

OVERVIEW & SCRUTINY COMMITTEE

Tuesday, 3 February 2015 at 7.15 p.m., Room C1, 1st Floor, Town Hall,
Mulberry Place, 5 Clove Crescent, London, E14 2BG

This meeting is open to the public to attend.

Members:

Chair: Councillor Joshua Peck

Vice Chair: Councillor John Pierce

Councillor Asma Begum	(Scrutiny Lead for Adult Health and Wellbeing)
Councillor Denise Jones	(Scrutiny Lead for Children's Services)
Councillor Dave Chesterton	(Scrutiny Lead for Development and Renewal)
Councillor Peter Golds	(Scrutiny Lead for Law Probity and Governance)
Councillor Mahbub Alam	
Councillor Abjol Miah	(Scrutiny Lead for Resources)
Councillor Muhammad Ansar Mustaqim	

Co-opted Members:

1 Vacancy	(Parent Governor Representative)
Victoria Ekubia	(Roman Catholic Church Representative)
Dr Phillip Rice	(Church of England Representative)
Nozrul Mustafa	(Parent Governor Representative)
Rev James Olanipekun	(Parent Governor Representative)

Deputies:

Councillor Khales Uddin Ahmed, Councillor Sirajul Islam, Councillor Rachael Saunders, Councillor Craig Aston, Councillor Julia Dockerill, Councillor Andrew Wood, Councillor Suluk Ahmed, Councillor Mohammed Mufti Miah and Maium Miah

[The quorum for this body is 3 voting Members]

Contact for further enquiries:

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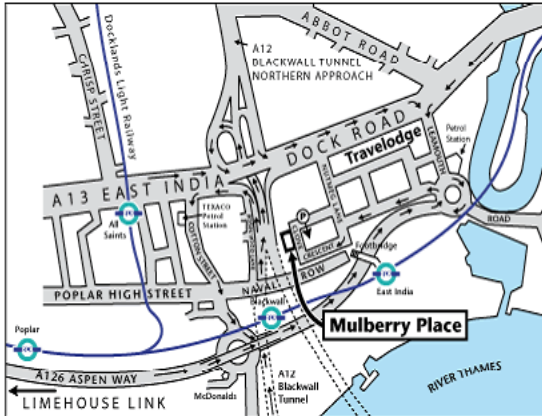
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1. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

**2. DECLARATIONS OF DISCLOSABLE
PECUNIARY INTEREST**

1 - 4

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Interim Monitoring Officer.

3. UNRESTRICTED MINUTES

To confirm as a correct record of the proceedings the unrestricted minutes of the meeting of the Overview and Scrutiny Committee held on 6th and 19th January, 2015 (To follow).

4. REQUESTS TO SUBMIT PETITIONS

To receive any petitions (to be notified at the meeting).

5. UNRESTRICTED REPORTS 'CALLED IN'

To consider and adjudicate on the 'Call In' relating to the decision of the Mayor in Cabinet held on 7th January, 2015 and Called In on 16th January, 2015 detailed at agenda item 5.1 below.

**5.1 Call In - Rights of Light - City Pride Development &
Island Point Development**

5 - 38

6. SCRUTINY SPOTLIGHT**6.1 Mayor****6.2 Police Borough Commander****7. UNRESTRICTED REPORTS FOR
CONSIDERATION****7.1 Planning for the UK Parliamentary Election (May 2015):
Update (To follow)**

All Wards

**7.2 Approval of the London Borough of Tower Hamlets'
Community Infrastructure Levy (CIL) Charging
Schedule (To follow)**

All Wards

8. VERBAL UPDATES FROM SCRUTINY LEADS

(Time allocated – 5 minutes each)

9. PRE-DECISION SCRUTINY OF UNRESTRICTED CABINET PAPERS

To consider and agree pre-decision scrutiny questions/comments to be presented to Cabinet.

(Time allocated – 30 minutes).

10. ANY OTHER UNRESTRICTED BUSINESS WHICH THE CHAIR CONSIDERS TO BE URGENT

To consider any other unrestricted business that the Chair considers to be urgent.

11. EXCLUSION OF THE PRESS AND PUBLIC

In view of the contents of the remaining items on the agenda the Committee is recommended to adopt the following motion:

“That, under the provisions of Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded from the remainder of the meeting for the consideration of the Section Two business on the grounds that it contains information defined as Exempt in Part 1 of Schedule 12A to the Local Government Act, 1972.”

EXEMPT/CONFIDENTIAL SECTION (Pink Papers)

The exempt committee papers in the agenda will contain information, which is commercially, legally or personally sensitive and should not be divulged to third parties. If you do not wish to retain these papers after the meeting, please hand them to the Committee Officer present.

SECTION TWO

WARD

**PAGE
NUMBER(S)**

12. EXEMPT/CONFIDENTIAL MINUTES

Nil items.

13. EXEMPT/ CONFIDENTIAL REPORTS 'CALLED IN'

There were no decisions of the Mayor in Cabinet 7th January, 2015 in respect of exempt/ confidential reports on the agenda, and therefore none eligible for 'Call In'.

Whether any recent exempt/ confidential decisions of the Mayor outside Cabinet, taken under executive powers, were "Called In" will be notified at the meeting.

14. PRE-DECISION SCRUTINY OF EXEMPT/ CONFIDENTIAL) CABINET PAPERS

To consider and agree pre-decision scrutiny questions/comments to be presented to Cabinet.

(Time allocated 15 minutes).

15. ANY OTHER EXEMPT/ CONFIDENTIAL BUSINESS THAT THE CHAIR CONSIDERS URGENT

To consider any other exempt/ confidential business that the Chair considers to be urgent.

Next Meeting of the Overview and Scrutiny Committee

Tuesday, 10 February 2015 to be held in Room C1, 1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London, E14 2BG

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Agenda Item 2

DECLARATIONS OF INTERESTS - NOTE FROM THE INTERIM MONITORING OFFICER

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

Interests and Disclosable Pecuniary Interests (DPIs)

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Interim Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

Effect of a Disclosable Pecuniary Interest on participation at meetings

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Interim Monitoring Officer following consideration by the Dispositions Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Interim Monitoring Officer of the interest for inclusion in the Register.

Further advice

For further advice please contact:-

Meic Sullivan-Gould, Interim Monitoring Officer, 0207 364 4801

John Williams, Service Head, Democratic Services, 020 7364 4204

APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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Agenda Item 5.1

Committee: Overview & Scrutiny	Date: 3 rd February, 2015	Classification: Unrestricted	Report No. 5.1
Report of: Service Head, Democratic Services Originating Officer(s): David Knight, Committee Services Officer		Title: Cabinet Decision Called In: Rights of Light - City Pride Development & Island Point Development Wards: All	

1. SUMMARY

- 1.1 The attached report “6.2 Rights of Light - City Pride Development & Island Point Development” was considered by the Mayor in Cabinet on 7 January, 2015 and has been “Called In” in respect of the proposal that the Council intervenes in a commercial dispute between a developer and local residents by Councillors Candida Ronald; Shiria Khatun; Andrew Cregan, Marc Francis and Rachel Blake. This is in accordance with the provisions of rule 16 of the Overview and Scrutiny Procedure Rules in Part 4 of the Council’s Constitution.

2. RECOMMENDATION

- 2.1 That the OSC consider the contents of the attached report, review the Mayor in Cabinet’s decision (provisional, subject to Call In) arising; and
- 2.2 Decide whether to accept the decision or to refer the matter back to the Cabinet with proposals and reasons.

3. BACKGROUND

- 3.1 The request (received 16 January, 2015) to “call-in” the Mayor in Cabinet’s decision published on 9 January, 2015 was submitted under rule 16 of the Overview and Scrutiny (OSC) Procedure Rules. It was considered by the Interim Monitoring Officer who has delegated responsibility for calling in Cabinet and Mayoral decisions in accordance with agreed criteria.
- 3.2 The Call-In request fulfilled the required criteria and the decision is referred to OSC in order to consider whether or not to refer the matter back to the Cabinet for further consideration.
- 3.3 Implementation of the Cabinet decision is suspended whilst the “Call In” is considered.

4. THE MAYOR IN CABINET’S PROVISIONAL DECISION

- 4.1 The overall report, attached at Appendix 2, considered Rights of Light - City Pride Development & Island Point Development. The Call-In request was specifically about the Council proposing to intervene in a commercial dispute

between a developer and local residents, however for ease, all the Decisions agreed by the Mayor in Cabinet in relation to the report are listed below:-

“DECISION

- i. Note the risks identified in section 13;
- ii. Agree the principle of acquiring the developer’s land for planning purposes using S227 powers and disposing of that land to the developer using S233 powers in order to engage S237 powers to enable the development to be carried out;
- iii. Note the effect of S237 of the TCPA if the Council acquires land for planning purposes;
- iv. Note the circumstances in which an acquisition may be made for planning purposes;
- v. Note the consultation undertaken with affected neighbouring owners and land interests;
- vi. Note that the use of S237 powers is necessary and proportionate, and that the developer has shown to Council officers, that it has made adequate efforts to reach fair negotiated settlements with affected third parties, and that the developer will continue to do so during the implementation of powers;
- vii. Agree to enter into agreements with the affected land owners for compensation in respect of rights extinguished under S237 of the TCPA 1990;
- viii. Agree that the developer should be obliged to apply for consent to the non-material minor amendments summarised in paragraph 10.5 before the Council exercises its S237 powers;
- ix. Delegate to the Director of Development and Renewal after consultation with the Service Head – Legal Services the powers, to agree the terms of the acquisition and lease and lease back to the developer and to complete the necessary documentation to enable acquisition under S227 of the TCPA 1990 and subsequent disposal or lease back to the developer under S233 of the TCPA 1990, at no cost to the Council;
- x. Delegate to the Director of Development and Renewal after consultation with the Service Head - Legal Services the power to take all necessary procedural steps and execute the necessary documents to override all third party rights pursuant to S237 of the TCPA 1990 to facilitate the proposed developments on both the City Pride and Island Point sites.
- xi. Note that any transfer or lease back of the site to the developer will require the consent of the commissioners appointed by the Secretary of State as detailed in paragraph 15.9.

