

REPORT TO EXECUTIVE

Date of Meeting: 27th June 2023

REPORT TO COUNCIL

Date of Meeting: 18th July 2023

Report of: Director of City Development and the City Surveyor

Title: Water Lane Compulsory Purchase Order

Is this a Key Decision?

No

Is this an Executive or Council Function?

Executive and Council

1. What is the report about?

- 1.1 The residential led redevelopment of the Water Lane area, on the west bank of the Exeter Ship Canal, is one of the Liveable Exeter aspirations, one of the Emerging Exeter Plan proposed site allocations and is an aspiration that has been identified in the Development Plan for at least a quarter of a century.
- 1.2 The Water Lane Development Management Company (“WLDMC” or “land promoter”), one of the major land promoters in the area, has approached Exeter City Council (“ECC” or “the Council”) to enquire whether the Council would consider using Compulsory Purchase Order (“CPO” or “the Order”) powers to assemble two strategic land parcels needed to facilitate servicing to the Water Lane site to enable redevelopment (see Appendix 1). The development vision is for a residential led mixed use waterside development aligning with Liveable Exeter principles. Subject to approval by Executive, the full cost of the CPO would be underwritten by the land promoter.
- 1.3 The purpose of this report is to seek approval for the Council to support WLDMC by using CPO powers to acquire and simultaneously dispose of land and properties to the land promoter on regeneration grounds, whilst also agreeing the principle of dedicating to Highways or disposing the northern tip of the Council’s Exton Road Depot Material Recycling Facility (see Appendix 2), at less than best consideration, to facilitate improved pedestrian, cycle and public transport routes in the area.

2. Recommendations:

That Executive recommends to Council to agree the following proposal:

- 2.1 Delegate authority to the City Surveyor, in consultation with the Leader, Director of City Development and the Director Finance (s.151 Officer) to: dedicate part of the Exton Road Depot Material Recycling Facility

("ERDMRF"), as shown on the site boundary plan in Appendix 2, to Devon County Council for Highways use; or, if necessary, and subject to the provisions of the subsidy Control Act 2022, dispose of the land (conditional on the underpass improvements works being commenced to adoptable standards) to WLDMC (or the relevant corporate vehicle), at less than best consideration but at a cost that covers the relocation of stored materials on the disposal site and the construction of an appropriate boundary treatment on the revised boundary line.

- 2.2 In the event of a proposed less than best disposal under 2.1 above, delegate authority to the City Surveyor, in consultation with the Leader, s.151 Officer and Director of City Development to assess and, subject to compliance with relevant statutory provisions, agree an undervalue.

That Executive RESOLVES to:

- 2.3 Subject to the S151 Officer being satisfied as to the financial standing of the party/parties providing the indemnity, delegate authority to the Director of City Development to enter into a Compulsory Purchase Order Indemnity Agreement ("CPOIA") and if necessary, a development agreement with the land promoter (and any other relevant third party) prior to undertaking any preparatory works in respect of a Compulsory Purchase Order to acquire the third-party proprietary interests identified in Appendix 1,
- 2.4 Agree that, subject to 2.3. above, the Director of City Development be authorised to take all necessary steps to secure the making, submission, confirmation and implementation of a Compulsory Purchase Order to acquire the third-party proprietary interests identified in Appendix 1,
- 2.5 Agree that the Director of City Development be authorised to issue all relevant notices and certificates in connection with the making, confirmation and implementation of any Compulsory Purchase Order,
- 2.6 Agree that the City Surveyor be authorised to acquire third party proprietary interests by private treaty negotiation,
- 2.7 Agree that the City Surveyor be authorised to dispose of any third party propriety interest acquired pursuant to the Compulsory Purchase Order to WLDMC (or the relevant corporate vehicle) in accordance with terms to be agreed and subject to compliance with relevant statutory provisions,
- 2.8 Agree that the Director of City Development be authorised to make General Vesting Declarations (GVDs) under the Compulsory Purchase (Vesting Declarations) Act 1981 and/or serve notices to treat and notices of entry (if required) following confirmation of a Compulsory Purchase Order by the Secretary of State,

- 2.9 Agree that the Director of City Development be authorised to issue and serve any warrants to obtain possession of property acquired by the Council following the execution of a General Vesting Declarations or service of a notice of entry if it was considered appropriate to do so; and
- 2.10 Delegate authority to the City Surveyor to agree the final terms for the disposal of the strip of land at Exton Depot and the final terms of the CPOIA subject to compliance with relevant statutory provisions.

3. Reasons for the recommendation:

- 3.1 In October '2022 the Council agreed the Corporate Plan 2022-2026 and the proposals will contribute towards the plan by:
- Contributing to the aspirations of the Exeter Vision 2040 by repurposing contaminated brownfield industrial land into a well-connected and sustainable new neighbourhood that makes Exeter a more liveable City; and
 - Building new homes on a substantial brownfield site within walking distance to the city centre will directly contribute towards the strategic aspirations for more housing and an active city centre.

