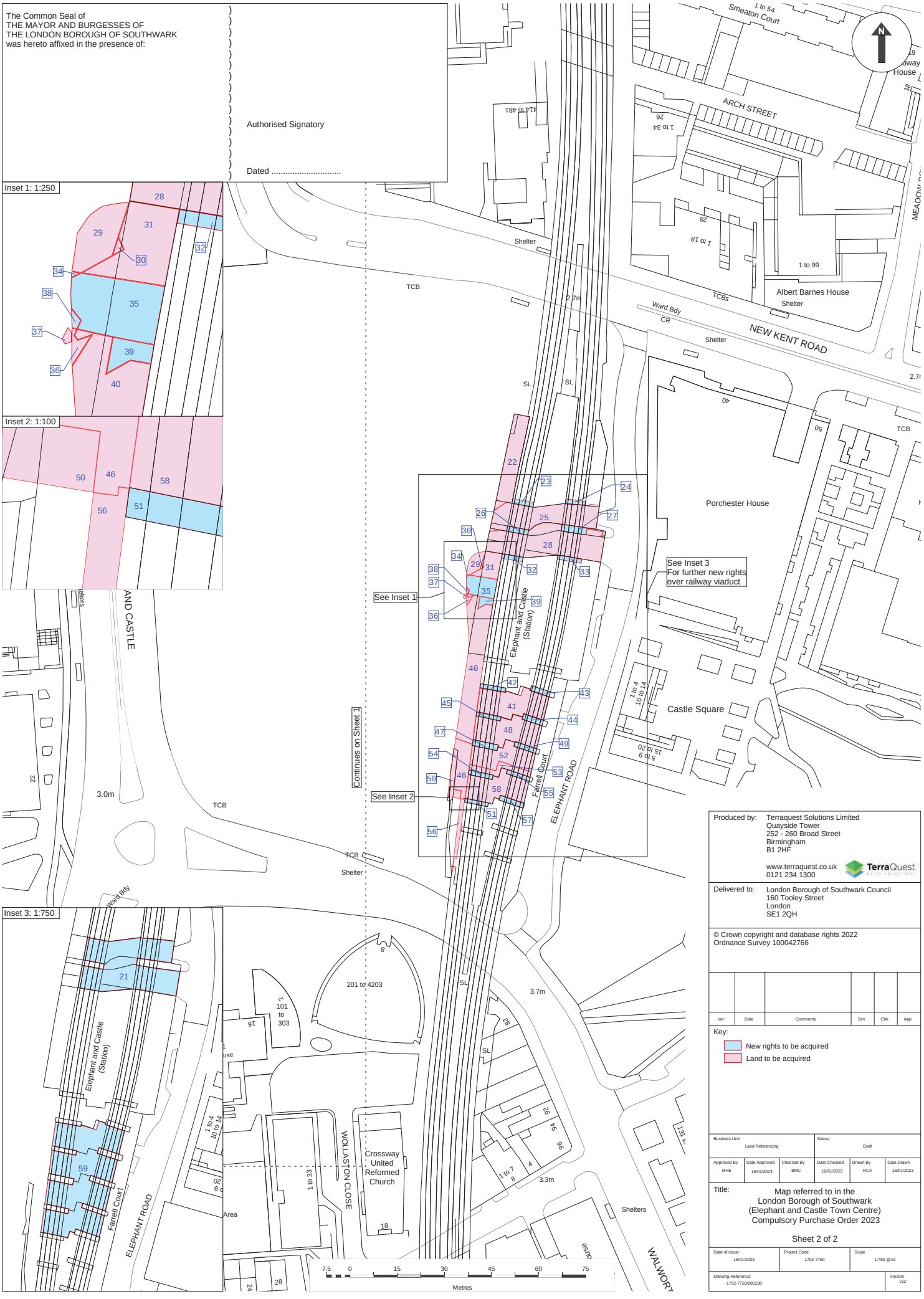
Authorised Signatory

Dated .....



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MHE	16/01/2023	BMC	16/01/2023	RCA	16/01/2023

Title: Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023

Sheet 2 of 2

Date of Issue:	Project Code:	Scale
16/01/2023	1702-7750	1:750 @A2

Drawing Reference:	Version
1702-7750/000230	v12

Location Plan for the map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023

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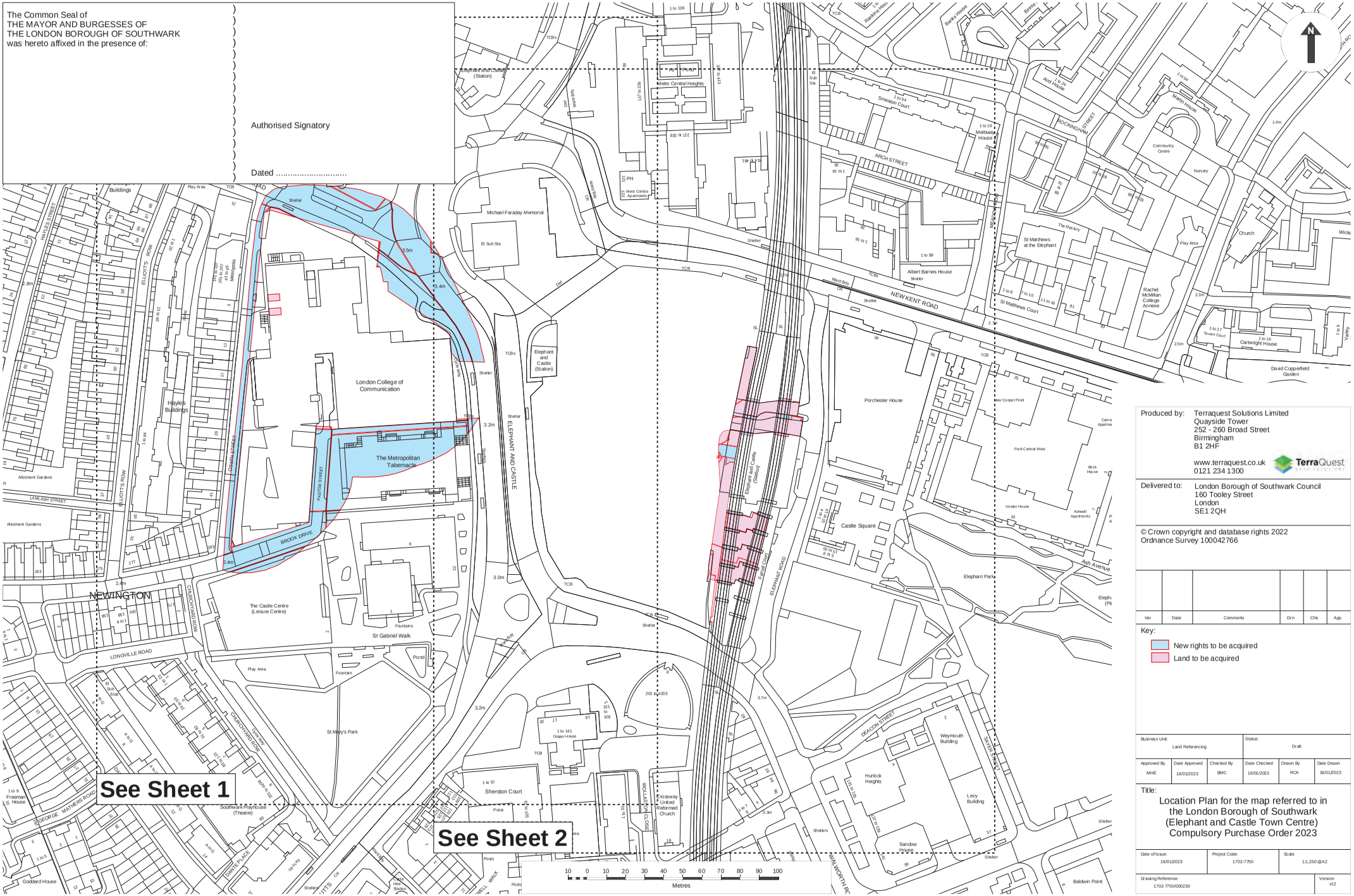
Dated .....