4.2 Reasons for Decisions

4.2.1 The appendix to the report set out the full reasons for the proposals and they can be seen in the attached appendix to the Cabinet report.

4.3 Alternative Options Considered

4.3.1 The appendix to the report set out any alternative options considered and they can be seen in the attached appendix to the Cabinet report.

5. REASONS AND ALTERNATIVE COURSE OF ACTION PROPOSED FOR THE 'CALL IN'

5.1 The Call-in requisition signed by the five Councillors listed above gives the following reason for the Call-in:

5.1.1 We hereby call-in the Mayor's decision in Cabinet (Wednesday 7th January) with regard to the Rights of Light.

5.1.2 A decision was taken at Cabinet to acquire from developers the land at City Pride on the Isle of Dogs in order to break the right to lights for neighbouring residents. After breaking the right to light the Council would then transfer the property rights back to the developer.

5.1.3 The Council is proposing to intervene in a commercial dispute between a developer and local residents - taking the side of the developer against the interests of its own residents - using legislation which was intended to be used in the development of major public infrastructure and not in residential developments. The existing legislation in such matters specifically provides for such disputes to be resolved at law, creating a "balance between development and protection, influenced by the particular factors of the situation favouring injunction or damages." [Law Commission report Rights to Light 2014]

5.1.4 The Council is not a disinterested party in this matter with the large amount of s106 planning gain at stake and has no business intervening in a purely commercial dispute.

5.1.5 This call-in will give the Mayor the opportunity to consider whether this intervention is appropriate and whether it could have further consequences by setting a precedent in relation to other development in the borough.

5.2 Alternative action proposed:

5.2.1 That the Mayor:

- That the Mayor fully consider and outline the impact of such a decision on future developments in the borough; and
- That the decision on rights of light be left to the courts.

6. CONSIDERATION OF THE “CALL IN”

- 6.1 Having met the “Call In” request criteria, the matter is referred to the OSC in order to determine the “Call In” and decide whether or not to refer the matter back to Cabinet for further consideration.
- 6.2 The following procedure is to be followed for consideration of the “Call In”:
- (a) Presentation of the “Call In” by one of the “Call In” Members followed by questions from members of OSC.
 - (b) Response from the Lead Member/officers followed by questions from members of OSC.
 - (c) General debate followed by OSC decision.

N.B. In accordance with the OSC Protocols and Guidance adopted by the Committee at its meeting on 4th June, 2013, any Member(s) who present(s) the “Call In” is (are) not eligible to participate in the general debate.

- 6.3 It is open to the OSC to either resolve to take no action (which would have the effect of endorsing the original Mayoral decision/s), or to refer the matter back to the Mayor for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The comments of the Chief Financial Officer are incorporated in the attached report

8. LEGAL COMMENTS

- 8.1 The Mayor in Cabinet’s decision has been called-in in accordance with the Overview and Scrutiny Procedure Rules set out in the Council’s Constitution. The alternatives presented in paragraph 2.2 of the recommendations in this report are options available to the Committee under the Overview and Scrutiny Procedure Rules.
- 8.2 Legal comments relevant to the Mayor’s decision and to the review by the Overview and Scrutiny Committee are set out in the report on which the decision was based.

9. APPENDICES

- 1. Appendix 1 - “Call In” Requisition
- 2. Appendix 2 – Rights of Light - City Pride Development & Island Point Development

**Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this report**

Brief description of "background papers"

Name and telephone number of holder and address where open to inspection.

None

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O&S Call-In: Rights of Light - City Pride Development & Island Point Development

We hereby call-in the Mayor's decision in Cabinet (Wednesday 7th January) with regard to the Rights of Light.

A decision was taken at Cabinet to acquire from developers the land at City Pride on the Isle of Dogs in order to break the right to lights for neighbouring residents. After breaking the right to light the Council would then transfer the property rights back to the developer.

The Council is proposing to intervene in a commercial dispute between a developer and local residents - taking the side of the developer against the interests of its own residents - using legislation which was intended to be used in the development of major public infrastructure and not in residential developments. The existing legislation in such matters specifically provides for such disputes to be resolved at law, creating a "*balance between development and protection, influenced by the particular factors of the situation favouring injunction or damages.*" [Law Commission report Rights to Light 2014]

The Council is not a disinterested party in this matter with the large amount of s106 planning gain at stake and has no business intervening in a purely commercial dispute.

This call-in will give the Mayor the opportunity to consider whether this intervention is appropriate and whether it could have further consequences by setting a precedent in relation to other development in the borough.

Alternative courses of action:

- That the Mayor fully consider and outline the impact of such a decision on future developments in the borough
- That the decision on rights of light be left to the courts

Signed:

Cllr Candida Ronald


Cllr Shiria Khatun

Cllr Andrew Cregan

Cllr Marc Francis

Cllr Rachel Blake

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CABINET 7 January 2014	 TOWER HAMLETS
Report of: Aman Dalvi, Corporate Director of Development and Renewal	Classification: Unrestricted
Resolution: Rights of Light S227, S233 & S237 Town and Country Planning Act 1990 - City Pride & Island Point Development	

Lead Member	Councillor Rabina Khan, Cabinet Member for Housing and Development
Originating Officer(s)	Jackie Odunoye, Service Head Strategy Regeneration & Sustainability
Wards Affected	Canary Wharf & Island Garden
Community Plan Theme	A Great Place to Live
Key Decision?	Yes

1. **EXECUTIVE SUMMARY**

- 1.1 Development continues apace in the borough at ever higher densities which poses significant challenges to building places which are attractive to live and work in and provide all of the necessary amenities and infrastructure.
- 1.2 An issue which is now rising in importance is Rights to Light. This is a property issue; it can have an impact on resale value, and also potentially has Human Rights Act implications. It only appears to really impact on freehold or long leasehold owners and not short term tenants whose interest in the property is usually of limited duration.
- 1.3 In some cases developers are turning to the Council to request consideration of the use of its powers under the Town and Country Planning Act 1990 (**TCPA**), sections 227, 233 and 237. The effect of using these powers is to remove the potential for affected owners to issue an injunction to prevent a development from going ahead however it cannot remove the right for compensation to be paid.
- 1.4 The Council cannot use these powers simply to assist the developer or because the developer faces severe financial pressure because of the threat of an injunction. Neither is the fact that planning consent has been granted an automatic route to the use of the sections 227, 233 and 237 powers; the two are entirely separate processes.
- 1.5 The Council has to be satisfied that the public good justifies the dismissal of a private property right. Compensation is always payable in any event.

2. RECOMMENDATIONS:

The Mayor is recommended to:

- 2.1 Note the risks identified in section 13;
- 2.2 Agree the principle of acquiring the developer's land for planning purposes using S227 powers and disposing of that land to the developer using S233 powers in order to engage S237 powers to enable the development to be carried out;
- 2.3 Note the effect of S237 of the TCPA if the Council acquires land for planning purposes;
- 2.4 Note the circumstances in which an acquisition may be made for planning purposes;
- 2.5 Note the consultation undertaken with affected neighbouring owners and land interests;
- 2.6 Note that the use of S237 powers is necessary and proportionate, and that the developer has shown to Council officers, that it has made adequate efforts to reach fair negotiated settlements with affected third parties, and that the developer will continue to do so during the implementation of powers;
- 2.7 Agree to enter into agreements with the affected land owners for compensation in respect of rights extinguished under S237 of the TCPA 1990;
- 2.8 Agree that the developer should be obliged to apply for consent to the non-material minor amendments summarised in paragraph 10.5 before the Council exercises its S237 powers;
- 2.9 Delegate to the Director of Development and Renewal after consultation with the Service Head – Legal Services the powers, to agree the terms of the acquisition and lease and lease back to the developer and to complete the necessary documentation to enable acquisition under S227 of the TCPA 1990 and subsequent disposal or lease back to the developer under S233 of the TCPA 1990, at no cost to the Council;
- 2.10 Delegate to the Director of Development and Renewal after consultation with the Service Head - Legal Services the power to take all necessary procedural steps and execute the necessary documents to override all third party rights pursuant to S237 of the TCPA 1990 to facilitate the proposed developments on both the City Pride and Island Point sites.
- 2.11 Note that any transfer or lease back of the site to the developer will require the consent of the commissioners appointed by the Secretary of State as detailed in paragraph 15.9.

3. REASONS FOR THE DECISIONS

- 3.1 Section 8 of this report highlights the substantial benefits from the scheme in terms of meeting the well-being tests for the use of the S237 powers. Paragraphs 16.7 and 16.9 confirm that the public benefits of using the S237 powers are considered to outweigh the infringements of private rights.
- 3.2 The affordable housing which is to be built as part of the City Pride and Island Point scheme will contribute towards the Council's housing target and the GLA's London Plan housing target. The loss of these units would make achievement of already very challenging numbers even more difficult.
- 3.3 The developer has formally requested that the Council considers the use of section 237 powers of the Town and Country Planning Act 1990, because one or more owners of neighbouring residential properties have threatened the use of injunction to frustrate the development. The validation and consultation undertaken by officers has confirmed that this is a distinct possibility.
- 3.4 The use of the power does not remove the right to compensation to be paid to the affected property owners. In reaching a final decision the Council will have specific regard to both the property rights of the affected owners and the Human Rights Act implications.
- 3.5 The purpose of the Scheme is to overcome certain impediments to the development of the Land and to enable such development to be carried out with minimum further delay so that substantial well-being benefits can be realised for the Council's area.
- 3.6 The Scheme will achieve this purpose by authorising the interference with any easements or other third party rights over the Land, including any rights of light, which may arise as a result of the carrying out of the development.