4. What are the resource implications including non financial resources

- 4.1 WLDMC have agreed to underwrite the Council's costs in relation to any compulsory purchase order that ECC makes in order to facilitate the redevelopment of the Water Lane area. ECC will require WLDMC to enter into a Compulsory Purchase Order Indemnity Agreement ("CPOIA") prior to taking any action.
- 4.2 The CPOIA will cover all of ECC's costs in relation to the preparation, making, confirmation and implementation of any Compulsory Purchase Order. These costs include: the purchase price or any compensation for any land or interest which ECC has to acquire either pursuant to the Compulsory Purchase Order or in consequence of the service of valid blight notices, (including all payments made pursuant to the Compulsory Purchase Act 1965 and the Land Compensation Acts 1961 & 1973); any statutory interest payable and ECC's reasonable and proper internal and external costs (including legal, surveying and other professional costs).
- 4.3 ECC will seek to recover all CPO costs: including land acquisitions, legal costs and staff time meaning there is minimal resource or financial risk to ECC.
- 4.4 If the principle of the CPOIA is agreed, appropriate financial and legal due diligence will be undertaken to ensure that the agreement can be relied upon.

- 4.5 WLDMC, the entity that has approached ECC for support, is a development management company and depending on the due diligence mentioned in 4.4 above it may be necessary for the land owners Cillarda Group Holdings or their parent company to be party to the CPOIA.
- 4.6 Once acquired all third party interests will be transferred to WLDMC (or the associated corporate vehicle) in accordance with terms to be agreed.
- 4.7 There should be no negative impact on ECC cashflow. If and when assembled the CPO professional team will have a duty of care to both ECC and the land promotor but they would be paid directly by the land promotor and any acquisitions are going to require the land promotor's solicitors to be in funds before completion. The main cost recovery is likely to be internal officer time.
- 4.8 Although the proposed disposal of a section of land at Exton Depot will not generate a net receipt for the Council it will cover immediate costs whilst contributing to a circa million pound infrastructure improvement that could facilitate improved cycle, pedestrian and electric bus routes, reducing car usage and the savings associated with Exeter having a healthier population that is utilising active and emissions free travel (for further consideration on benefits see 8.43 below).
- 4.9 By their very nature large scale mixed use regeneration schemes are complex and require the vision, drive and participation of many private and public sector parties. Water Lane has been a council aspiration for at least a quarter of a century but ECC will need to look beyond planning policy aspirations if it to help foster the type of environment needed for this type of scheme to flourish.
- 4.10 In addition to planning policy there are a range of tools at ECC's disposal that can be used to encourage development and the recommendations put to Executive in this report are a great example of two of these tools. Through utilising Compulsory Purchase Order powers (underwritten by the land promotor) and dedicating (or disposing of) land for a use that will create greater social, economic and environmental value for local residents and businesses ECC can help facilitate the strategic vision for the area, whilst working in collaboration with the private sector and minimising the impact on ECC's resources.

5. Section 151 Officer comments:

- 5.1 Whilst the indemnity agreement may protect the Council from incurring expense, there is always a risk that failure of the Company providing the indemnity will leave the Council at risk of financial expense. It is essential therefore, that proper financial vetting is undertaken to ensure that the Company has the financial strength to comply with its obligations.
- 5.2 WLDMC is a Company set up to deliver this Development only and therefore is unlikely to have the financial strength to provide this assurance, meaning a

Parent Company Guarantee may be required. The report does not set out the potential sum required for the CPO and therefore the section 151 Officer cannot comment on the scale of risk entailed.

- 5.3 In respect of the proposed transfer of land, again there is no assessment of the value of the land involved. Given current borrowing costs and the lack of resources available for a capital programme, Members will have to balance the undoubted benefits of the proposal, against the Council's need to finance its own priorities.

6. What are the legal aspects?

- 6.1 Under Section 13 of the Planning and Compulsory Purchase Act 2004 the Council must keep under review the matters which may be expected to affect the development of their area or the planning of its development.
- 6.2 These matters include the principal physical, economic, social and environmental characteristics of the area, the principal purposes for which land is used in the area, the size, composition and distribution of the population of the area, the communications, transport system and traffic of the area, and any other considerations which may be expected to affect those matters. The matters also include any changes which the Council think may occur in relation to any other matter and the effect any such changes are likely to have on the development of the Council's area or on the planning of such development.
- 6.3 The Council has the power through various enactments to make Compulsory Purchase Orders and to apply to the Secretary of State for confirmation of any order.
- 6.4 Local authorities are generally under a duty to comply with Section 123(2) of the Local Government Act 1972 with regard to land held in the General Fund, as is the case here, which requires that except with the consent of the Secretary of State a Council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained.
- 6.5 The other two exceptions to the obligation to obtain best value are: short tenancies (terms/ assignments of 7 years or less) and General Disposal Consents (the purpose of which is for land to be disposed that is likely to contribute to the achievement of any one or more of: promotion/ improvement of economic well-being; promotion/ improvement of social well-being; promotion/ improvement of environmental well-being; and the 'undervalue' (difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2 million or less.)
- 6.6 Councils should not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action. A general disposal consent has therefore been issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as

they consider to be necessary or desirable. However, when disposing of land at an 'undervalue', Council's must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.