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Ver	Date	Comments	Drn	Chk	App

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- Land to be acquired

Business Unit:			Status:		
Land Referencing			Draft		
Approved By	Date Approved	Checked By	Date Checked	Drawn By	Date Drawn
MHE	16/01/2023	BMC	16/01/2023	RCA	16/01/2023

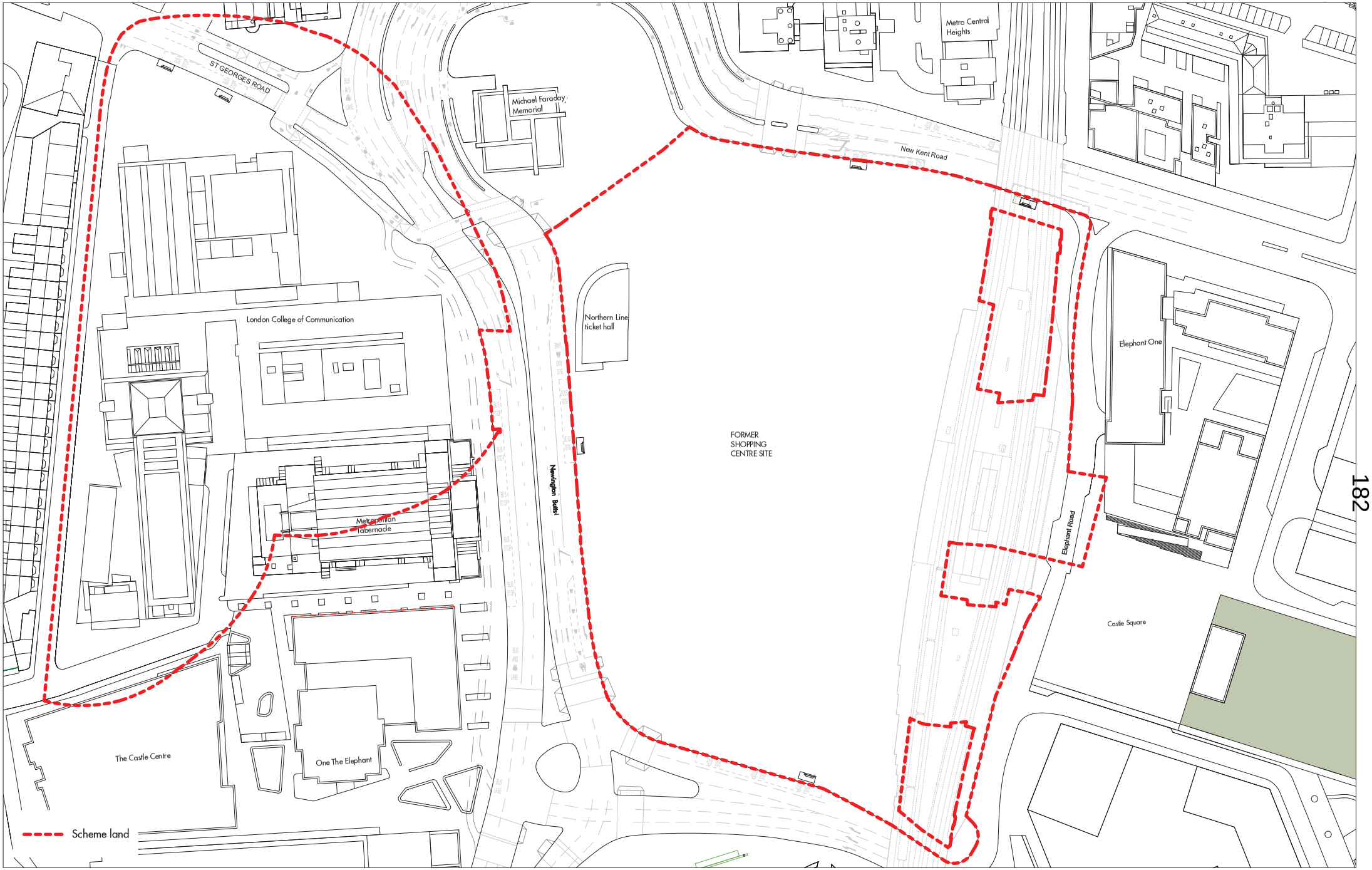
Title:
Location Plan for the map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023

Date of Issue:	Project Code:	Scale
16/01/2023	1702-7750	1:1,250 @A2

Drawing Reference:	Version
1702-7750/000230	v12

ANNEX 2

PLAN OF THE SCHEME LAND



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REV	DATE	DESCRIPTION	CKD
P1	12.07.22	ISSUED FOR INFORMATION	EJ
P2	10.10.22	ISSUED FOR INFORMATION	EJM