Powers

- 3.7 The Council has the power to acquire land for planning purposes under Section 227 of the Town and Country Planning Act 1990 ("**Act**").
- 3.8 Such powers can only be used if the Council thinks that:
- 3.8.1 the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; and
- 3.8.2 the development, re-development or improvement is likely to contribute the achievement of the promotion or improvement of the economic, social and/or environmental well-being of the Council's area.
- 3.9 If such powers are exercised to acquire land, it would have the effect of authorising the Council (and any successors in title to it) under section 237 of the Act to carry out development on the land in accordance with planning permission, notwithstanding that such development involves interference with certain interests or rights or a breach of a restriction as to the user of land arising by virtue of a contract. Compensation would be payable in respect of any such interference or breach pursuant to section 237(4) of the Act.

- 3.10 In 3.8 and 3.9 above, the Council may enter into a back to back deal with the developer, pursuant to criteria in section 233(1) of the TCPA. The disposal should be in such a manner and subject to such conditions as appear expedient in order:
- a) to 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; or
 - b) to secure the erection, construction or carrying out on it of any buildings or works which the Council considers necessary for the proper planning of the area. The terms of the disposal should ensure that the best use of the land and buildings will be secured.
- 3.11 The Council is satisfied that the use of such powers is appropriate given the need to override easements and other rights which could otherwise prevent or further delay the carrying out of development of the Land. There are no other more appropriate enabling powers.

4. ALTERNATIVE OPTIONS

- 4.1 There is no obligation for the Council to use its powers in this way and it cannot use them simply to assist the developer or to mitigate the developer's financial risks. If it chose not to act it would require the developer to deal with the objections and reach agreements with neighbouring property owners. There would remain a residual risk that the development might not progress due to the inability to agree settlements with all relevant parties and possibly due to the scheme becoming unviable. The affordable housing units would not be built out and the other public benefits identified in section 8 would not be achieved.
- 4.2 It is noted the developer has explored alternative options for both the City Pride and Island Point sites, including partial re-designs and scaling the scheme down to a smaller footprint; these options are considered further in section 9. Some of the partial changes proposed will be submitted by the developer as non-material amendments. However, some of the alternative re-design options explored have been found to be unviable or still leave a high risk of injunction. Crucially, the two sites are inter-linked and the successful delivery of the scheme would be dependent on both sites coming forward for development.
- 4.3 The alternative option is to NOT make the recommended Resolutions for exercising the powers under sections 227, 233 and 237 of the TCPA 1990. In this instance whilst negotiations by the developer with individual land interests could continue, this would depend on the willingness of the affected claimants: there would be a real risk that the development could not go ahead, due to the threat of injunctions. This would jeopardise the delivery of the substantial benefits for the local community identified in Section 8 below.

5. BACKGROUND

- 5.1 One of the implications of high density development is the potential to reduce the light reaching windows of surrounding homes; this is an important consideration in the planning process where there are well established methodologies for calculating Daylight/Sunlight penetration. However there are occasions where even when a development has planning consent there are still adverse implications to neighboring homes. The affected home owners are entitled to compensation but in some circumstances might also be able to obtain an injunction to limit or prevent the

development being carried out. There is now case law in which such injunctions have been awarded.

- 5.2 However, the ability to injunct can be removed if the Council chooses to use powers included in the Town and Country Planning Act 1990 (TCPA) to appropriate or acquire the land. The City Pride and Island Point developer has raised with officers the possibility of invoking the powers in Tower Hamlets.
- 5.3 Section 237 of the TCPA provides that the construction of any building or the carrying out of work on land which has been acquired or appropriated by a local authority for planning purposes (whether done by the authority or by a person deriving title under them) is authorised if done in accordance with planning permission, notwithstanding that it involves interference with an easement or breach of a restrictive covenant. The use of any land in England which has been acquired or appropriated by a local authority for planning purposes is likewise authorised. The effect of section 237 is to defeat third party interests, such as rights to light. Compensation is payable for such interference under the compulsory purchase legislation, that is on the basis of diminution in the value of the claimant's land without any ransom or loss of bargaining position element.
- 5.4 The reference in section 237 to acquiring land for planning purposes relates to its acquisition under section 226 or 227 of the TCPA. These powers may be summarised as follows:-
1. *Under section 226 a local authority has power to acquire compulsorily land in its area (a) if they think the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land or (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.*
 2. *Section 227 provides that the Council of a London Borough may acquire by agreement any land which they require for any purpose for which they may be authorised to acquire land under section 226.*
- 5.5 The Council will not carry out the development itself. It is envisaged that the Council will acquire the sites subject to an obligation to transfer them back to the developer so that it can carry out the development. The Council may dispose of the land under section 233 of the TCPA for the purpose of bringing it forward for development or otherwise facilitating development. Any such disposal must be for the best consideration that can reasonably be obtained, unless the Secretary of State's consent is obtained. That said it is open to the Council to acquire land for planning purposes by agreement from a developer and then immediately transfer or lease it back. Provided the development is then carried out in accordance with planning permission it will be free from the restraints of any easements or covenant affecting the land, including rights of light.

6. DETAILS OF REPORT

- 6.1 The exercise of the powers outlined in section 3 above will affect third party property rights so the courts will strictly apply the relevant requirements for a compulsory acquisition for planning purposes, which under section 226 of the TCPA are as follows:

a) The Council thinks that the acquisitions will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land; or

b) The land is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

- 6.2 In order to show that the acquisition will facilitate the development (for the purposes of 6.1(a)), the Council must be satisfied that it would stop the development going ahead if it did not intervene. It will also be essential to show why these cannot be avoided e.g. by negotiations between the development and owner of the rights. There has to be evidence that there is real risk the rights owner will injunct the development and that all reasonable attempts have been made to eliminate the risk. The Council should require the developer to demonstrate a significant degree of intransigence on the part of rights owners before it would be justified in exercising its powers under sections 226 and 227 so as to defeat rights of light. This should be based on evidence of consultation with the rights owners.
- 6.3 The Council cannot exercise its powers unless it thinks the development is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of Tower Hamlets. The Council's sustainable community strategy under section 4 of the Local Government Act 2000, which is set out in the Tower Hamlets Community Plan, is targeted at promoting or improving the economic, social and environmental well-being of Tower Hamlets. If a development will support achievement of the Community Plan objectives, e.g. by creating jobs or constructing housing particularly social housing, then it may relevantly promote wellbeing.
- 6.4 If the land is acquired by agreement under section 227 it is necessary to satisfy the criteria in section 226 and some provisions of the Compulsory Purchase Act 1965 still apply.
- 6.5 In such a case the Council will need to demonstrate that it has identified the rights of light and other rights of third parties which will be overridden and have formed the view that it is in the public interest that these are overridden. This should be possible in a case where it is considered that the acquisition is likely to contribute to the Council's Community Plan objectives and promote the wellbeing of Tower Hamlets.
- 6.6 As set out in 3.8 above, the Council may enter into a back to back deal with the developer. However, to satisfy all the criteria in section 233(1) of the TCPA, the disposal should be in such a manner and subject to such conditions as appear expedient in order:
- c) to 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; or
 - d) to secure the erection, construction or carrying out on it of any buildings or works which the Council considers necessary for the proper planning of the area. The terms of the disposal should ensure that the best use of the land and buildings will be secured.
- 6.7 The purpose of the disposal exercise must be to facilitate the development and not just to save the developer money. The authority must require the developer to convince it that the use of the powers is necessary and that third parties have had a proper opportunity to negotiate with the developer.

- 6.8 The Council cannot make a profit on the back to back transaction but it can ensure the developer covers all its costs. This will be secured through the Indemnity agreement which the developer is entering into with the Council.

7. CITY PRIDE & ISLAND POINT DEVELOPMENT SCHEME

- 7.1 The City Pride development was granted planning consent on 10th October 2013 under ref. PA/12/03248, (refer to back ground paper no.1)
- 7.2 Consent was granted for the construction of a 75-storey tower comprising 822 residential units (of which 70 are affordable housing); 162 serviced apartments; associated amenity floors; retail use at ground floor and associated open space.
- 7.3 At the same Committee planning consent under ref. PA12/03247 was granted for a development at Island Point for the construction of buildings ranging from 3 to 5 storeys, together with a 6th floor roof-top pavilion, providing 173 units of affordable housing together with open space and a community building, (refer to background paper no.1).
- 7.4 These two consents were linked in a section 106 agreement also dated 13 October 2013 under which the developer also agreed to pay a total of £9,251,640 as a contribution to education, healthcare, local community facilities, environmental improvements, public transport improvements, and training and skills. (Refer to background paper No.1)
- 7.5 The development will use sustainable and energy efficient building techniques and renewable energy technologies which together will ensure a significant reduction in potential carbon dioxide emissions.
- 7.6 The developer has now notified the Council that there is a strong likelihood that a small number of affected owners will issue an injunction to prevent the development at the City Pride site from proceeding as they are not satisfied with the compensation currently on offer.
- 7.7 The developer has provided a file of evidence on the scope of the negotiations with the affected owners. Contained within this evidence pack is open letter correspondence in which the owner's lawyer makes clear that they are prepared to issue an injunction, which would put the scheme at risk. (Refer to background paper no.12)
- 7.8 It appears from this evidence that 2 owners adjacent to the City Pride site who will lose light from their bedroom windows are considering issuing an injunction. Consultants have assessed the resulting diminution of property value and to date the developer has formally offered about 20 times the industry standard book value in compensation. In addition, two owners at Lockesfield Place adjacent to the Island Point site are likely to be impacted significantly enough for them also to have an actionable right, though to date the owners have not threatened the use of an injunction. However, as a potential injunction could still be sought, this puts the development at risk.
- 7.9 The developer has formally requested the Council to consider the use of its S237 powers under the TCPA 1990, using a back to back purchase and sale methodology to acquire and dispose of the City Pride and Island Point sites only in order to extinguish third party rights. No other land or adjacent properties form part of this

acquisition. Affected owners would retain their right to compensation. Such compensation would be calculated in accordance with statutory provisions. At this point no details of the proposed purchase price for the sites has been discussed or agreed upon.