6.7 A Circular issued in 2003 (Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003) gives authorities consent to a disposal of land at an undervalue provided that:-

a) a local authority considers that the disposal is likely to contribute to the achievement of:

i) the promotion or improvement of economic well-being;

ii) the promotion or improvement of social well-being;

iii) the promotion or improvement of environmental well-being; and

b) the best price reasonably obtainable for the property does not exceed £2,000,000 (two million pounds)

6.8 It is considered that the proposed disposal of a strip of land Exton Depot complies with both provisions a) and b) above.

Town and Country Planning Act 1990 Powers

6.9 Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) provides that a local authority shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area if they are satisfied that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. However the power must not be exercised unless the authority thinks that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area.

6.10 The compulsory acquisition of third-party proprietary interests and/or rights in relation to Water Lane will enable the delivery of hundreds of homes and will provide increased certainty with regard to land assembly and the implementation of the redeveloped.

6.11 The adopted development plan related to Water Lane (within which WLDMC's land sits) comprises the saved policies of the adopted Exeter Local Plan First Review (1995) and the adopted Exeter Core Strategy (2012). The Local Plan First Review makes detailed proposals for the regeneration of land in the Water Lane area, including for mixed use redevelopment incorporating housing. The Core Strategy identifies the Water Lane Area as a location for "comprehensive mixed-use redevelopment".

6.12 The emerging Exeter Plan, which was subject to draft outline consultation in the autumn of 2022, maintains this focus on regeneration by proposing the

Water Lane site for mixed use redevelopment including around 1,180 homes. Alongside this, the Council is preparing a Supplementary Planning Document (SPD) which will provide a development framework and design code for Water Lane. The land parcels shown at Appendix 1 are needed to facilitate servicing of Water Lane site, in particular for active travel modes, to enable the Council's longstanding redevelopment aspirations.

- 6.13 Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides for the acquisition of new rights over land where such rights are not in existence when the order specifying them is made. In order to facilitate the redevelopment of the site it may be necessary to acquire new rights over land for purposes such as crane oversailing.
- 6.14 Government guidance on the use of compulsory purchase powers is set out in the Department for Levelling Up, Housing and Communities "Guidance on Compulsory Purchase Process and the Crichel Down Rules Guidance". Paragraph 2 of the guidance states that compulsory purchase orders should only be made where there is a compelling case in the public interest.
- 6.15 The Council will be expected to demonstrate that it has taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities can arrange to acquire land by agreement, they will pay compensation as if it had been compulsory purchased, unless the land was already on offer on the open market.
- 6.16 The proposed regeneration scheme is in the public interest and will improve the wellbeing of the area in a number of way:
- Social – enabling the proposed regeneration will facilitate and encourage the growth of a new community whilst generating improvements to existing surrounding neighbourhoods. It will open up better access to the valley parks, include new workspace, shops and schools and also seek to make major shifts in mobility to take pressure off busy road corridors.
 - Environmental – the proposed regeneration will be sustainable and incorporates a number of comprehensive environmental attributes including a strategic approach to flood risk mitigation, low car (or no car) residential areas supported by sustainable transport, phased development that ensures the continued operation of the Marsh Barton energy from waste plant and biogas power station. The proposed regeneration will also facilitate continued operation of the canal.
 - Economic – The proposed regeneration will incorporate new workspaces, shops, leisure facilities, community facilities and education facilities that will provide numerous growth and employment opportunities for the area and Exeter as a whole on what is currently underutilised brownfield land.

- 6.17 Officers are of the view that there is a compelling case in the public interest to secure the redevelopment of the site. To that end, officers are recommending that ECC utilise the powers under section 226(1)(a) of the Town and Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976, because it is not certain that the required third-party proprietary interests and/or rights will be acquirable by agreement.

Human Rights

- 6.18 The Human Rights Act 1998 requires (amongst others) that every public authority acts in a manner which is compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The following parts of the Convention are relevant to the Council’s exercise of its compulsory purchase powers:
- Article 1 of the First Protocol – the right to peaceful enjoyment of possessions; and
 - Article 8 – respect for private and family life and home.
- 6.19 Any decision to make a Compulsory Purchase Order (“CPO”) must strike a fair balance between the public interest in the redevelopment of the land and interference with private rights. Bearing in mind the fact that the exercise of compulsory purchase powers is a statutory process, the provisions for compensation to be paid to those affected and the compelling case in the public interest for the redevelopment, it is considered that the interference with private property rights is necessary, proportionate and strikes a fair balance towards meeting ECC’s objectives.
- 6.20 Those affected by a Compulsory Purchase Order will be informed and advised of their right to make representations to the relevant Secretary of State, to be heard at public inquiry and of a fair entitlement to compensation (where applicable). Thus ensuring consistency with Article 6: right to a fair hearing.