Do not scale from this drawing. Use figured dimensions only. Figured dimensions are in millimetres. All levels are in metres. All dimensions and levels shall be verified on site before proceeding with works. Detailed site survey to be carried out to verify positions and level relationships with site features and entrance survey. The Architect must be notified of any discrepancy.
Where building components are described in the specification as Descriptive Specification - (Contractor Design) elements shown on this drawing pertaining to those components are to be read as "Issued for Design Intent" only.
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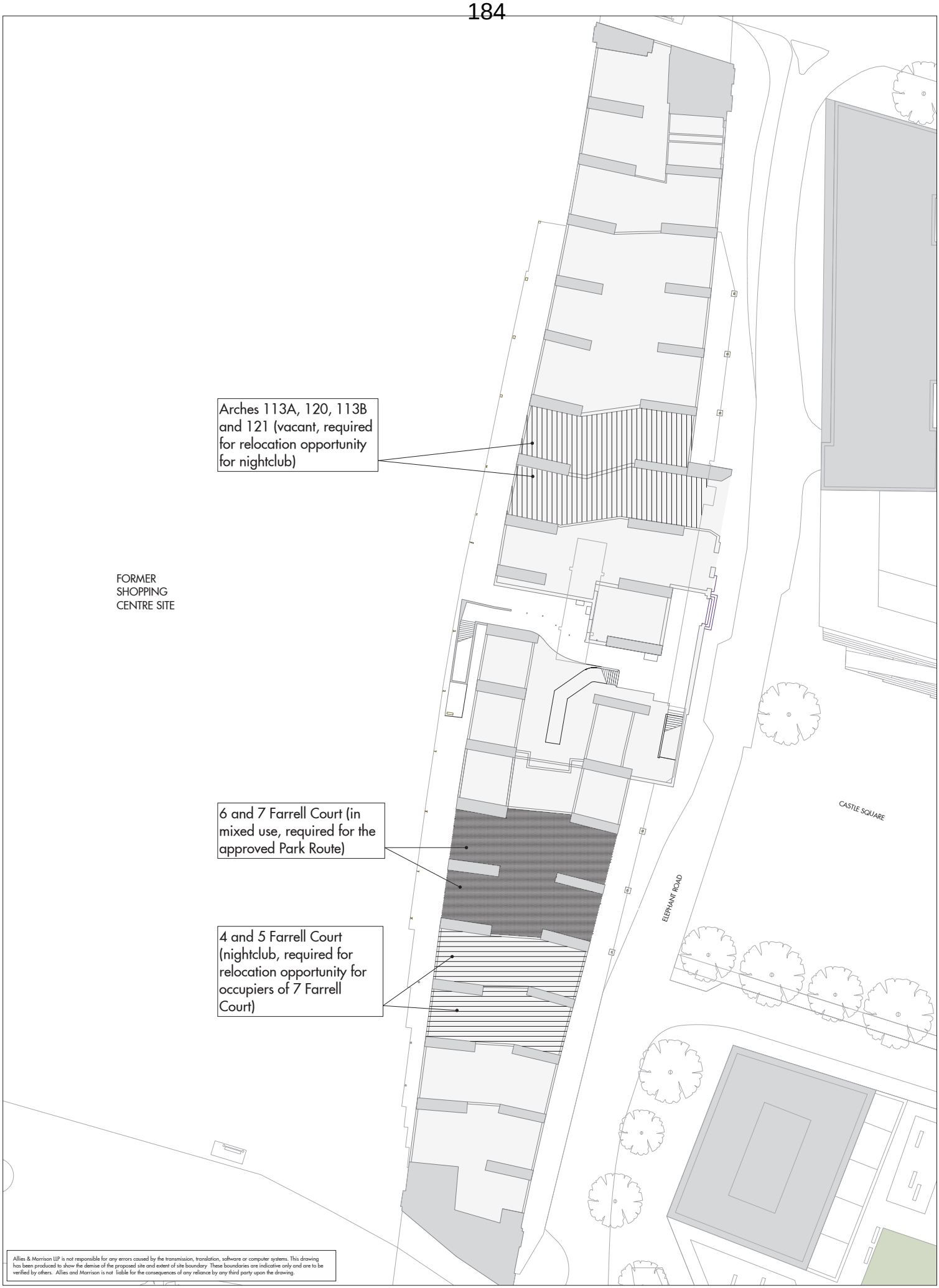
ELEPHANT AND CASTLE : TOWN CENTRE
Elephant & Castle Town Centre Redevelopment - Current
SCHEME LAND
ETC-AAM-EX-DR-A-100024

P2
Revision

SCALE 1 : 500 @A1
SCALE: 1 : XXX @A3

ANNEX 3

ARCH UNITS INDICATIVE PLAN



Do not scale from this drawing. Use figured dimensions only. Figured dimensions are in millimetres. All levels are in metres. All dimensions and levels shall be verified on site before proceeding with works. Detailed site survey to be carried out to verify positions and level relationships with site features and entrance survey. The Architect must be notified of any discrepancy.
Where building components are described in the specification as Descriptive Specification - (Contractor Design) elements shown on this drawing pertaining to those components are to be read as "Issued for Design Intent" only.
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REV	DATE	DESCRIPTION	CKD
P1	12.07.22	ISSUED FOR INFORMATION	EJ
P2	10.10.22	ISSUED FOR INFORMATION	EM
P3	07.11.22	ISSUED FOR INFORMATION	EM

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A&M JOB No: 935_06

ELEPHANT AND CASTLE : TOWN CENTRE
ELEPHANT & CASTLE RAILWAY ARCHES
INDICATIVE LOCATION PLAN
ETC-AAM-EX-ZZ-DR-A-100023

P3
Revision

SCALE 1 : 250 @A1
SCALE: 1 : 500 @A3

ANNEX 4

APPENDIX I TO CABINET REPORT DECEMBER 2022

APPENDIX I

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

ADVERSE EFFECTS ARISING FROM PROPOSED CPO

1. The use of CPO powers in relation to the two railway arches to the north of the railway station to which EC already has long leasehold title, so that control can be achieved to turn those two arches into a relocation premises for Corsica Studios and retail kiosk units, will deprive Arch Co of its long leasehold title to those arches. Similarly the acquisition by the Council under a CPO of 4 and 5 Farrell Court, and 6 and 7 Farrell Court, and the corridor of land to the immediate west of the railway viaduct, will deprive Arch Co of its long leasehold title to those premises. Arch Co is a large, commercial concern with many railway arch units across the country. It is not considered that the acquisition of these areas will cause serious detriment to it.

2. The occupiers of 6 and 7 Farrell Court will be displaced if their interests were compulsorily acquired to facilitate the creation of the Park Route. In a worst case scenario, they might cease trading as a result of an acquisition by CPO. However, the Council's and EC's intention is that 4 and 5 Farrell Court will be acquired and developed as a relocation opportunity within the Scheme for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them. The tenant of 6 Farrell Court, DistriAndina, is also being offered the opportunity to relocate within the Scheme, to a new unit on the East Site. Again, it is envisaged this would mitigate the adverse impact of the CPO on them.

3. The tenant of 4 and 5 Farrell Court, Corsica Studios, will be displaced if its interest was compulsorily acquired and in a worst case scenario might cease trading as a result of the CPO. However, the Council and EC's intention is that they should be offered the opportunity to relocate to the arches to the north of the railway station, which would be converted into a new space for them, thus safeguarding the future of this cultural electronic and dance music club in the locality.

4. Any party that has their interest acquired pursuant to a CPO is entitled to statutory compensation for the loss of their interest. Where only part of the land is taken, there is the opportunity to claim compensation for severance or injurious affection in respect of the retained part. Furthermore, and independent of statutory compensation, the section 106 agreement has a relocation fund for eligible local independent traders on the East Site.

