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| <p><b>Cabinet</b></p> <p>19 December, 2017</p>  |  <p><b>TOWER HAMLETS</b></p> |
| <p><b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place</p>              | <p><b>Classification:</b><br/>Unrestricted</p>  |
| <p><b>Blackwall Reach Regeneration: New Charitable Trust &amp; CPO Resolution</b></p> |   |

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| <b>Lead Member</b>            | Councillor Rachel Blake, Cabinet Member for Housing and Development |
| <b>Originating Officer(s)</b> | Niall McGowan – Housing Regeneration Manager                        |
| <b>Wards affected</b>         | Poplar Ward   |
| <b>Key Decision?</b>          | Yes   |
| <b>Community Plan Theme</b>   | <b>A Great Place to Live</b>  |

## 1 **EXECUTIVE SUMMARY**

### 1.1 This report:

1.1.1 updates the Mayor on progress being made in delivery of the Blackwall Reach Regeneration scheme and seeks authority to proceed with the next steps required, including the setting-up of a new Blackwall Trust that will oversee the new central park and invest in community initiatives; and

1.1.2 seeks authority to make a new Compulsory Purchase Order to acquire the part of the existing Millennium Green which is not yet in the council's ownership, to enable it to be preserved as open space and landscaped, maintained and improved for inclusion in the new central park.

## 2 **RECOMMENDATIONS**

In respect to the Blackwall Trust, the Mayor in Cabinet is recommended to:

- 2.1 Agree to establish the Blackwall Trust, a charitable company limited by guarantee, and delegate to the Corporate Director of Place, after consultation with the Corporate Director of Governance and Monitoring Officer, the power to take all necessary steps for this purpose including, but not limited to, approving the name of the Trust, governance documents (including the memorandum of association, articles of association and objects), submitting documents and making necessary applications/registrations with Companies House, the Charity Commission, and HMRC.

- 2.2 Authorise the Corporate Director, Place, to nominate up to 2 officers to be appointed as directors and trustees of the company on behalf of the Council, subject to any restriction on local authority control which will be determined once the final structure is confirmed.
- 2.3 Authorise the Corporate Director of Governance and Monitoring Officer to execute any agreements or documents required to give effect to recommendation 2.1 and 2.2.
- 2.4 Authorise the Corporate Director of Place to finalise and grant a 250 year lease of the Millennium Green to the new Blackwall Trust, to be retained as open space, subject to consideration being given to any objections made following advertisement of the intended disposal in accordance with section 123(2A) of the Local Government Act 1972.
- 2.5 Authorise the Corporate Director of Place to transfer to the Blackwall Trust any funds the council has received from Swan Housing Association Limited and which are being held on trust for the Trust.

In respect to the Millennium Green Compulsory Purchase Order, the Mayor in Cabinet is recommended to:

- 2.6 Agree the making, confirming and implementation of a Compulsory Purchase Order under section 226(1)(a) of the Town and Country Planning Act 1990 to acquire plots 61, 71 and 74 (as shown in the map in Appendix 1) which are located within the residual Robin Hood Millennium Green, and currently in the ownership of the Robin Hood Millennium Green Trust, in order to secure its preservation and improve its management.
- 2.7 Note that the Council has made (and will continue to make) a concerted effort to negotiate the acquisition of the Millennium Green land with its Trustees, but that to date these negotiations have proven unsuccessful.
- 2.8 Determine that the use of CPO powers is justified after balancing the rights of the land owners with the need to secure the preservation and improvement of the open space.
- 2.9 Determine that the interference with the human rights of the property owners affected by these proposals, and in particular their rights to the ownership of property, is proportionate, given the adequacy of their rights to object and to compensation (where applicable), and the benefit to the economic, social and environmental well-being of the areas of Tower Hamlets affected by these proposals.
- 2.10 Authorise the Corporate Director of Place to take all necessary steps to implement recommendation 2.6 including but not limited to:
  - 2.10.1 Acquiring the land interests identified in the map at Appendix 1, either by private treaty or compulsorily.