Subsidy Control Act 2022

- 6.21 The Subsidy Control Act 2022 (“SCA 2022”) prohibits financial assistance conferring an economic advantage on one or more enterprises which is capable of having more than an incidental or hypothetical effect on competition and investment within the UK or trade and investment between the UK and another country.
- 6.22 SCA 2022 seeks to be permissive rather than restrictive, starting from the point that subsidies are permitted if they comply with specified subsidy control principles which are:

- Subsidies should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns) Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it,
- Subsidies should be designed to bring about a change of economic behaviour of the beneficiary. That change, in relation to a subsidy, should be conducive to achieving its specific policy objective and something that would not happen without the subsidy,
- Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy,
- Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means,
- Subsidies should be designed to achieve their specific policy objectives while minimising any negative effects on competition or investment within the United Kingdom; and
- Subsidies' beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including, in particular, negative effects on competition or investment within the United Kingdom and / or international trade investment.

- 6.23 If the transfer of the land (at neutral cost to ECC) for the delivery of highways improvements, in the Marsh Barton/ Water Lane area, could be considered a subsidy, it is likely to comply with the principles above.
- 6.24 The works will be delivered to adoptable standards so the economic benefit of their delivery will be conferred to all residents and businesses in this part of Exeter rather than bestowing any special benefit to one individual or organisation.
- 6.25 The SCA 2022 has a Minimum Financial Assistance Provision which permits public authorities to award low level financial assistance if the recipient has not reached the allowance threshold of £315,000 over the applicable period. For financial assistance to qualify as Minimal Financial Assistance the conditions of the SCA 2022 must be met and the procedural requirements of the Subsidy Control Statutory Guidance complied with.
- 6.26 Further consideration will be given to the application of the provisions of the Subsidy Control Act 2022 during the process to acquire and dispose of land.

7. Monitoring Officer's comments:

Notwithstanding the requirement to enter into an indemnity agreement, the Monitoring Officer recommends that regular periodic financial checks of WLDMC are undertaken.

8. Report details:

Background

- 8.1 The Water Lane Regeneration Area lies to the west of the Exeter Ship Canal a couple of hundred metres south of the Exeter Quayside and adjacent to the Riverside Valley Park.
- 8.2 The residential redevelopment of the Water Lane Regeneration Area, is one of the Liveable Exeter aspirations and arguably the most exciting large scale brownfield regeneration opportunity in the city. The regeneration area has been identified in the adopted Development Plan for over a quarter of a century.
- 8.3 The emerging Exeter Plan is seeking to allocate this area as a strategic Liveable Exeter opportunity. To support the Exeter Plan a Vision and set of Design Principles for Water Lane have been produced by the Council envisaging a new vibrant mixed-use neighbourhood along the canal. The principles set an overarching place making framework for Water Lane in a series of requirements, including prioritising active travel (walking and cycling), public transport and low car ownership. Further work is underway to develop the principles into a detailed Design Code/ Development Framework. This work will be published as a Supplementary Planning Document for public consultation in the autumn, alongside the next stage of the Exeter Plan (see also paragraph 8.12 of this report).
- 8.4 In practice the area currently comprises the Northern and Southern Regeneration Zones (see Image 1 overleaf) with the Northern Regeneration Zone owned predominately by a conglomeration of National Grid (“NG”) and Wales and West (“W&W”), who are seeking to partner with a developer shortly, and the Southern Regeneration Zone owned predominately by Cillarda Group Holdings working in partnership with the Water Lane Development Management Company (“WLDMC”).