5. The CPO would also see new rights created over the land shown shaded blue on the plan at Appendix A. The new rights of access to carry out works to the sides and undersides of the viaduct in connection with the creation of the walk-through in what is currently 6 and 7 Farrell Court (including removing the existing shopfronts) would apply against Network Rail but are considered to be relatively minor in nature. No works would be carried out which would affect the operation of the railway. The same is true of the new rights that are

sought in respect of (i) a right of way to/from the East Site over Network Rail's adjacent land to the railway station (and related right to pave hand maintain that area), (ii) the sides and undersides of the viaduct arches currently owned long leasehold by EC, so that they can be brought into beneficial use as a nightclub (including the right to install frontage and rear elevations) and (iii) the sides and undersides of the arches enclosing 4 and 5 Farrell Court for physical works associated with the change in use of those units to accommodate the tenants and occupiers of 6 and 7 Farrell Court. A right is also sought to pave under an external staircase adjacent to the railway station and to maintain such paving.

6. The rights being sought over the Tabernacle will result in some minor inconvenience to the Tabernacle for a relatively short period, as explained elsewhere in the report, but the Tabernacle will remain open to its congregation throughout the duration of any such works and disabled access will be maintained at all times whilst the Tabernacle is being used. It is considered that such an adverse effect (if mitigation cannot fully remove it) is minor.

7. The acquisition of crane oversail rights over various pieces of land is considered to be relatively minor in effect.

8. The owner of any land interest affected by the new rights will be entitled to statutory compensation in respect of those new rights.

9. As explained in Appendix D, in accordance with the Cabinet resolution of April 2020, the Council has already conducted a process which overrides rights of light and other rights held by third parties in respect of all areas of the East and West Site on which new buildings will be erected. This removes the ability of eg rights of light holders to obtain an injunction or to hold the developer to ransom, with the rights holders entitled to compensation on a diminution in value basis. It is not considered that there are any such rights in respect of the areas that will now be subject to acquisition under the CPO which would be problematic, but any such rights as exist will be overridden by way of the implementation of the CPO in any event.

10. The tall buildings proposed as part of the Scheme will result in adverse day light and sunlight effects on a number of nearby properties, including residential properties, particularly those in Oswin Street, Hayles Buildings and Metro Central Heights. The tall buildings on the East Site can be constructed without the CPO but the CPO is required to build those on the West Site. Cabinet is referred to the Planning Committee report in the background papers - the Planning Committee considered light amenity and overshadowing in detail as part of the planning application process and it was considered that those adverse effects were outweighed by the benefits of the Scheme.

11. As set out in the Planning Committee report, there would be harm to the setting of the Metropolitan Tabernacle. Cabinet will note, though, that notwithstanding the substantial weight given to that harm, the Planning

Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme.

12. Without mitigation, there are likely to be some adverse equality impacts as discussed in detail in Appendix K of this report in respect of the tenants and occupiers of the affected railway arches and the Tabernacle. However, as explained in Appendix K, mitigation is proposed by way of the proposed relocations for the affected arch tenants and measures will be taken to mitigate the effects of construction on the Tabernacle, including maintenance of disabled access. It is considered all that can reasonably expected to be done to mitigate impacts on these parties has been and is continuing to be done.

ANNEX 5

APPENDIX J TO CABINET REPORT AND ADDENDUM REPORT DECEMBER 2022

APPENDIX J

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.

2. Section 226(1)(a) gives the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land". The making of a CPO will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land covered by the CPO. The Scheme has already begun on part of the East Site, adjacent to the CPO land, and EC has shown through all of its progress its continued intention to proceed with the Scheme so as to complete the East Site redevelopment and then carry out the West redevelopment if CPO powers are utilised. Without the use of the CPO powers, it will not be possible to deliver key areas of public realm on the East Site, nor to complete the East Site redevelopment of the Scheme, which will mean that EC could not comply with the approved phasing plan under the July 2021 planning permission to move onto the West Site redevelopment. Moreover, as explained in the main body of the report, the title and new rights sought in respect of the West Site are necessary to enable demolition and construction in respect of the West Site. Also as explained in the main body of the report, the acquisition of title to certain railway arch premises and related new rights over the viaduct structure is required to deliver the new home for Corsica Studios and the relocation opportunity for the tenant and occupiers of 7 Farrell Court. So the CPO will facilitate the carrying out of redevelopment on, or in relation to, the land included in the CPO and thus the test in section 226(1)(a) is satisfied.

3. In addition to section 226(1)(a), section 226(1A) applies, so the Council must not exercise the power under section 226(1)(a) unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the environmental well-being of their area. In this case, the Council thinks the development, re-development or improvement is likely to contribute to the improvement of all three well-being objects.

4. The Scheme is likely to result in *economic* well-being improvements, including a material increase in the quantity and quality of town centre uses, including providing additional and better quality retail, leisure, education and office provision, consistent with the long term strategy to regenerate the Town Centre and enhance its vitality and viability. The Scheme will create enhanced linkages, and assist in the regeneration of the wider centre. The Scheme includes the provision of affordable retail and office floorspace. The education facility will secure LCC's long-term future in the area.

5. The Scheme will create 1,230 construction jobs per year over the 10 year build programme. The completed Scheme will generate up to 2,085 gross new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward, an increase of over 600 when compared with the estimated 1,418 full time equivalent jobs on the East and West Sites before the development commenced. Measures to secure jobs for unemployed borough residents are contained in the section 106 agreement and will deliver significant economic benefits to the local population.

6. The Scheme will secure key new transport infrastructure, including a new station entrance, create enhanced linkages between existing transport provision, and provide a comprehensive package of measures to enhance the connectivity of the new town centre. These measures will make the town centre more competitive, better able to retain and attract trade from within its catchment, including meeting the needs of the additional local residents, workers and students, and encourage the use of sustainable means of transport.

7. As regards the fitting out and opening of the underground station box, the amendments made to the section 106 agreement due to TfL's funding position means that there is an increased chance (as compared to the position in April 2020) that the new station box will not be fitted out and come into operation, but the likelihood of the new station being fitted out and becoming operational at a reasonable point in the future is still high. Even if reduced weight was given to the new station box due to the TfL funding uncertainty, the CPO would still be justified for all the other economic, social and environmental well-being improvements that the Scheme would bring.

8. The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally. It is estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are offered. The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and at least £11,230,308 Southwark CIL.

9. The Scheme will deliver significant *social* well-being improvements. These include the creation of a more balanced mix of uses, creating quality homes, offices, education and community facilities, including the provision of affordable retail, workspace and homes. The Scheme includes the provision of cultural and community facilities, including new and enhanced public realm and public toilets which will benefit all sections of the community. It will include a new home for Corsica Studios, thus giving the opportunity to safeguard the longer term future of this cultural electronic and dance music club on Elephant Road. It will also include relocation premises for the small, local businesses which will be displaced by the creation of the Park Route.