- 7.10 Further to the above position, the developer had originally notified the Council of Right of Light issues on the City Pride site only, however as soon as Officers began the detailed work it became apparent that there are Right of Light issues at Island Point as well and therefore the Council would have to use its powers on both sites.
- 7.11 As set out above, the Council cannot make a profit from the use of these powers but all its costs can be covered, including the costs of any Judicial Review. The developer is entering into an Indemnity Agreement with the Council to cover these costs.
- 7.12 The criteria which have to be met when considering the exercise of the Council's powers under S227 of the TCPA is set out in paragraph 15.5 (Legal Implications).
- 7.13 In this case the developer has provided documentary evidence that injunctive action is being threatened and that it has offered two rights of light owners 20 times the book value of the loss. There is considerable potential benefit to Tower Hamlets that would be lost which will be discussed further in Section 8 below; these benefits would be consistent with objectives set out in the Tower Hamlets Community Plan and other published strategies. This would tend to support an argument that it is in the public interest to override third party rights, although an Equality and Human Rights impact assessment has been carried out to test this proposition.

8. BENEFITS OF THE SCHEME

- 8.1 The Scheme will facilitate the carrying out of development on the Land by enabling the Planning Permissions to be implemented.
- 8.2 The Scheme will contribute to the achievement of the promotion or improvement of the **social well-being** of the Council's area for the following reasons:
 - 8.2.1 The development of City Pride will provide 70 affordable housing units, 752 private residential units and 162 serviced apartments.
 - 8.2.2 The development of Island Point will provide 173 affordable housing units. These will include a significant number of social rented family homes, which is the Council's preferred tenure and house type.
 - 8.2.3 All residential units will be designed to a high quality. They will comply with and where possible exceed the Mayor's residential unit size standards and will provide large and high quality amenity spaces and child play spaces.
 - 8.2.4 The development of Island Point will provide up to 56 square metres of community floor space. This will be available for use by the local population.
 - 8.2.5 Financial contributions to the value of £2,399,302 for City Pride and £3,452,064 for Island Point will be paid by the developer towards education, healthcare, local community facilities and public transport improvements. These contributions will ensure that the impacts of the new development are

satisfactorily mitigated. Some £977,099 was to be paid by the developer to Crossrail within the £9.25M s106 payments highlighted in para. 7.4, but this is now superseded by a larger payment of over £3M to be paid to Crossrail under the London Mayor's Community Infrastructure Levy.

- 8.2.6 It is noted that the above benefits to the Borough can only be realised through the successful completion of the development and by endorsement of the S106 contributions, which would seek to mitigate any adverse impact to the local area.
- 8.3 The Scheme will also contribute to the achievement of the promotion or improvement of the ***economic well-being*** of the Council's area for the following reasons:
- 8.3.1 The development of City Pride will provide up to 359 square metres of retail floorspace. This has the potential to provide an additional 77 jobs during the operational phase. This estimate comprises approximately 22 jobs for the estate management team, 5 jobs for the retail and 50 jobs for the serviced apartment provider.
- 8.3.2 The development of City Pride and Island Point has the potential to provide an additional 1,100 jobs during the construction phase, with 800 operatives constructing City Pride and 300 operatives constructing Island Point.
- 8.3.3 Financial contributions to the value of £201,376 for City Pride and £47,655 for Island Point will be paid by the developer towards training and skills initiatives. These contributions will ensure that the impacts of the new development are satisfactorily mitigated.
- 8.4 The Scheme will also contribute to the achievement of the promotion or improvement of the ***environmental well-being*** of the Council's area for the following reasons:
- 8.4.1 The development of City Pride will provide 1,482 square metres of open space.
- 8.4.2 The development of Island Point will provide 5,898 square metres of open space.
- 8.4.3 Financial contributions to the value of £1,604,502 for City Pride and £569,642 for Island Point will be paid by the developer towards local environmental improvements. These contributions will ensure that the impacts of the new development are satisfactorily mitigated.

9.1 RIGHTS OF LIGHT STUDY VERIFICATION

- 9.1 As referred to in paragraph 10.8 the Council has appointed an independent Right to Light consultant (DPR) who has completed stages 1 and 2 of a verification process, which required reviewing the methodology for calculating properties impacted by the development, reviewing consultation and evidence materials and confirming the compensation offers. (Refer to background papers no. 2, 3 & 4) The results concluded the developer's right to light study was accurate; importantly it also identified the same properties which would have a potential claim.
- 9.2 The rights to light report (now independently verified) identifies the impact of the City Pride and Island Point development on rights of light to neighbouring properties, and

identifies which of those properties, although potentially impacted, do not actually have rights either because a Light Obstruction Notice (LON) has been served under the Rights of Light Act 1959, or a Deed or Legal Agreement exists which removes rights of light. It also identifies which properties are not yet old enough to have acquired a right to light in law.

- 9.3 The report goes on to identify the neighbouring commercial and residential properties that will experience a right to light injury.
- 9.4 The commercial properties that will experience a right to light injury are:-
- 17 Columbus Courtyard
 - Quay House
 - Ensign House
 - 1-5 Cabot Square
 - 7-8 Heron Quay West
- 9.5 Although it has been verified that a right to light injury will be caused to these properties, the injuries caused are all relatively minor, and the small scale of injury to a small number of rooms, coupled with the fact that two of the properties are a considerable distance from the site, mean that the risk of a Court granting an injunction must be relatively low. In addition, the cost and risk to neighbours of pursuing an injunction for this minor impact reduces the risk.
- 9.6 The residential properties that are affected are as follows:-
- Anchorage Point
 - 1-9 Quayside
 - 35, 43, 59, 60 and 61 Lockesfield Place
 - West India Quay (see details in paragraph 9.10 below)
- 9.7 At Anchorage Point, there is a room on each of the 1st – 6th floors that will experience a noticeable reduction in light. This room is large enough to be a living room or kitchen / diner, and if so the reduction in light that takes place will be material and must be considered to be potentially injunctable in respect of the lessees of those particular flats.
- 9.8 At 1-9 Quayside, there is a right to light injury to one bedroom in each of two flats (no.1 & 4). The loss is very noticeable, and again must be considered to be injunctable in respect of that leasehold interest, although possibly not in respect of the freehold interest.
- 9.9 At Lockesfield Place the impact is variable along the terrace of houses. It is most severe in respect of Nos. 43 and 59 and it is considered that these may have an actionable right.
- 9.10 At West India Quay there were initially thought by DPR to be two flats which would experience losses to one bedroom in each flat. However, DPR has now reviewed additional technical information and advised that the impact to light losses at West India Quay is considered to be minor and not injunctable.

Possible alterations to scheme proposal

- 9.11 The rights to light consultant has considered the extent to which the scheme proposal for the City Pride site could be modified to avoid causing right to light injury to neighbouring properties.

- 9.12 Reducing the height of the building will have little material impact on most affected properties, including owners with injunctable claims, as these properties are located at lower levels around the development site. The proposed building at City Pride is already so tall (at 75 storeys) that a reduction of a few storeys at the top will still not materially improve the sky visibility within the neighbouring rooms. This option would have some impact on those buildings further away, but they are less significantly affected in any event.
- 9.13 The principal way to reduce the impact would be to reduce the plan area of the proposed building in order to provide better levels of sky visibility to either side of the scheme. More detailed analysis would be needed to see what changes would be required to make material improvements, although the only properties likely to particularly benefit from the reduction in floor area are 1-9 Quayside, and then only if the proposed block were to be set back from the current proposed north elevation to a position in line with the north elevation of 1-9 Quayside. This would require a new full planning application to be submitted by the developer, therefore superseding the current consent which the scheme already has. This approach would create further risks, delays and uncertainty for the developer, and for the delivery of the public benefits from the scheme identified in Section 8.
- 9.14 Instead, the developer has been advised to consider possible re-designs in the approved scheme at Island Point, as there may be ways to remove the right of light impact. The developer has subsequently been in discussion with planning officers and identified three options for non-material amendments which can be made to the Island Point site to reduce right to light injury (refer to background paper no.6. Five amendments had been proposed to the scheme, the details include the following:
- 1) Cut back to reduce effect on 35 Lockesfield Place: This is a minor change, does not significantly affect the appearance of the elevations and as such could be considered non-material.
 - 2) Cut back to reduce the effect on 43 Lockesfield Place: This reduces the number of habitable rooms by 2 and as such would overall reduce the level of affordable housing the scheme provides. This cannot be considered a non-material amendment.
 - 3) Cut back to reduce effect on 59 Lockesfield Place: This affects the design of the elevation and reduces the number of habitable rooms within the scheme; this cannot be considered non-material to the scheme and would either need to be applied for through a s73 application or new planning application.
 - 4) Cut back to reduce effect on 60 Lockesfield Place: Initially these drawings showed a revised entrance to the first floor which raised concerns about security, a gate at the top of the stairs has now been included to overcome these concerns; however the changes would still have an effect on the design of the rear elevation of the building. If the window configuration could be readjusted to better reflect the original design then this could be considered non-material, however as it stands the window arrangement is sufficient different to the general pattern along the rear elevation for this to be considered material.
 - 5) Cut back to reduce effect on 61 Lockesfield Place: Again, as per option 4, the external staircase layout has been amended to reduce the security problems. The cut back at roof level is less significant than in option 4 and this does not

affect the appearance of the rear elevation or the window alignment to the same degree. This could therefore be a non-material amendment.

- 9.15 Overall, options 1 and 5 could be considered non-material; with some work to option 4 this could be non-material and options 2 and 3 are material. It is noted that material alterations would require a new planning permission. This would result in further delay and significant uncertainties to the delivery of the scheme's public benefits.
- 9.16 This has been issued as officer advice only from the Planning Department and a final decision by the Local Planning Authority could only be secured through a formal application for a non-material amendment.
- 9.17 The potential benefits would be to the properties numbered 35, 60 and 61 Lockesfield Place. However light injury to number 43 and 59 Lockesfield Place would remain as would their actionable claim. The developer is expected to make the planning applications in due course.

Conclusion

- 9.18 The impact of the proposed developments on the neighbouring commercial properties identified in paragraph 9.4 is minimal and should not be of material concern.
- 9.19 The impact on neighbouring residential properties cannot be discounted because of the reduction in light that takes place to the affected flats. It is not expected that the courts would necessarily grant an injunction to a freehold owner, but that cannot be discounted for leasehold owners, especially as those lessees are likely to have long leases and therefore the material interest in the property. In this case the affected parties are leaseholders, some of whom could seek an injunction.