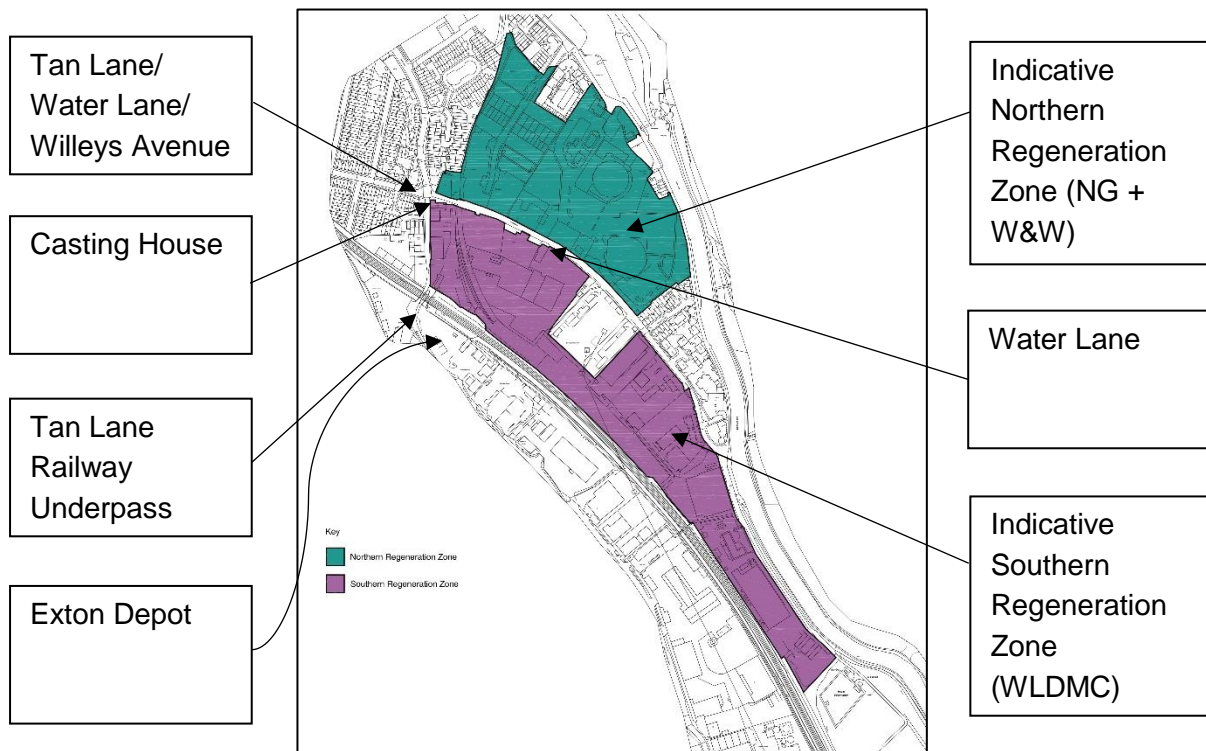


Image 1: Indicative Northern and Southern Water Lane Regeneration Zones

- 8.5 Both regeneration zones have aspirations for residential led mixed use schemes with the potential for a completely new neighbourhood of c. 1,500 homes. Both developments are seeking high density, low car ownership developments so quality safe pedestrian, cycle and bus access will be essential.
- 8.6 To get sufficient vehicular access to the area Highways proposals include improvements to the Willeys Avenue/ Water Lane junction, re-alignment of Tan Lane and the creation of a new service road (effectively avoiding a left in/ right out scenario at the Willeys Avenue/ Water Lane junction). The highway realignment / junction designs have been discussed with DCC who have confirmed that the proposals support the access plans for the redevelopment area..
- 8.7 To facilitate the desired access solution for the regeneration area two parcels of land are required. WLDMC has approached Exeter City Council (“ECC”) to seek Compulsory Purchase Order (“CPO”) support to facilitate the acquisition of a couple of strategic land holdings (see Appendix 1). Officers are seeking authority to enter into a Compulsory Purchase Order Indemnity Agreement (“CPOIA”) with WLDMC which will allow ECC to use their CPO powers, at WLDMC’s cost, to assist in the facilitation of the regeneration opportunity without anticipated financial cost or risk to ECC.

Planning Context

- 8.8 The development plan related to Water Lane comprises the saved policies of the adopted Exeter Local Plan First Review (1995) and the adopted Exeter

Core Strategy (2012). The Council is preparing a new Exeter Local Plan to replace both the First Review and the Core Strategy. The draft plan has been published for consultation and one of the core principles is a brownfield focused approach to development strategy (a principle which was supported during public consultation in 2022). Water Lane is a key site within this brownfield approach to housing delivery.