10. The Scheme will also deliver significant *environmental* well-being improvements. In addition to providing well designed buildings and well connected spaces, the Scheme will contribute to securing more sustainable travel patterns, by better serving the needs of current and future residents, workers and students. The Scheme includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements, including additional landscaping and tree planting. The Scheme also includes a new home for Corsica Studios which will have better sound insulation than the current premises, thus alleviating noise amenity concerns.

11. Notwithstanding that there will be some negative effects to those affected by the CPO, as referred to in this report, and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.

12. The specific economic, social and environmental well-being improvements that the CPO will deliver directly are in themselves sufficient to satisfy section 226(1A) of the 1990 Act. Firstly, without the CPO, the Park Route as shown in the planning permission approved drawings cannot be delivered. It has been a key aspect of the Council's planning vision for a long time that the redeveloped Shopping Centre site should be opened up for pedestrians to what is now Elephant Park, thus facilitating the connection of these two key sites. EC is under an obligation in the section 106 agreement to use reasonable endeavours to open the Park Route prior to the East Site opening. Although the section 106 agreement allows for an alternative route for the Park Route through one of the arches that EC has some long leasehold to, or such other alternative route that the Council may approve, the July 2021 planning permission only shows the route through 6 and 7 Farrell Court, so that is the approved route under the permission. That route was chosen for the planning application, after analysis of likely pedestrian footfalls, and what would be the optimum route through the East Site because it forms a natural pedestrian "desire line", as it aligns with a boulevard from Elephant Park and so represents the optimum connection to Elephant Park and Lendlease's new redevelopment around it. From the chosen Park Route, pedestrians will be able to continue west through the new town centre to Elephant & Castle highway with its bus services (and Brook Drive beyond), or to move northwest to the new Underground station. This route is also close to Castle Square and Walworth Road. By contrast the arch EC has some long leasehold title to is situated further away from Walworth Road and Elephant Park and so would be inferior as a direct pedestrian link to those areas. In addition, it is located close to (and opposite) the proposed new building for the LCC, Building E1, and for pedestrians to emerge opposite Building E1 and close to the railway station, when considered along with users of the rail station, risked creating a pinchpoint. Building E1 would likely have had to have been smaller to accommodate additional pedestrian circulation space, losing mass from its south eastern corner. Reduced footprint of that building would be problematic, due to UAL's requirements for the new educational facility to achieve critical mass in order to retain the LCC at Elephant & Castle. Shifting

Building E1 to the west would have impacted on the Station Route, making it too narrow and affecting the clear and permeable route through the East Site to the Elephant & Castle peninsula.

13. Secondly, areas of new public realm adjacent to the railway viaduct are also at risk of not being delivered without the CPO, including the ability to complete the Station Route from the new Underground station box to the railway station for pedestrians, via the new right sought in that respect. Again, this is a key aspect of the East Site.

14. Thirdly, the use of the CPO powers will facilitate the only practical solution for the retention of the electronic and dance music use in this location, as explained in more detail in the main body of the report.

15. Fourthly, the use of the CPO powers will facilitate the redevelopment of 4 and 5 Farrell Court to provide a suitable and immediately adjacent relocation opportunity for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them.

16. Fifthly, without the use of CPO powers there is now a significant risk that the East Site will not be completed. The approved phasing plan under condition 3 of the planning permission requires the East Site to be completed prior to the West Site redevelopment taking place, save for the redevelopment of the current LUL Underground station, which will only be redeveloped after the new station box has been opened (so as to ensure continuity of Underground provision). So the completion of these areas of the East Site is necessary for the West Site to proceed in accordance with the approved phasing, thus the CPO unlocks all the benefits associated with the West Site, including 498 residential units (165 of which are to be affordable), new retail floorspace (including affordable retail) and a new cultural venue.

17. Sixthly, the CPO elements being sought in relation to the West Site itself are all necessary for the West Site redevelopment to proceed, as explained in the main body of the report.

18. The CPO is therefore essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring.

19. Accordingly the statutory test in 226(1A) is met.

20. The key paragraphs from the Guidance are now considered.

Acquiring authorities should use compulsory purchase powers where it is expedient to do so

21. Given the conclusions in relation to the tests under section 226(1)(a) and section 226(1A) above, it is clearly expedient to make a CPO to facilitate this very important redevelopment. For the reasons explained above, the CPO is essential to the successful implementation and completion of the Scheme. The only change as to expediency (as compared to April 2020) is the fact that

redevelopment has begun, which makes it even more expedient than was previously the case that the CPO is made so that the Scheme can continue and be completed.

However, a CPO should only be made where there is a compelling case in the public interest

22. The Scheme will transform the town centre. Although there are some adverse effects, as referred to elsewhere in this report, it is considered that these are relatively minor and in any event need to be weighed against the very significant and numerous public benefits that will accrue from the Scheme. This is considered to be the case even in relation to the specific benefits that would be directly delivered through the use of the CPO powers (as detailed above). The CPO is necessary to unlock these benefits of the Scheme. The public benefits arising from the use of the CPO powers amount to sufficiently compelling reasons for powers to be sought and outweigh the loss and any overriding of property interests to individuals and businesses arising from the CPO. As vacant possession of most of the East Site was obtained by agreement, confirming the CPO will not have many of the potentially adverse impacts it could have caused as originally envisaged in April 2020, so there is now less private loss to be outweighed by the public benefits. There is an increased need for the redevelopment to proceed and be completed given that the large majority of the East Site has been demolished and cleared and the early stages of construction are underway. So, the case for a CPO is now more compelling than ever.

The acquiring authority will be expected to demonstrate that it has made reasonable offers to acquire land and rights by agreement

23. It is considered that this part of the Guidance has been satisfied to date and will continue to be so. EC, acting in collaboration with Council officers, has been making reasonable efforts to acquire outstanding land interests and new rights by agreement over a significant period of time. Council officers have been kept regularly appraised of, and have been consulted in respect of, the ongoing negotiations. The Council's officers have also been directly involved with discussions with Arch Co, seeking agreement. This approach has generally worked well, as evidenced by the fact that EC has concluded various acquisitions and agreements with third parties already, thus avoiding the compulsory acquisition of various interests, but as explained below a CPO is now required to give impetus to negotiations with the remaining affected parties. EC is continuing its attempts to acquire by agreement and will be obliged to continue to do so under the CPO indemnity agreement. The Council will take an active role, in collaboration with EC, to take those negotiations forward and in making offers to the remaining parties.

Compulsory purchase is intended as a last resort; but it may be sensible for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal proceedings to mitigate loss of valuable time and to encourage those whose land is affected to enter into meaningful negotiations

24. The making of a CPO will assist in the remaining negotiations as it will make all parties aware of the seriousness of the Council's intentions, as is recognised in the Guidance. The CPO is being used as a genuine last resort to ensure the land assembly needed to continue and complete the Scheme. The CPO will underpin the remaining negotiations that need to be concluded to enable the Scheme. The use of CPO as a last resort is evidenced by the considerable reduction in land that has been included in the CPO as compared to that in April 2020 (because much of the necessary land has been acquired by agreement). The fact that development has commenced makes it all the more important to have the CPO to complete the development. Delaying the CPO risks being unable to complete the Scheme in accordance with the development programme, or at all.