Light Obstruction Notice

- 9.20 A Light Obstruction Notice (LON) if duly registered is equivalent to a physical obstruction to land (usually expressed to be of unlimited height) intended to interfere with the enjoyment of light. Only those who have formal rights of light have the right to challenge the registration of a LON.
- 9.21 LONs are usually registered where formal rights of light are not yet enjoyed but are about to be acquired. This could be because the party making the application is proposing to redevelop its land in the near future, but there is insufficient time to do so before formal rights of light are acquired. Other landowners have been known to make LON applications as an estate management exercise to stop rights of light being acquired as a matter of principle, whether or not they want to redevelop at the point the application are made or shortly thereafter.
- 9.22 Registration of the LON is in the Local Land Charges Register of the relevant Local Authority. Those potentially affected by the LON registration are notified of the LON application and given opportunity to make challenge should they wish to do so by the Upper Tribunal. The local authority has no role in the actual consultation undertaken when a LON is registered; this responsibility lies with the Land Tribunal Services.
- 9.23 If there are grounds for challenge, such a challenge needs to be made within one year of registration of the LON if a relevant landowner is to avoid losing its rights to assert rights of light enjoyed by virtue of long user (20 years).

10. NEGOTIATING SETTLEMENTS

- 10.1 The developers have provided detailed evidence concerning their attempts to engage with the parties whose light might potentially be affected by the development at both sites and concerning any subsequent negotiations. While some settlements have been agreed, a number of parties with potential claims have either remained unwilling to engage or unwilling to reach agreement and two are threatening to seek injunctions. (Refer to background paper no.10 & 12)
- 10.2 The properties which are most significantly affected and considered to have potentially actionable claims are listed below:
- Flats numbers 1 & 4 at 1-9 Quayside affected by the City Pride site
 - Flats numbers 11, 12, 20, 22, 30, 32, 40, 42, 50, 52, 60, 62, 70 and 72 Anchorage Point affected by the City Pride site
 - Property numbers 35, 43, 59, 60 and 61 Lockesfield Place affected by the Island Point site

Compensation Offers

- 10.3 In order for the Council to be satisfied that the levels of compensation being offered and agreed are appropriate, the latest compensation schedule has been independently checked by Delva Patman Redler (DPR), a specialist right of light consultant. DPR has worked through these and confirmed that the settlements agreed and the offers being made to date are at a fair and indeed generous level. (Refer to background papers no. 3 & 4)
- 10.4 DPR has confirmed that the compensation offers are based on the traditional method of valuing rights of light. In doing so, the developer has used the normal maximum rate of light rent of £5 per square foot and a yield of 5% when calculating compensation figures based on light injury to a property. DPR has confirmed that the compensation schedule reflects a fair and reasonable approach for the developer to have taken.
- 10.5 The book values for compensation thus reached have then been enhanced further. DPR have confirmed that it is usual for the book value to be enhanced by a factor of between 2.5 and 3. This is based on case law that has become standard for open market negotiations. The actual enhancement does depend on the strength of the affected land interest/owner's case and the likelihood of obtaining an injunction. In recent negotiations in the City of London, settlements have increasingly been made at a higher level, up to five times the book value.

DPR has assessed the compensation offers being made at the City Pride and Island Point developments, examples of which are listed below:

Flats 1 and 4 Quayside

- 10.6 At 1-9 Quayside, where the leasehold owners of the two flats (No.1 & 4) have been threatening to apply for an injunction, offers have been made at twenty times the book value, which DPR deems to be generous. No agreement has been reached with the leaseholder owners of these flats which would enable the development to proceed.

Anchorage Point

- 10.7 At Anchorage Point offers have been made at five times the book value, which is the upper end of the normal negotiation range and therefore still generous, bearing in mind the relatively small impact on the property. The developer has contacted all 14 owners by letter and sent draft Deeds of Release on 31st October 2014. It is noted that at 7 of the affected flats the loss is considered so minor as not to be actionable, whilst the other 7 flats retain compensationable claims. To date 12 out of 14 leasehold owners have engaged in negotiation discussions, however no settlements have been reached.

Lockesfield Place

- 10.8 The owners of the properties at Lockesfield Place are being advised by Anstey Horne surveyors who have been sent the rights of light calculations of the developer's consultants. They have also been offered compensation in an amount considered by DPR to be reasonable, but to date have not responded to correspondence since the end of September, and thus no open acknowledgement that those of their clients who suffer material interference will not seek an injunction.
- 10.9 In respect of No. 59 Lockesfield Place, other than a brief response reserving all their clients rights on 18th August 2014 (and thus reserving right to seek an injunction) and indications that Anstey Horne surveyors were appointed, there has been no response or further update to the Council or the developer.

West India Quay

- 10.10 West India Quay is some 564 metres away from the City Pride site and the view has been taken that any impact on the light to its windows from the City Pride development would be imperceptible. The developer has, however, written to the owners of any potentially affected apartments and invited them to engage with them should they wish to take matters further.
- 10.11 DPR's analysis has thus confirmed that the settlements negotiated to date and the offers that have been made by the developers are at a fair and reasonable and indeed, generous, level and that all necessary steps have been taken to reach agreement with the parties affected so as to avoid the need for the Council to exercise its powers in order to facilitate the development.

11. PUBLIC CONSULTATION

- 11.1 Officers have carried out a 28 day public consultation in line with best practice.
- 11.2 The consultation period commenced on 17th July 2014 and ended on the 18th August 2014. Officers have continued to take and assess any further correspondence to date.
- 11.3 A total of 170 individual letters to owners and third party interests directly affected by rights to lights claims were issued by a combination of post, recorded and hand delivery on 16th July.

- 11.4 In addition, a two week rolling press notice was issued in the East End life and East London Advertiser for the following dates (17th, 21st, 24th and 28th July) notifying residents and members of the public.
- 11.5 Further to this, multiple site notices were erected around the development site itself to further notify residents and members of the public.
- 11.6 Details of the approved planning application, the land to be acquired and any additional information has been available at the Council office and by request to the Housing Regeneration Team.
- 11.7 The Council has received **64** individual responses to the consultation and officers have responded to calls and e-mails, in some cases by providing additional information.
- 11.8 The objections can be summarised as follows:
- 1) 57 responses received from residents of the Cascades Development against which a Light Obstruction Notice (LON) has previously been successfully registered. The LON registration prevents the Cascades Tower asserting prescriptive rights of light under the prescription Act 1832 and this property enjoys no express rights of light over the City Pride site. (refer to background paper no.6) Individual queries about the LON process have been responded to by officers.
 - 2) 2 responses relate to 3 flats within 1-9 Quayside House Development. None of these 3 flats have windows that overlook the City Pride development site and as such their properties remain unaffected. (refer to background paper no.3)
 - 3) A response received from 43 Lockefield Place is recognised as a legitimate actionable claimant.
 - 4) 2 responses received relate to flats within the Landmark Tower, which is a development constructed between early 2007 and late 2010 with Practical Completion of the entire development taking place in December 2010, therefore the windows in all the Landmark buildings do not benefit from rights of light, as they have not existed for 20 years.
 - 5) 2 responses received relate to flats within Anchorage Point Development. Flat 81 is not thought to be affected by the City Pride development as it is a top floor river facing apartment. DPR has verified that flat 81 is not materially affected and that it will remain well-lit. Flat 11 has previously been identified as one of the 7 materially affected properties at Anchorage Point (refer to background paper no.3).
- 11.9 There have been representations from Howard Kennedy solicitors representing affected parties at Quayside flats 1 and 4, which have been taken into account in preparing this report. The correspondence appears to threaten Judicial Review and/or injunction against the Council should it use its S237 powers. By letter dated 17 September 2014, the Council invited Howard Kennedy to make further representations but was informed on 2 October 2014 that they had no further representations to make beyond those previously made. No alternatives were offered to use by the Council of its section 237 powers. The developer had a meeting with the representing solicitors on the 5th November 2014, on a without

prejudice basis. On 15 December 2014, Howard Kennedy informed the Council that negotiations were continuing with the developer. However it has been confirmed that no settlement has been reached and the owners represented by Howard Kennedy are still threatening to apply for an injunction.

- 11.10 Correspondence has also been received from professional representatives acting for 59 Lockesfield Place and the Lockesfield Place Management Company, although the latter does not have an actionable interest in the land. Again these have been acknowledged and the points raised are being followed up. To date these representatives have made no further comment or reverted back to the Council.
- 11.11 None of the responses received by the Council in this consultation exercise proposed any viable alternative design options, or otherwise, to overriding rights under S237.

12. NEXT STEPS

- 12.1 As this is the first time the Council is considering the use of such powers and because of the potential for legal challenge, Counsel has been retained to advise on the use of the power and the verification and consultation undertaken to date.
- 12.2 All correspondence to the public consultation will receive an update response with matters of clarification as required.
- 12.3 If further responses are received from legal or other professional advisors to the affected land owners, they will be assessed and factored into the final report or addendum report or by way of a verbal update at the scheduled Cabinet.
- 12.4 Final drafting of the financial indemnity will be agreed and the indemnity signed shortly prior to the Cabinet meeting.
- 12.5 If the use of section 237 powers is agreed the full terms of the back-to-back land transaction will be negotiated and agreed after the Cabinet decision.

13. RISK MANAGEMENT IMPLICATIONS

- 13.1 **Valuation** – the compensatory issue relating to a right to light claim derives from diminution of property value. The developer has instructed a specialist valuer to determine the value, which may or may not have been agreed by the affected property owners. To offset the risk that the Council may not rely exclusively on the developer's valuations of compensation, the Council has retained its own right to light expert to verify that the developer's compensation schedule of offers are fair and reasonable.
- 13.2 **Other Covenants** – the use of the power will potentially extinguish all covenants and third part rights not just Rights of Light. The developer has completed a Deed of Release in respect of such conversance. In addition, sufficient due diligence has already been done, demonstrating the existence of rights which prevent the development.
- 13.3 **Benefits to the local area** - the Council cannot use its power simply to save the developer money; there must be a clear socio- economic benefit to the local area. These benefits must be able to be quantified and proved, and be benefits which

would disadvantage the Council's objectives if they were lost e.g. by reference to the Strategic Plan. S106 payments cannot be taken into account because these payments are to mitigate the impacts of the development, therefore in essence if the development does not go ahead they will not be required and there is no loss to the locality. Although in practice these payments are hugely beneficial to the Council this is not in itself sufficient. Counsel has been instructed to advise on the use of these powers, and throughout the process, and will be instructed in the event of a challenge.