- 8.9 The First Review makes detailed proposals for the regeneration of land designated as the “Quay and Canal Basin Area”. A range of policies (KP6, H3, S1, S6, TM1 & TM3) contemplate a mix of uses over five sub-areas identified as (i) Quay, (ii) Cricklepit, (iii) Canal Basin and (iv) Water Lane Area and (v) Canal Banks. The policy for the Water Lane Area is to secure housing and leisure development on land vacated by employment uses and to support the retention and introduction of “more environmentally acceptable” employment uses. Other parts of the area are intended to provide a variety of visitor and leisure uses in the area’s historic buildings accompanied by retailing, offices, and housing, especially above ground floor level.
- 8.10 The Core Strategy continues to identify the Water Lane Area as a location for “comprehensive mixed-use redevelopment”. The Council intended that this high level strategy should find expression through a masterplan contained in the Development Delivery Development Plan Document. However, that document was abandoned. The focus on regeneration is nonetheless maintained in the draft outline Exeter Plan.
- 8.11 The draft outline Exeter Plan (2020-2040) proposes to reallocate the Quay and Canal Basin Area as “Water Lane – Site Reference 15”. The boundaries of the First Review Quay and Canal Basin allocation and the proposed Exeter Plan Water Lane allocation are similar but not exactly coterminous. A key proposal is that the area could accommodate around 1,500 new homes (1,180 during the plan period) alongside a mix of other uses including: new workspaces, shops, leisure uses (especially in the vicinity of the canal), community facilities, educational provision; and public open space. Regeneration is intended to be supported by a range of access improvements which reduce reliance on the private car, encourage cycling and walking (including a new crossing of the canal), and improvements to bus and railway infrastructure.
- 8.12 As set out in paragraph 8.3, the Council is currently preparing a Supplementary Planning Document (SPD) to comprise a Development Framework and Design Code for Water Lane. The SPD is needed to ensure comprehensive and coordinated development of the multiple land parcels in the Water Lane area. The document will hang off the Local Plan First Review and Core Strategy to support decision making in advance of the adoption of the Exeter Plan. It will also be aligned with the Liveable Exeter Principles contained in the outline draft Exeter Plan.
- 8.13 Whilst ‘Liveable Exeter: A Transformational Housing Delivery Programme’ is not an adopted planning policy document, it aims to demonstrate the capacity

within Exeter for renewal and densification through a transformational programme of housing delivery. In respect of the Water Lane area, it sets out a prospectus for new homes as part of a mixed-use development including workspace, shops, leisure, community space and primary school. The principles of Liveable Exeter have been incorporated within the emerging Exeter Plan. To elaborate further on the above the allocation proposed within the first draft of the new Plan considers allocating the land at Water Lane for redevelopment comprising:

- High quality, high density, mixed use development
- A strategic approach to flood risk mitigation
- A mix of house types and sizes, including affordable housing
- Low car (or no car) residential areas supported by sustainable transport
- New workspaces, shops/leisure use, community facilities, potential education facilities and public open spaces
- Ensuring continued operation of the canal
- Phased development and ensuring continued operation of the Marsh Barton energy from waste plant and biogas power station
- A net gain in biodiversity and funding to mitigate impacts on the Exe Estuary

- 8.14 A mixed use outline planning application for the land between Water Lane and the Railway line is being prepared by Cillarda Group and WLDMC for land in their control. The proposals are being developed through a collaborative process with Exeter City Council including securing a Planning Performance Agreement and participation in a Design Review process.
- 8.15 WLDMC has so far undertaken two comprehensive consultation exercises held from 24 June – 29 July 2022 and 24 March – 17 April 2023 including walk in exhibition centres. The majority of the responses received to these consultations were supportive. WLDMC has engaged with key stakeholders and its communications and community engagement will help to shape the proposals accordingly.
- 8.16 The Design Review Process for the Scheme has seen positive feedback from Design West Review Panel which concluded with in a letter dated 15 March 2023 that it “sees encouraging signs towards the creation of an exciting project that could have wide exemplary value. We want to help you realise your vision and look forward to the next stage.”
- 8.17 The mixed-use development proposal appears aligned with current and emerging planning policy. The final outcome of the consultations, pre-application feedback and Design Review Process will inform the final outline planning application which is due early this year.

Proposed Highways Improvement Works

- 8.18 As mentioned in 8.6 above, Devon County Council (DCC) have been consulted by WLDMC on the highways solution. To get sufficient vehicular access to the area it is proposed to make highways improvements to the Willeys Avenue/ Water Lane junction including the re-alignment of Tan Lane and the creation of a new access road alongside the railway line (effectively avoiding a left in/ right out scenario at the Willeys Avenue/ Water Lane junction).
- 8.19 DCC have been approached about using CPO powers at a county level to help enable the scheme and although they are broadly supportive of the proposal to promote low parking residential schemes serviced via Water Lane (allowing the predominately pedestrian nature of Haven Road and the Quayside to be maintained) at officer level they do not have the appetite to put forward a CPO for consideration by the County Council.
- 8.20 WLDMC have a controlling interest in the majority of the land required within the Southern Regeneration Zone (see Appendix 3) needed to deliver a comprehensive regeneration scheme apart from the key strategic land holdings considered in Appendix 1.
- 8.21 The eastern end of Water Lane is relatively constrained as the carriageway is only about 5.5 metres wide in places and its effective width is reduced in places as it is bordered by the retaining wall of the former gas holder site. Furthermore sections of the eastern end of Water Lane don't have pedestrian footways (on either side of the highway).
- 8.22 Parcel 2 is key for the delivery of the proposed regeneration as it sits at the "gateway" to the site as a whole when approaching it from the northern section of Water Lane or Willeys Avenue. The parcel sits at the key node between Tan Lane and Water Lane (East) which is proposed to be the main access point for the whole regeneration area.
- 8.23 From a highways, transport and general development perspective it is a key parcel of land required to facilitate improvements to both Tan Lane and Water Lane (East) along with the junction of where the two meet.
- 8.24 Parcel 1 is just as important as the ownership includes the un-adopted footway at the eastern end of Water Lane which is often obstructed as residents utilise it for parking restricting use by pedestrians whilst reducing visibility at the adjoining highways junction.
- 8.25 The strategic access solution for the regeneration area is to prioritise active travel and sustainable public transport whilst minimising vehicular access to the regeneration area via Haven Road, maintaining the relatively quiet and pedestrian character of the Quayside.
- 8.26 To achieve this both Parcels 1 & 2 are required to facilitate an appropriately safe and desirable access solution for the regeneration area.