When making … [a CPO] acquiring authorities … should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.

25. The Council's purpose in making the CPO is to facilitate the development, redevelopment or improvement on or in relation to the CPO land, namely the Scheme. The Scheme represents a vital, comprehensive redevelopment of the town centre. The very considerable benefits that will arise from the Scheme have been summarised elsewhere in this report. These public benefits outweigh and justify interference with, human rights and such interference is proportionate to the large level of public benefits that would arise from the Scheme. The purpose to be achieved by the CPO justifies interference with human rights even if the interference was a lot wider or more severe than considered in this report, given the benefits of the Scheme. The public benefits of the Scheme outweigh the private losses. This is the case even if the specific benefits that would be directly delivered by the CPO are considered in isolation and weighed against the interference with the human rights of the affected parties.

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

26. Please refer to paragraph 23 above as to offers to date and the intention for the Council and EC to actively pursue further negotiation. The Council has sought to engage constructively with those affected, as evidenced by Council officers addressing affected traders as to the proposals, the appointment of Tree Shepherd to assist affected parties with relocation advice and the other measures in the agreed relocation strategy under the section 106 agreement. The Council and EC are also seeking to constructively work towards 4 and 5 Farrell Court being redeveloped as a relocation opportunity for displaced occupiers of 7 Farrell Court as part of the Scheme, and to facilitate the relocation of Corsica Studios within the Scheme into a new home in Arches 113A/120 and 113B/121.

The acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time… [the acquiring

authority should] have a clear idea of how it intends to use the land which it is proposing to acquire and [should be able to] show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.

27. The Council plans to use the CPO acquisitions and new rights to facilitate the carrying out of the Scheme to enable the Scheme to continue and be completed. The powers need to be sought now, otherwise the East Site will not be able to be completed in accordance with the development programme, or at all, and thus the West Site redevelopment could not begin in accordance with the approved phasing. The Council and EC, with the best of intentions, have sought to be patient in allowing time for private treaty negotiations to bear fruit but the CPO is needed to ensure the Scheme can continue and be completed. Resources are dealt with below.

The acquiring authority should address (a) sources of funding … available for both acquiring the land and implementing [the Scheme] … and (b) the timing of that funding - funding should generally be available now or early in the process … evidence should be … provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

28. The Council will be entering into a CPO indemnity agreement with EC (backed by a guarantee from Get Living Plc) whereby the Council will receive a complete indemnity in respect of all compensation to be paid pursuant to the CPO and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the CPO will be borne by EC too (again, guaranteed by Get Living Plc). The Council is satisfied that Get Living Plc has good covenant strength to meet its obligations in the unlikely event that EC defaulted.

29. In addition, further details of funding have been provided by EC which has been reviewed and officers are satisfied that the funding is either already available, for East Site, or is likely to be available in good time to commence the West Site redevelopment as envisaged. It is anticipated that around 40% of the West Site redevelopment cost (including land acquisition) will be financed by equity payments from the Triangle partners and a further affordable housing grant in respect of the West Site, with around 60% being provided through debt funding. Understandably, the developer will not seek that debt funding for the West Site until closer to the time that the West Site redevelopment is begun, otherwise it would incur significant and unnecessary interest charges in the interim period. (By way of example, the East Site debt funding for the construction of new buildings on East Site was put in place in December 2021, and piling began in March 2022.) As to whether the West Site debt funding is likely to be obtainable on reasonable commercial terms to the developer, it is considered that this is likely to be the case given: the identity of EC's backers; the central London location and prestige of the redevelopment, with which lenders are likely to wish to be associated; that Delancey, who advise EC, are experienced in and have obtained significant debt funding on other large scale redevelopment projects for their clients; and

the fact that EC was able to procure debt funding to fully fund the East Site redevelopment.

30. As regards non-financial resources, EC has procured a professional team from all disciplines to advise in respect of the Scheme. It is advised by Delancey, an experienced property development and asset management company. The Triangle partners (EC's backers) have developed large schemes before, as referred to in the April 2020 Cabinet report. Officers are satisfied the developer has the expertise and the ability to attract the funding to deliver the West Site. It has already demonstrated its commitment by at considerable expense securing a planning consent, acquiring much of the land needed to deliver the Scheme, securing funding for the construction phase of the East Site and commencing on the East Site. This is therefore not an impediment. There are no known external factors that may frustrate delivery of the Scheme.

Acquiring authorities will need to demonstrate that the scheme is unlikely to be blocked by any physical or legal impediments. These include:

(a) the programming of any infrastructure accommodation works or remedial work which may be required

31. It is considered there are no such impediments. LUL has planning permission for its connecting tunnel works for the new station box and the revised planning permission allows for the new station box to be larger, thus accommodating the Northern and potentially the Bakerloo Line too.

(b) any need for planning permission for the scheme or other consent or licence.

32. The vast majority of the Scheme has been granted planning permission. The new relocation premises for Corsica Studios and retail kiosk use envisaged for the arch units to the north of the railway station do not yet have the requisite consents. Subject to the imposition of suitable conditions, there is no reason why such consents would not be granted, as this would be in keeping with the current uses on Elephant Road and the policies applicable to the Opportunity Area. The proposed change in use of 4 and 5 Farrell Court to a commercial, business and services use as a relocation opportunity, with associated physical works, will also require planning permission. Given the proposed relocation of Corsica Studios further up Elephant Road as described, again, there is no reason why such planning permission would not be granted. In each case, EC has advised that it has instructed its planning consultants to prepare the necessary planning application.

33. The April 2020 Cabinet report stated that the listed building consent for the minor works to the façade of the Tabernacle only had a 3 year period in which to begin works. This was an error, the consent has, in fact, a 10 year implementation period and so there is no need to seek a longer consent as was envisaged in that report. This is beneficial.

34. Planning permission has also been obtained by EC on 10 June 2022 in respect of a heating network pipe which will run from 50 New Kent Road (owned by EC's group company) under Elephant Road into the East Site. An easement has been completed with Network Rail to facilitate this.

35. Highway stopping-up orders in respect of both East and West Sites have already come into operation and so there are no further stopping-up orders required in respect of the Scheme.

36. One or more agreements under the Highways Act 1980 with TfL and the Council, as highway authorities, will be required for highway works. Agreement will very likely be reached on these, as they are, routinely, on many different types of development. The section 106 agreement imposes restrictions on certain milestones in the development programme until the highways agreements, and their respective works, are completed. The Council's consent, as highway authority, would also be required if the highway layer is to be disturbed to facilitate the heating pipe network works referred to above. Again, there is no reason why that consent should not be forthcoming.

37. Licences will be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments. Such licences are already in place in respect of the works to date on East Site.