- 13.4 **Reputational damage** – notwithstanding the potential loss of economic, social or environmental benefits the use of the power to support a developer may well be highly contentious, particularly if the development was in itself controversial during the planning process which is likely. The key test that the loss of personal property rights needs to be outweighed by the wider public good is particularly pertinent in determining whether the Council should formally use its power. The appetite for this will need to be gauged in relation to any application from a developer and weighed against the loss of benefits. Counsel has been instructed to advise on the use of these powers, and throughout the process, and will be instructed in the event of a challenge.
- 13.5 **Judicial Review** – any decision will be challengeable via the courts. Although the indemnity agreement would ensure that the costs of the action would be funded by the developer the Council would suffer reputational damage if it lost a challenge particularly as it is likely that such a case would be high profile. An assessment of the likelihood of challenge, the chance that such a challenge would be successful and the impact of the decision being overturned by the court will have to be weighed up against the loss of benefit to the local area. Counsel has been instructed to advise on the use of these powers, and throughout the process, and will be instructed in the event of a challenge.
- 13.6 **Indemnity** – The Council will be exposed to a variety of costs should the Mayor decide to support this development. These include staff time and the costs of any legal challenge. These costs may be considerable, particularly as the Council may be requested to pay the claimant's costs should a successful claim be brought. In terms of its own staff costs, the Council cannot make a profit but may recover from the developer its costs of undertaking the work. It is difficult to estimate the extent of litigation costs but they could be in the range of £50,000 - £100,000 if a claim for Judicial Review is brought and pursued to a successful conclusion against the Council. An indemnity agreement is to be completed with the developer before Cabinet meets. It is intended to indemnify the Council for its officer time but also for costs of claims associated with any challenges that maybe made against the Council by reason of the decision. Any such agreement is unlikely to provide perfect indemnity. The Council may still become exposed to legal costs, for example in the event that it determines to continue with proceedings contrary to the advice of counsel or against the developer's wishes.
- 13.7 **Land Agreement** – if S237 powers are used these will be the need for back to back land transactions. These must be cost neutral to the Council. There are a number of associated risks:
- Site valuations and triggers of best value considerations
 - Triggers the need for Secretary of State consent to dispose.
 - Taxation risks if the agreements are not structured effectively and / or these are not fully covered in the indemnity agreement

- Compensation costs not being fully covered in the indemnity agreement (as these would become payable by the Council)
- Claims against the Council from other parties e.g. if a covenant in the land is not fully identified and dealt with appropriately

Impediments to Implementation

- 13.8 There are no planning impediments to implementation of the Scheme or the carrying out of the development.
- 13.9 There are no financial impediments to implementation of the Scheme or the carrying out of the development. The developer has entered into an agreement with the Council to indemnify the Council against all compensation payments and relevant costs which will be incurred by the Council in connection with the Scheme.
- 13.10 No related orders, applications or appeals are required to enable the Scheme and the development to proceed.
- 13.11 The buildings formerly on sites at the City Pride site have been demolished under previous planning permissions. Detailed design work has been progressed and is now sufficiently advanced to enable commencement of permanent construction works from 2015 and handover of the development from 2019.

14. COMMENTS OF THE CHIEF FINANCE OFFICER

- 14.1 This report assesses the powers available to the Council under the Town and Country Planning Act 1990, Section 237, and how these can be used to reduce the possibility of legal objections being pursued in respect of Rights to Light disputes arising from private developments. The report specifically requests approval for these powers to be applied in relation to the private redevelopment scheme on the site of the former City Pride and Island Point.
- 14.2 Officers have obtained legal opinion in respect of the potential use of Section 237 powers, with Counsel's views summarised in the report. It is essential that the Authority's assets are not put at risk through the application of these powers, and although detailed financial evaluation of the costs involved has not yet been undertaken, the overriding principle is that no unrecoverable costs should be incurred by the Council, with the developer underwriting all costs and risk. This is a similar principle to that operated when the Council undertakes Compulsory Purchase Order action to assist a development which is being promoted by a third party.
- 14.3 In relation to the City Pride & Island Point development an indemnity agreement is being negotiated with the developer as outlined in paragraph 13.6. It should be noted however that the agreement is unlikely to provide full indemnity, and that there may be instances where the Council could still become exposed to costs through its actions (examples are included in paragraph 13.6). If unrecoverable costs are incurred these would be a call on the Council's reserves.
- 14.4 Each individual application of Section 237 powers must be determined in accordance with the requirements of the legislation. As well as addressing the various risks that could arise from the process (see Section 13), any evaluation must incorporate an assessment of the tax implications of the acquisition and disposal mechanism in order that the agreements can ensure that any risks to the Council are mitigated.

15. LEGAL COMMENTS

- 15.1 Section 237 of the Town and Country Planning Act 1990 Act (TCPA) provides that the construction of any building or the carrying out of work on land which has been acquired or appropriated by a local authority for planning purposes (whether done by the authority or by a person deriving title under them) is authorised if done in accordance with planning permission, notwithstanding that it involves interference with an easement or breach of a restrictive covenant. The use of any land in England which has been acquired or appropriated by a local authority for planning purposes is likewise authorised.
- 15.2 Compensation is payable for such interference under the compulsory purchase Legislation, on the basis of diminution in the value of the claimant's land without any ransom or loss of bargaining position element.
- 15.3 Under section 226 of the TCPA a local authority has power to acquire compulsorily land in its area (a) if they think the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land or (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
- 15.4 Section 227 of the TCPA provides that the Council of a London Borough may acquire by agreement any land which they require for any purpose for which they may be authorised to acquire land under section 226.
- 15.5 If the Council is to utilise the above powers it should be satisfied that the following criteria have been met:-
- The use of the statutory powers is required in that:
 - (1) (i) the infringements cannot reasonably be avoided;
 - (ii) the easements to be interfered with cannot reasonably be released by agreement; and
 - (iii) the development is prejudiced due to the risk of injunction and adequate attempts have been made to remove the injunction risks.
 - (2) The Council thinks it will facilitate the carrying out of development, redevelopment or improvement on or in relation to land.
 - (3) The Council thinks that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of the Borough and therefore it is in the public interest that it be carried out, and whether those benefits could be achieved without giving rise to all or some of the infringements.
 - (4) It is in the public interest that the development is carried out.
 - (5) The public interest to be achieved is proportionate to the private rights being infringed (Human Rights Act 1998).
- 15.6 233(1) of the TCPA sets out the Council's relevant power to dispose of the land. There is an obligation for the Council to obtain best consideration unless the Secretary of State's consent is given. The General disposals consent does not apply to land held for planning purposes and so the Council will need to ensure the terms of any transfer/ lease and transfer/ lease back to the Developer complies with the provisions of s233(1).

- 15.7 Before determining to make a relevant acquisition, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. Some form of equality analysis will be required which is proportionate to any proposed acquisition and its potential impacts.
- 15.8 The decisions whether to acquire land under sections 226 or 227 of the TCPA and whether to dispose of such land under section 233 are executive decisions. It is reasonable to consider that they would be key decisions having regard to the relevant test specified in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and in the Council's Constitution.
- 15.9 On 17 December 2014, the Secretary of State pursuant to his powers of direction in section 15 of the Local Government Act 1999 appointed commissioners to oversee specified functions at Tower Hamlets. The Council will be required to obtain the prior written agreement of the commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties any real property other than existing domestic property for the purposes of residential occupation. Therefore the commissioners will need to consent to the proposed disposal of the land back to the developer.

16. HUMAN RIGHTS CONSIDERATIONS

- 16.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights (ECHR). Various convention rights are likely to be relevant to the proposed acquisition, including:
- Entitlement to a fair and public hearing in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process.
 - Peaceful enjoyment of possessions (First Protocol Article 1). This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
- 16.2 The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate.
- 16.3 The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the exercise of the s237 powers. The Council must carefully consider the balance to be struck between individual rights and the wider public interest.
- 16.4 Human Rights arise in respect of the proposed arrangements. Following the introduction of the Human Rights Act (1998) the Council is required to act in accordance with the European Convention on Human Rights (ECHR) in deciding

whether or not to implement the arrangements. Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. Acquisition of property under section 227 of the Act which engages section 237 of the Act to authorise interference with rights of light involves interference with a person's right under the article.

- 16.5 However, the rights to peaceful enjoyment of possessions in this Article is a qualified rather than absolute right, as the wording of Article 1 or Protocol 1 permits the deprivation of an individual's possessions where it is in the public interest and subject to the conditions provided for by law, and (in relation to the right to respect for private and family life and a person's home) Article 8(2) allows for interference which is "in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the rights and freedoms of others".
- 16.6 There must therefore be a balancing exercise between the public interest and the individual's rights whereby any interference in the individuals' rights must be necessary and proportionate. 'Proportionate' in this context means that the inference must be no more than is necessary to achieve the identified legitimate aim. A fair balance must be struck between the rights of the individual and the rights of the public.
- 16.7 Section 8 of this report highlights the substantial benefits from the scheme in terms of meeting the wellbeing tests. The public interest in facilitating the development and achieving the substantial public benefit outweighs the rights of the individuals to peaceful enjoyment of their possessions. The proposed use of section 237 powers amounts to a proportionate interference in all circumstances. In this regard the availability of compensation to those who are deprived of their rights of light is of relevance to the issue of proportionality.
- 16.8 The planning implications of the development have been fully considered. The development has been deemed acceptable in planning terms by the Council. Consideration of the scheme should not re-open consideration of the accepted planning merits of the development.
- 16.9 On balance, the infringements of light to a small number of flats for which the compensation prescribed by law will be payable, is outweighed by the substantial public benefit which the scheme will deliver.