Site Descriptions of Potential Compulsory Purchase Sites

- 8.27 The CPO area is made up of a handful of properties over two titles. Please refer to Appendix 1 for details of each boundary.

Parcel 1

- 8.28 Part of Freehold Title: DN62743 (Address: part of the Vulcan Estate, Water Lane, Exeter, EX2 8BY).
- 8.29 The property extends to 0.04 acres and comprises two strips of land to the south of Water Lane (see Appendix 1).
- 8.30 The property currently forms part of the Vulcan Estate which is formed of industrial and warehouse premises.
- 8.31 The interest is required to facilitate a new potential highway link associated with the redevelopment of the Southern Regeneration Zone.

Parcel 2

- 8.32 Freehold Title: DN124909 (Address: Flats 1-4, Casting House, Water Lane, Exeter, EX2 8FE)
- 8.33 The property extends to 0.08 acres and comprises Casting House and the building's curtilage.
- 8.34 The property is currently made up of a block of 4 private residential flats and parking spaces.
- 8.35 This property is required to facilitate the proposed Tan Lane realignment and widening associated with the redevelopment of the Southern Regeneration Zone.

Negotiations to Date

- 8.36 WLDMC has made efforts to acquire the above mentioned interests by voluntary agreement. If the recommendations of this report are approved the council and WLDMC will continue to try to acquire the remaining interests by private treaty. In the event that the remaining interests cannot be obtained, the efforts to acquire them (without utilising compulsory purchase powers) will form part of the justification for obtaining confirmation of a Compulsory Purchase Order ("CPO") from the Secretary of State.

Reasons for progressing towards a CPO

- 8.37 As considered in 6.16 above it is considered that the proposed acquisition of the above sites to facilitate residential led mixed use regeneration is in the

public interest and of benefit to the wellbeing of existing residents for the following reasons:

Social

- Enabling the proposed regeneration will facilitate and encourage the growth of a new community whilst generating improvements to existing surrounding neighbourhoods. It will open up better active travel access to the valley parks, include new workspace, shops and schools and also seek to make major shifts in mobility to take pressure off busy road corridors.

Environmental

- The proposed regeneration will be sustainable and incorporates a number of comprehensive environmental attributes including a strategic approach to flood risk mitigation, low car (or no car) residential areas supported by sustainable transport. Phased development will ensure the continued operation of the Marsh Barton “energy from waste” plant and biogas power station. The proposed regeneration will also facilitate continued operation of the canal.

Economic

- The proposed regeneration will incorporate new workspaces, shops/leisure, community facilities and education facilities that will provide numerous growth and employment opportunities for the area (and Exeter as a whole) on what is currently underutilised brownfield land.

CPO Procedure

8.38 The key steps in the CPO are as follows:

- a) **In Principle Resolution** – Executive resolved to make CPO in principle (current resolution being sought).
- b) **Land Referencing** – Identifying who owns, rents and leases properties and communicating with all qualifying people.
- c) **Formulation** – the Council obtains information about legal interests in the land, including serving requisitions for information.
- d) **Scheme** – the Scheme is determined and application documents are prepared.
- e) **Delivery** – how the Scheme will be delivered in terms of funding and the identity of the developer are identified and approved by the Council.
- f) **Resolution** - Cabinet resolved to make CPO.
- g) **Making the Order** – The order is made by affixing the Council's Seal, advertising and serving formal notices on qualifying persons. This allows a 28 day objection period.
- h) **Notification and Publicity** – Advertise the CPO and advise qualifying persons (an owner, tenant or leaseholder) how to object and to whom.
- i) **If objections are received** –The Secretary of State will direct a CPO Inquiry, on a timescale directed by the Secretary of State, into whether the

CPO should be awarded or not. Once the inquiry is completed, the Inspector will put a report before the Secretary of State who will decide whether or not to confirm the CPO as submitted modify it or reject it.

- j) **If no objections are received** – The Secretary of State or the Council will confirm the CPO.
- k) **Confirmation** - Once confirmed, the Council can seek to take possession of the land via either a General Vesting Declaration or a Notice to Treat.
- l) **Pay Compensation** – Compensation is calculated by reference to the national regime or if disputed determined by the Upper Tribunal.