38. There are no physical impediments which are known which will prevent the Scheme from proceeding.

39. The CPO legislation affords special protection to statutory undertakers' operational land. Statutory undertakers can make representations to their appropriate minister (i.e. the minister who is responsible for that undertaker) against the inclusion of their operational land, as well as objecting to the Secretary of State in the normal manner. If such a representation is made and not withdrawn, generally the Secretary of State will not confirm the CPO as regards that interest in land unless the appropriate minister gives a certificate that the land can be taken without serious detriment to the statutory undertaker.

40. There is some operational land of statutory undertakers within the CPO area, notably the railway viaduct and the area of land immediately to the west of the railway station over which a new pedestrian right of way (and related right to pave and maintain that area) is sought. However, it is not the intention of EC or the Council to interfere with the operational running of the railway. Discussions are progressing between EC and Network Rail in these respects and EC is confident that agreement shall be reached on all matters. EC has been keeping the Council appraised of progress and given confidence that agreement can be reached, thereby bringing Network Rail into the Scheme by agreement. Nevertheless, the CPO is needed as a backstop. Although crane oversail will take place over some highway areas administered by TfL

and the Council, there should be no operational impact on TfL and the Council as highway authorities.

41. There are also electricity sub-stations within the CPO area, held by London Power Networks. Again, this is operational land and EC will work towards procuring their agreement to bring the leases to an end but the CPO is needed as a backstop.

42. The CPO land also includes statutory undertaker and telecommunications operator apparatus and EC is already in discussions with the utility companies and the telecommunications operators to reach agreement with them.

43. There are no areas of land which attract special protection under section 19 Acquisition of Land Act 1981 (common land, open space or allotments).

44. Therefore, there are unlikely to be any impediments to the Scheme if a CPO is made.

Acquiring authorities are expected to evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.

45. This is addressed above.

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

46. The Council's purpose in making the CPO is stated above. It fits with the adopted development plan, which supports the regeneration envisaged by the Scheme. The CPO is necessary to implement the Council's and the Mayor's objectives as specified in the New Southwark Plan 2022 and the London Plan 2021. Both of these documents had been envisaged by the Cabinet report in April 2020 and the policies in both were considered by the Council at Planning Committee for the revised planning application on 6 July 2021.

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.

47. This is addressed at paragraphs 3 -19 above.

Whether the purpose for which the acquiring authority is proposing to acquire the land would be achieved by any other means. 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 of which the land is being acquired.

48. The prospects of acquiring all the relevant land interests by agreement to enable the comprehensive redevelopment within a reasonable timescale are

unlikely. The Council has already, with the best intentions, allowed time for negotiations to reach fruition. If the Council does not act now then the completion of the East Site, and the West Site redevelopment, will be entirely dependent on the owners and occupiers of the outstanding land interests.

49. Consideration has been given to whether the Council's objectives might be achieved by individual landowners within the land separately carrying out development of their land. This would be likely to result in poorly co-ordinated redevelopment of parts of the CPO land, in a piecemeal fashion, which will contrast badly with the comprehensive vision of the Scheme. Any proper redevelopment needs the interests/rights covered by the CPO and certainly any redevelopment in line with planning policy does. The Scheme, as per planning policy, is an holistic concept which cannot be delivered on a piecemeal basis and any attempt by third parties to redevelop parts of the land on a piecemeal basis without the use of CPO powers would destroy the additional benefits that come from a co-ordinated, holistic regeneration in line with planning policy.

50. The Council has considered whether there are alternative proposals for this land and whether such proposals would be appropriate. There are no known alternative proposals that the Council is aware of, and even if there were, such alternatives would not (1) meet the objectives of planning policy for a comprehensive redevelopment of the Scheme Land and (2) provide the benefits of the Scheme.

51. Consideration has been given to if the Council's objectives in making a CPO can be achieved at a different location. The scope for any alternative location in the context of the particular objectives here is absent. The Scheme is to regenerate this area of land, which cannot be achieved on another area of land.

52. Consideration has also been given as to whether an alternative alignment for the Park Route, through Arches 113A/120 and 113B/121, to the north of the railway station, would have avoided the need to acquire the leasehold title to 6 and 7 Farrell Court and associated new rights. For the reasons given at paragraph 12, that alternative alignment would have been significantly inferior to the chosen route, such that 6 and 7 Farrell Court do need to be acquired. Consideration has also been given to whether it would have been practicable to retain Corsica Studios within 4 and 5 Farrell Court, thus avoiding the need to acquire Arch Co's long leasehold title to Arches 113A/120 and 113B/121 to relocate Corsica Studios. For the reasons explained in paragraphs 32 to 38 of the main body of the report, the only practical solution for retention of the venue on Elephant Road is to relocate it to Arches 113A/120 and 113B/121, and EC does not have the necessary title to bring that about, so the acquisition of greater leasehold title and associated new rights is necessary to achieve this. Consideration has also been given to whether it is necessary to acquire 4 and 5 Farrell Court to accommodate Beset and their occupiers. No suitable alternative relocation opportunity which meets Beset's requirements has been found. 4 and 5 Farrell Court would become vacant once Corsica move to the northern arches and they represent a suitable relocation premises for Beset and their occupiers.

The potential financial viability of the scheme for which the land is being acquired. 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 scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.

53. Funding intentions are dealt with above. The potential viability of the Scheme has been examined as part of the planning application process in the context of the maximum level of affordable housing the Scheme can provide. Discussion took place during the original planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as well as costs advice from cost advisors. The advice from GVA (now Avison Young), advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.

54. In June 2021, as part of consideration of the revised planning application, DS2 (advising EC) concluded that there had been a notional increase in viability so that the ungeared IRR had risen to 10.23% but pointed out this was derived only from the fact that the East Site value had reduced due to the demolition of buildings, and that in real terms there was a reduction in retail values due to the COVID-19 pandemic, and the general decline in high street retailing, increased construction costs and the pandemic's effect meant that development economics were extremely challenging. Avison Young concurred that the target level of profit was not predicted to be met with the requisite level of affordable housing.

55. Some time has passed since the revised planning permission was granted in July 2021. Accordingly, the viability position has been the subject of further expert work by Avison Young for the Council. Avison Young have carried out a high level review of the viability of the Scheme. The exercise took the form of a review of the updated proposed Scheme appraisals and commentary upon whether the inputs are reasonable at this point in time. This high-level review has been undertaken on a desktop basis to inform the Council's decision making. Avison Young advise that this exercise would likely have to be reviewed again in the run up to a CPO inquiry. The review also included a sensitivity analysis of the IRR, commercial rents and yields.

56. On the basis of their high level analysis, Avison Young have concluded that the Scheme is viable. Avison Young advise that the following points further reinforce their conclusion that the Scheme is viable: the East Site works have been procured under a fixed price Design and Build Contract with a major building contractor, Multiplex; full funding for the East Site has been secured; the existence of the contractual agreement with UAL/LCC; the Scheme has commenced and is proceeding; whilst the current macro-economic situation is challenging, there nevertheless remains underlying demand for high quality professionally managed residential stock, and rental forecasts remain positive.