17. ONE TOWER HAMLETS CONSIDERATIONS

- 17.1 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender re-assignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers. In particular the Council must pay due regard to the need to:
 - I. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - II. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - III. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 17.2 These obligations are aligned with and delivered in conjunction with contribution to the One Tower Hamlets objectives of reducing inequalities, ensuring community cohesion and strengthening community leadership. The Equality Act implications of the Scheme were considered by the Council when the planning application was approved. In summary the Scheme overall and in particular the new community assets and infrastructure it will deliver is considered to address the impacts of the construction process on the local communities and in the longer term will support community wellbeing and social cohesion. Further improvements include the provision of large homes which will address severe overcrowding issues, a significant increase in the number of wheelchair accessible properties, and internal improvements to a large number of properties to improve the living standards of the occupants.
- 17.3 The purpose of using the section 237 powers is to ensure that the gains in affordable housing and other social, economic and environmental benefits of the proposed development can be realised. As the use of the Council's powers will impact on the rights of third party individuals, an equality impact assessment has been carried out. From the analysis and interpretation of evidence it is concluded that the different equality or other protected groups would not be adversely and/or disproportionately impacted by the proposal.
- 17.4 This scheme will contribute to One Tower Hamlets objectives. The three objectives are to reduce inequalities; ensure community cohesion; and, strengthen community leadership.
- 17.5 On **reducing inequalities**, the new scheme proposed will lead to an increase in affordable housing on the site. The use of s237 powers by the Council, as proposed, would not impact on affected property owners' compensation entitlements under legislation, as explained in paragraph 1.3. The treatment of the homeowners is assessed to be proportionate in the context of the wider benefits of the scheme.
- 17.6 On **ensuring community cohesion**, the Council is working with community representatives to facilitate the redevelopment project, and minimise disruption. The new scheme is intended to achieve improved physical change to the area to meet the objectives of high quality 'Place Making'.
- 17.7 On **strengthening community leadership**, the Council continues to work closely with residents and home owners. The successful delivery of City Pride and Island Point is predicated on continuing successful engagement with residents and other local stakeholders and the Council will continue to work with residents on that basis.
- 17.8 Overall there is a need to provide a balanced judgement in order to assess the loss of individual rights against the wider public benefit. The action proposed is considered to be proportionate to achieve the Council's regeneration aims, including the critical delivery of affordable homes for local people. Implementation of these powers will not affect the rights of residential property owners to financial compensation, where these rights currently exist.

18. APPENDICES

18.1 The report has the following appendices:

Appendix 1: City Pride site location plan

Appendix 2: Island Point site location plan

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APPENDIX 1 - City Pride Site Location Plan



APPENDIX 2 - Island Point Site Location Plan



Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

1. Approved Planning Consent and Strategic Development Committee reports for PA/12/03248 and PA/12/03247 dated 10th October 2013
2. Delva Patman Redler - Right to Light Summary Report, Ref: AP/sy/14335, dated September 2014
3. Delva Patman Redler – Verification of Compensation Schedule Summary – Ref: AR/sw/14335 dated 5 November 2014
4. Delva Patman Redler – Verification of Compensation Schedule Summary 2 – Ref: AR/sw/14335 dated 10 November 2014
5. Supporting Drawings and Right to Light analysis
6. Design Study to Minimise Impacts on Surrounding Properties to the Island Point Development, dated September 2014
7. Cascades Light Obstruction Notice Registration details (LON)
8. Equalities Impact Assessment – City Pride & Island Point Development
9. Submission on Compliance with S237 Criteria for City Pride & Island Point Development
10. Anchorage House & West India Quay Consultation & Engagement Summary
11. City Pride and Island Point Appendices: S237 Advice (Folder 1)
12. Third party and residents representations following consultation and latest correspondence letters.

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Agenda Item 7.3

Committee: Overview and Scrutiny	Date: 3 February 2015	Classification: Unrestricted	Report No: 7.3
Report of: Louise Russell Service Head Corporate Strategy & Equality		Title: Update on Best Value Improvement Planning	

1. **SUMMARY**

- 1.1 This report updates the Committee on the current process in relation to best value improvement planning.

2. **RECOMMENDATIONS**

The Overview and Scrutiny Committee is recommended to:-

- 2.1 Consider and comment on the proposed approach to date as set out in this report.

3. **BACKGROUND**

- 3.1 On December 17th 2015 the Secretary of State issued directions to the London Borough of Tower Hamlets under section 15 of the Local Government Act 1999, and appointed 2 Commissioners with specific functions. These directions are set out as Appendix 1.

- 3.2 At its meeting in January the Overview and Scrutiny Committee agreed, in considering a referral from Council, in relation to the PWC inspection of the Council which gave rise to the SoS directions, that it wished its future work in relation to the issues raised in the motion to be focussed on considering and scrutinising the council's plans for improvement.

- 3.3 The specific Direction for the Council relating to improvement and action planning is contained in Direction 1: 'Within 3 months from the date of these Directions [ie 17 March 2015] to draw up and agree with the Commissioners a strategy and action plan for securing the Authority's compliance with its best value duty (to include as appropriate complying with the specific directions set out below and putting in place robust and transparent arrangements for grant decisions), and to submit this to the Secretary of State.'

- 3.4 The best value duty in section 3 of the Local Government Act 1999 is broadly drafted. It requires a local authority "to make arrangements to

secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". Previous legislation and statutory guidance was clear that this would need to be demonstrated by processes including the production of a Best Value Performance Plan, continuous improvement against Best Value Performance Indicators and a programme of periodic best value reviews of particular services or cross-cutting activities. None of this guidance is any longer in place and since 2010 authorities have been given considerable discretion in how they meet the best value duty, with the only statutory guidance remaining being 2 pages long and focusing almost solely on the duty to consult in achieving this duty, and in particular the need to consult with the voluntary and community sector. The Secretary of State's response refers also to the Barnet v Nash case which again largely focused on the duty to consult element of the BV duty.

3.5 In this context, the authority has begun discussions with the Commissioners about the nature of strategy and action plan they would expect to see and how broad its scope would be given the PWC inspection looked at only four key areas of the Council's business: grants, publicity, procurement of contracts and property. These are at an early stage but the broad approach to date is set out below.

4. Strategy and action plan to secure best value compliance

4.1 The main focus of the Council's improvement planning is around the four main areas which were the subject of the PWC report. There are already, or are underway, a number of reviews or improvements to policies and procedures to address the process issues identified in the PWC report.

4.2 Our current work is taking stock of what is currently in place and what more might need to be done. This will address issues emerging from the PWC report plus our own understanding of areas for improvement. This is work in progress and we are awaiting Commissioner feedback on initial drafts. Some of the key areas in hand are:

Grants
Re-focus and consolidatethe new MSG programme
Review/clarify protocols for grant awards and processes for decision making by the Commissioners
Review grant management and monitoring procedures – officer manual updated
Property transfer
Update Asset Disposal policy as part of review of Council's financial regulations
Update Disposal and Letting manual to align with updated policy
Finalise Community Buildings Lettings and Charging policy
Dissemination of revised protocols and training of staff
Programme of audit to ensure compliance
Use of publicity

Review of Communications Protocol
Develop a costed plan for use of Council communications
Contracts
Full category management analysis of current third party and commissioned spend
Ongoing programme of procurement training to develop procurement knowledge and skills across the organisation
Review arrangements for securing compliance through role of central team
Review and revise as necessary Procurement Policy imperatives
Review contracts awards and approval process

4.3 In addition we are discussing with the Commissioners their interpretation of the breadth of the best value improvement plan expected given the focus of the inspection findings on the four areas above. The Council has a wide range of processes and mechanisms in place to achieve continuous improvement and to secure economy and efficiency, only a very limited number of which have been considered as part of the PWC inspection. The Council is providing the Commissioners with a position statement setting out these existing arrangements.

4.2 Some key elements are set out in the table below:

Continuous Improvement	Economy, Efficiency and Effectiveness
Performance Management Framework (revised 2013) – the Plan, Do, Monitor, Improve cycle and golden thread	Medium Term Financial Planning and budgeting
Strategic and business planning framework- ie Community Plan, Strategic Plan, Directorate and team plans	Delivery of year on year savings without significant impact on performance outcomes
Robust annual target setting process against corporate target setting criteria	Budget consultation – for 15/16 budget and ongoing plans
Regular quarterly performance monitoring by Cabinet, O&S	Financial systems
Annual Report to residents	Budget monitoring and reporting
Team planning and annual review	Procurement procedures and other financial regulations
Performance Review Group and related improvement activity	Internal Audit programme of activity and follow-up
Annual Residents Survey and action planning	Risk management framework
Directorate performance management and improvement activity	Corporate Boards for Assets, Competition, People
Single Equality Framework and excellent EFLG assessment	Think Tank future planning
Investors in People Silver assessment and Going for Gold action planning	External auditors' value for money and financial resilience judgements
Scrutiny reviews and recommendations	

Data Quality action plan and regular audits
Annual Governance Statement and governance review
PDR and appraisal system
Workforce planning

- 4.3 Many of these have been subject to internal or external review within recent years. The Council has a strong story to tell in terms of service outcomes in a number of areas and robust performance monitoring arrangements for addressing areas of performance failure. In terms of economy and efficiency, we have delivered savings of over £100m without significant impact on performance outcomes. In addition, our external auditors annually assess our efficiency in a value for money judgement.
- 4.4 Our discussions with Commissioners are therefore focusing on what additional expectations they would have for a best value action plan over and above the 4 areas, in light of the extensive arrangements already in place.
- 4.5 Further updates can be made to the Committee following these discussions and the further development of improvement plans.

5 COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 5.1 There are no financial implications as a consequence of recommendations within this report.