8.39 There is duty to negotiate in tandem with pursuing the CPO and the aspiration will be for all parties to agree a negotiated position that avoids the legal procedural costs associated with a CPO.

Tan Lane Improvements

8.40 To improve cycle, pedestrian and electric bus routes to the area and support a low car ownership ECC could also dedicate/ dispose of the northern tip (c. 0.1 acres) of Exton Road Depot Material Recycling Facility next to the railway arches on Tan Lane (see Appendix 2) to enable the opening up of an additional arch under the railway line to facilitate the height and width needed to service the Water Lane area with electric buses whilst also creating safe designated space for pedestrians and cyclists.



Image 1: View North towards existing Tan Lane Arch with Exton Road Depot on the right.

- 8.41 The existing Tan Lane underpass isn't really fit for purpose and if this route can be made safe for pedestrian and cyclist use, whilst also opening up the potential for electric buses, the opportunity should improve the accessibility and permeability of the area.
- 8.42 At an officer level DCC have recommended dedicating the land to DCC to secure the delivery of adoptable works via a S.38/ S.278 prepared alongside the planning application.
- 8.43 Whether the tip of the Exton Road depot is dedicate to DCC (subject to DCC approval) or dispose (at less than best consideration) to WLDMC the proposed

improvements are so desirable that it would appear reasonable to dedicate the land (or transfer for less than best consideration) on:

- social wellbeing grounds - proposed access improvements would benefit the lives of residents in the existing neighbourhoods as well as the new ones proposed,
- economic wellbeing grounds - good access facilitates good trade as well as access to a wider workforce; and
- environmental wellbeing grounds - safe active travel routes encourage low carbon travel.

8.44 If the land isn't dedicated directly to DCC then then the intention is that the land could be optioned for a limited period on the conditions that: i) an appropriate depot boundary treatment is constructed on the revised boundary line, ii) the cost of relocating the operation functions (currently election infrastructure storage) are met by the purchaser; and iii) the land can only be drawn down at the point the improvements to the underpass are being undertaken and the works being undertaken are designed to an adoptable standard.

8.45 The Exton Road depot land is operational land and depot space is within short supply but the opportunity to improve the underpass is a compelling one that creates benefits for Water Lane, Marsh Barton and areas further afield. With this in mind achieving a position where ECC can make a contribution in kind (by way of a strip of the Exton Road depot) at neutral cost without the need for a financial capital contribution, is still a great position for local residents and businesses that will generate maximum regeneration benefits from ECC's limited resources.

9. How does the decision contribute to the Council's Corporate Plan?

9.1 In October '22 the Council agreed the Corporate Plan 2022-2026 and the proposals will contribute towards the plan by:

- **Contributing to the aspirations of the Exeter Vision 2040** - by repurposing contaminated brownfield land into a well-connected and sustainable new mixed used neighbourhood contributes towards Exeter being a more liveable City; and
- **Delivering out strategic priorities** - building new homes on brownfield land within walking distance to the city centre will directly contribute towards the strategic aspirations for housing and an active city centre.

10. What risks are there and how can they be reduced?

10.1 Risk of the Compulsory Purchase Order being challenged or being rejected by the Inspector/ Secretary of State: ECC will enter into a CPOIA to recover all CPO costs – including land acquisitions, legal costs and staff time therefore there isn't an anticipated financial risk to the Council.

11. Equality Act 2010 (The Act)

- 11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:
- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
 - advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
 - foster good relations between people by tackling prejudice and promoting understanding.
- 11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.
- 11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.
- 11.4 An Equalities Impact Assessment is attached but until land referencing (see 8.38 above) is undertaken it is unclear whether the people living within the CPO parcels have protected characteristics.

12. Carbon Footprint (Environmental) Implications:

- 12.1 In July 2019 the Council declared a Climate Emergency. Creating sustainable new homes within walking distance of the City Centre, transport nodes, local amenities and leisure facilities, on contaminated brownfield land, will help the delivering our carbon reduction target (carbon neutral by 2030).

13. Are there any other options?

- 13.1 The alternative options to the recommendation above are:
- (a) **Do Nothing** – the land promotor has already tried acquiring the land parcels via negotiation and has assembled a significant proportion of the land required but without the threat of compulsion it may be difficult to acquire the final strategic land holdings needed. Given the importance of regenerating the area, it's potential to contribute towards new homes and the amount of time it has been a strategic aspiration of the Council the "do nothing" option is not a recommended route.
- (b) **Sell a strip of Exton Road depot to WLDMC for best consideration** – the case for the underpass is a compelling one that creates benefits for Water Lane, Marsh Barton and areas further afield but the greater the cost of the underpass improvements the less likely they are to be delivered.

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Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

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