57. Viability is a moot point in respect of the East Site because EC has chosen to proceed, has funded it and has a contractor appointed and on site to build it (subject in the case of the CPO areas to being able to do so). As regards the West Site, the reality is that once the new university campus building has been completed on the East Site for UAL, the completion of the sale of the LCC site is triggered, albeit UAL will have some time in which to move across to the East Site. So, having paid a very considerable sum to acquire the West Site at that point, it is highly likely that EC's group company, Elephant Three Properties Limited, would then proceed with the West Site redevelopment (subject to the CPO enabling it to do so), to recoup a return on its investment. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case, the Council has the benefit of Avison Young's updated expert advice that they believe the Scheme is viable. Moreover, officers do not consider there is any real uncertainty that the West Site will proceed given the factors above but, even if there was such uncertainty, the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.

58. In terms of the CPO indemnity agreement, all interests to be acquired by the Council, whether by agreement or by CPO, will be acquired for planning purposes. Under section 233(3) of the 1990 Act, the Council needs to achieve best consideration when disposing of land under this provision. This however needs to be judged in the context of the totality of the arrangements for the transfer of interests pursuant to the CPO indemnity agreement. The Council will only be acquiring interests from third parties or creating rights over their land on the basis that funding for the initial acquisitions or rights (at market value) is coming from EC and on the basis that it will thereafter dispose of any acquired land to EC or EC's group company. As such, there is no realistic prospect of the Council obtaining consideration in respect of the disposals to EC (or its group company) under the CPO indemnity agreement beyond the indemnity arrangements, such that these arrangements are the best consideration that can reasonably be obtained in the circumstances.

59. The Council is required to exercise its power under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation on the land in question (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land that wish to obtain accommodation. As explained in the main body of the report, the Council

and EC's intention is to offer relocation opportunities to the affected occupiers of 4 and 5 Farrell Court (Corsica Studios), and 7 Farrell Court (Beset), to relocate within the arch units which are the subject of the CPO. It is not practicable to relocate both DistriAndina and Beset into 4 and 5 Farrell Court as the units will not fit both of them, and in any event DistriAndina are being offered the opportunity to relocate elsewhere within the Scheme, in a new unit on the East Site. As explained in the main body of the report, it is envisaged that none of the existing occupiers will need to cease trading nor suffer any material delays in re-opening. The indemnity agreement between the Council and EC will require EC to offer relocation opportunities in accordance with section 233 in respect of any land that is acquired by the Council and disposed of to EC pursuant to the CPO arrangements. Accordingly it is concluded that the duty under section 233(5) will be satisfied.

60. In addition, the section 106 agreement relocation strategy requires that 10% of the new retail floorspace pursuant to the July 2021 planning permission will be affordable retail floorspace and will be offered in the first instance to eligible businesses displaced from the East Site. Similarly, 10% of the commercial floorspace pursuant to the July 2021 permission will be provided as affordable workspace, again offered in the first instance to eligible businesses from the East Site displaced by the redevelopment.

61. In respect of the statutory duty under section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, in the exercise of the powers of disposal under section 233, the Metropolitan Tabernacle is a listed building and some minor works to that building are required and have received listed building consent. The Council will acquire new rights over the land under the CPO and EC will be able to utilise those new rights. Cabinet will note that notwithstanding the substantial weight given to harm to the setting of the Tabernacle, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme. Any effects the Scheme may have on the other designated heritage assets in the locality, including the Faraday Memorial and Metro Central Heights listed buildings, listed buildings at West Square and the West Square and Elliott Row Conservation Areas, and any undesignated heritage assets, were fully considered by the Planning Committee. Officers consider that there is no breach of this statutory duty by reason of the proposals set out in this report.

That the correct statutory procedures have been correctly followed

62. It is considered that the relevant statutory procedures have been correctly followed to date. It will be necessary for the Council to follow the correct statutory procedures in making the CPO and publicising the same and serving notice of it on the affected parties, and to follow the Guidance policy on (among other things) providing a Statement of Reasons to affected parties. Thereafter the Council will need to adhere to the statutory procedures as regards the proposed confirmation of the CPO, including adhering to the inquiry rules.

Open Agenda

Cabinet

Tuesday 6 December 2022
11.00 am
Ground Floor Meeting Rooms, 160 Tooley Street, London SE1 2QH

Supplemental Agenda No. 2

List of Contents

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Date: 5 December 2022

Agenda Item 22

Item No: 22.	Classification: Open	Date: 6 December 2022	Meeting Name: Cabinet
Report title:		**ADDENDUM** Elephant and Castle Town Centre – Compulsory Purchase Order	
Ward(s) or groups affected:		North Walworth St. George's	
From:		Director of Planning and Growth	

PURPOSE

1. To advise members of further information or amendment.

RECOMMENDATION

2. That members note and consider any further information and amendments.

FACTORS FOR CONSIDERATION

3. An addendum in respect of the following item on the agenda is set out below:

4. Reference is made in the cabinet report (paragraphs 8, 13, 24, 25 and 85 of the main body of the report, paragraphs 2, 16 and 27 of Appendix J and paragraph 4 of Appendix K) to the approved phasing plan under the planning permission requiring the completion of the East Site (save in certain respects) before the West Site progresses. By way of correction, whilst the phasing plan does require the East Site to commence before the West Site, it does not require completion of the East Site before works can begin on the West Site. Accordingly, the comments to that effect within the report and to the effect that enabling compliance with the approved phasing plan would be a benefit of the CPO are to be disregarded. Nevertheless, the CPO is still required to facilitate the redevelopment of the West Site (and thus to bring about the benefits of the West Site) because of the need to compulsorily acquire title and new rights in relation to the West Site itself, to allow the demolition and construction on the West Site as explained in detail in the report. As the CPO is nonetheless necessary to unlock the redevelopment of the West Site and deliver the benefits of that redevelopment, and also to allow the completion of the redevelopment of the East Site in full in accordance with the planning permission and deliver the full benefits of that redevelopment, the merits of the case for the CPO are effectively unchanged in light of this correction. Allowing for this correction, it is considered that: the relevant legal tests and policy guidance are all still satisfied, including the tests as set out in sections 226(1)(a) and 226(1A) of the 1990 Act, with the redevelopment likely to contribute to all three of the well-being objects in section 226(1A); the CPO is essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring; there is a compelling case for the CPO and the

benefits that will result to the community at large; the use of the council's CPO powers is justified; and the conclusions in paragraphs 106-109 (inclusive) of the report remain correct.

REASON FOR URGENCY

5. Cabinet are considering this report on 6 December 2022 and need to be aware of this information.

REASON FOR LATENESS

6. The new information to the main report have been received since the committee agenda was printed. They relate to an item on the agenda and members should be aware of them.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
As set out in the cabinet report, item 22		

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Dated: 8 June 2023