6. LEGAL COMMENTS

- 6.1 The Council's obligation as a best value authority under section 3 of the Local Government Act 1999 is to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". The Council is required to consult for the purposes of deciding how to fulfil its duty. Whether or not any particular proposals require consultation may depend upon the significance or otherwise of those proposals.
- 6.2 The Council's Constitution provides that the Overview and Scrutiny Committee may consider any matter affecting the area or its inhabitants and may make reports and recommendations to the Full Council or the Executive, as appropriate, in connection with the discharge of any functions. This is consistent with the requirements of section 9F of the Local Government Act 2000. As part of this function the Committee may make recommendations to the Executive in relation to the content of the required strategy and action plan, prior to it being agreed with the Commissioners.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 The Council needs to deliver its functions, including in relation to those elements transferred to the Commissioners through Direction, with due regard to equality and the need of groups with protected characteristics. Changes to the way in which the Council awards grants, contracts or disposes of property, particularly community buildings, and publicises its activity has the potential to impact on equality and cohesion in the borough. Any significant policy changes emerging from the improvement planning activity will be subject to an equality impact assessment.

8. APPENDICES

Appendix 1 – Secretary of State Directions

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DIRECTIONS UNDER SECTION 15(5) AND (6) OF THE LOCAL GOVERNMENT ACT 1999 TO THE COUNCIL OF THE LONDON BOROUGH OF TOWER HAMLETS 2014

WHEREAS

1. The Secretary of State for Communities and Local Government ("the Secretary of State") has carefully considered the following in respect of the council of the London Borough of Tower Hamlets ("the Authority"):

a. the report of the Best Value inspection of the London Borough of Tower Hamlets by PricewaterhouseCoopers LLP of 16 October 2014 ("the PwC report") published and given to the Authority on 4 November 2014;

b. the report of "Delays at the verification and count for the May 2014 elections in Tower Hamlets - Report of the Electoral Commission's review", published 1 July 2014;

c. the representations made to him on 18 November 2014 by the Authority on the PwC report and on the proposed Directions;

d. PwC's response to representations from the Authority on PwC's report, received 8 December 2014; and

e. representations made by the Authority on PwC's response to representations from the Authority on PwC's report, received 10 December 2014.

2. The Secretary of State is satisfied that the Authority is failing to comply with the requirements of Part I of the Local Government Act 1999 ("the 1999 Act").

3. The Secretary of State, having considered the representations made by the Authority as required by section 15(9) of the 1999 Act, and other relevant representations received relating to the proposed Directions¹, considers it both necessary and expedient, in accordance with his powers under section 15(5) and (6) of the 1999 Act, to direct the Authority as set out below in order to secure the Authority's compliance with the requirements of Part 1 of the 1999 Act, in particular

- to put an end to any of the Authority's activities that are not compatible with its best value duty,
- to remove so far as possible the risk of further failures by the Authority to comply with the duty, and
- to rebuild the governance and financial management capacity of the Authority to secure its future compliance with the best value duty.

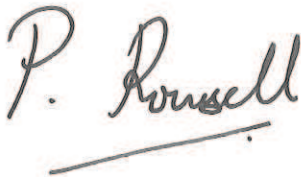
¹ Other representations are as explained in the Explanatory Memorandum; see paragraphs 10 to 12.

NOW THEREFORE

4. Pursuant to his powers under section 15(5) and (6) of the 1999 Act, the Secretary of State directs:

- i. the Authority to take the actions set out in Annex A to these Directions;
- ii. that the functions of the Authority specified in Annex B to these Directions shall be exercised from the date of these Directions to 31 March 2017 by the Commissioners, acting jointly or severally, the Commissioners being persons nominated by the Secretary of State for the purposes of these Directions as long as those nominations are in force, and
- iii. that, from the date of these Directions to 31 March 2017, the Authority shall comply with any instructions of the Commissioners in relation to the exercise of the functions specified in Annex B, and shall provide such information and assistance as the Commissioners may require for the purpose of exercising the functions specified in Annex B.

Signed on behalf of the Secretary of State for Communities and Local Government

A handwritten signature in black ink that reads "P. Rowsell". The signature is written in a cursive style. Below the signature is a horizontal line.

Paul Rowsell

A Senior Civil Servant in the Department for Communities and Local Government

Date: 17 December 2014.

ACTION THE AUTHORITY IS REQUIRED TO TAKE

In this Annex, the following expressions have the following meanings:

“statutory officers” means the head of paid service designated under section 4(1) of the Local Government and Housing Act 1989, the chief financial officer designated as having responsibility for the administration of the Authority’s financial affairs under section 151 of the Local Government Act 1972, and the monitoring officer designated under section 5(1) of the Local Government and Housing Act 1989;

“the Authority” includes the Mayor, the Cabinet Members, any committee or sub-committee and any other person who has responsibility for the matter in question;

“the Direction Period” means the period beginning with the date of these Directions and ending on 31 March 2017;

“member of the Authority” includes the Mayor.

The actions to be taken by the Authority are:

- 1) Within 3 months from the date of these Directions, to draw up and agree with the Commissioners a strategy and action plan for securing the Authority’s compliance with its best value duty (to include as appropriate complying with the specific Directions set out below and putting in place robust and transparent arrangements for grant decisions), and to submit this to the Secretary of State.
- 2) To prepare under the direction of the Commissioners and submit to the Secretary of State at 6 monthly intervals thereafter during the Direction Period, a report on progress against the strategy and action plan referred to in paragraph 1, including any comments from the Commissioners about the continuing need for each of the intervention measures.
- 3) Subject to paragraph 4 below, to undertake as a matter of urgency a recruitment exercise or recruitment exercises with the aim of making by 1 April 2015 (or earlier if practicable) suitable permanent appointments to those positions the holders of which are to be designated as statutory officers and, upon such appointments being made, to designate the holder of each position as the relevant statutory officer. Such recruitment exercise(s) is/are to be conducted under the direction of, and to the satisfaction of, the Commissioners who, for the avoidance of doubt, may for these purposes approve the continuation of a recruitment exercise commenced before the date of these Directions, with or without modification. Also for the avoidance of doubt and again subject to paragraph 4 below, an existing employee of the

Authority may be appointed to a position referred to in this paragraph, provided always that such person is a suitable permanent appointment to that position.

- 4) For the Direction Period, to obtain the prior written agreement of the Commissioners to:
 - (a) any dismissal or suspension of a person who has been designated as a statutory officer (whether that person was appointed or designated as a result of the exercise referred to in paragraph 3 or otherwise);
 - (b) any appointment of a person to a position the holder of which is to be designated as a statutory officer (whether as a result of the exercise referred to in paragraph 3 or otherwise);
 - (c) any removal of the designation of any person as a statutory officer (whether that person was designated as a result of the exercise referred to in paragraph 3 or otherwise); and
 - (d) any designation of any person as a statutory officer (whether as a result of the exercise referred to in paragraph 3 or otherwise).
- 5) For the Direction Period, to obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation.
- 6) Within 3 months from the date of these Directions, to prepare a fully costed plan for the Authority's proper use of publicity and agree that plan with the Commissioners; thereafter during the Direction Period, to report to the Commissioners on the delivery of that plan at 6 monthly intervals or at such intervals as the Commissioners may direct, and adopt any recommendation of the Commissioners with respect to that plan, and for the Direction Period, to adopt any recommendations of the Commissioners in respect to publicity more generally.
- 7) Urgently and in any event by no later than 1 February 2015, to prepare and implement an action plan, in consultation with the Commissioners, to achieve improvements in relation to the processes and practices the Authority adopts for entering into contracts, including how it implements its written procurement policies and procedures; and during the Direction Period, to adopt all recommendations of the statutory officers in relation to the processes and practices to be followed in relation to entering into contracts, unless the Commissioners' prior written agreement is obtained not to do so.
- 8) To allow the Commissioners at all reasonable times access:

- (i) to any premises of the authority
- (ii) to any document relating to the authority, and
- (iii) to any employee or member of the authority,

which appear to the Commissioners to be necessary for the purposes of carrying out their responsibilities under these Directions and any future Direction.

- 9) At the request of the Commissioners, to provide to them the views of the Authority as to the appropriate recipient and amount of any grant to which paragraph 1 of Annex B applies.
- 10) To provide the Commissioners, at the expense of the Authority, with such reasonable amenities and services and administrative support as the Commissioners may reasonably require from time to time to carry out their functions and responsibilities under these Directions; and
- 11) To pay the Commissioners' reasonable expenses and such fees as the Secretary of State determines are to be paid to them.

FUNCTIONS OF THE AUTHORITY TO BE EXERCISED BY THE COMMISSIONERS

- 1) Subject to paragraph 2, all functions the Authority exercises relating to the making of grants under any statutory power or duty, including any grants made pursuant to section 1 of the Localism Act 2011 (local authority's general power of competence).
- 2) For the purpose of paragraph 1,
 - a) paragraph 1) does not apply to grants made for the purposes of section 23 of the Housing Grants, Construction and Regeneration Act 1996 under section 24 of that Act (i.e. Disabled Facilities Grant).
 - b) functions include any functions incidental or consequential to the making of grants other than any functions provided for by Chapter 3 of Part 1 of the Local Government Finance Act 1992.
- 3) The functions of appointing persons to and removing persons from the statutory offices of Electoral Registration Officer (section 8(2) of the Representation of the People Act 1983) and Returning Officer for Local Elections (section 35(3) of the 1983 Act).
- 4) The functions under section 112 of the Local Government Act 1972 of (a) appointing and determining the terms and conditions of employment of an officer of the Authority, only insofar as those functions are exercised for the purposes of appointing a person as an officer of the Authority principally in order for that person to be appointed to the statutory offices of Electoral Registration Officer or Returning Officer for Local Elections, and (b) dismissing any person from being an officer of the Authority who after the date of these Directions has been appointed to the statutory offices of Electoral Registration Officer or Returning Officer for Local Elections.
- 5) The function under section 101 of the Local Government Act 1972 of arranging for the discharge of any of the Authority's functions by another body or person, only insofar as that function is exercised for the purposes of amending or revoking any arrangements the Authority has made in relation to the discharge of functions to be exercised by the Commissioners referred to in this Annex.