- 2.10.2 Appointing land referencing agents, making the CPO, publication and service of any press, site and individual notices and other correspondence for such making.
- 2.10.3 To apply for a certificate under section 19(1)(aa) of the Land Acquisition Act 1981 to the Secretary of State or, if no certificate is granted, to pursue the compulsory acquisition through the special parliamentary procedure.
- 2.10.4 Seeking confirmation of the CPO by the Secretary of State (or, if permitted, by the Council under any permission or power conferred by the Secretary of State), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary.
- 2.10.5 Publication and service of notices of confirmation of the CPO and thereafter to execute and serve any General Vesting Declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area identified in the plan at Appendix 1;
- 2.10.6 Issuing of General Vesting Declarations or Notices to Treat in respect of the land/interests identified in the map at Appendix 1.
- 2.10.7 Referral and conduct of disputes, relating to compulsory purchase compensation at the Upper Tribunal (Lands Chamber), where applicable.

### **3 REASONS FOR THE DECISIONS**

- 3.1 The Council in delivering its regeneration programme at Blackwall Reach is committed to preserving and improving the large central green space as a park for use and enjoyment by future generations of residents. This commitment was made to residents, and is also contractual in terms of the development agreement and undertakings made to Natural England, the successor body to the Countryside Agency that established the existing open space as a Millennium Green in 2001.
- 3.2 The Council has also undertaken to broaden the regeneration benefits for the expanding local community by establishing a new charitable body with a dual role:
- 3.2.1 to oversee the new park as its leasehold custodian, ensuring it is preserved as open space in perpetuity and is properly managed and maintained;
- 3.2.2 to help fund initiatives to improve the lives of local people, long after the physical transformation of the areas is complete.
- 3.3 The decisions requested are necessary to achieve these commitments:

- firstly to set up the required charitable Blackwall Trust to be constituted as a company limited by guarantee; and
- secondly to support by compulsory purchase the acquisition of part of the existing open space which the Council does not yet own, to ensure it can be re-landscaped for continued inclusion in the central park for which the new Blackwall Trust will hold the lease.

#### **4 ALTERNATIVE OPTIONS**

4.1 The variant options are: not to proceed at all with one or both proposals; or to delay making a decision to proceed. Both proposals are however integral to the delivery of the Blackwall Reach regeneration.

4.2 The consequence of a decision not to proceed, or of a delay in making a decision on either of these matters, would risk achieving a less comprehensive approach to the overall regeneration and could jeopardise the renewal and future management of the green space in a cogent way. Critically it would put the Council in a position where it is unable to deliver the whole site for assembly, in accordance with its obligations under contractual arrangements it has entered into with its development partners.

#### **4.3 Setting up a new “Blackwall Trust”**

The Council is contractually required to set up the new Blackwall Trust, via its Principal Development Agreement (PDA) with the Greater London Authority (GLA) and Swan Housing Association (Swan), who are the Council’s partners in the regeneration of Blackwall Reach. This PDA was entered into pursuant to a decision of the Mayor in Cabinet on 9<sup>th</sup> February 2011. The Council has also given an undertaking to Natural England to set up the Trust within a specific timescale and has made various commitments in respect to the ownership and management of the open space and the governance of the Trust in order to guarantee the preservation and maintenance of the land in perpetuity. This undertaking was given in 2013 in order to secure Natural England’s removal of their objection to the London Borough of Tower Hamlets (Blackwall Reach) CPO 2013.

4.4 The vesting by the Council of the western section of the existing Millennium Green in May 2017, following confirmation of an earlier CPO (see paras 5.3.2 – 5.3.3), has triggered a timeline for the Council to establish the new Blackwall Trust within 2 years, or be at risk of having to repay Natural England the £38,000 grant with which it originally established the current Millennium Green. The PDA also requires the Council to establish the Trust “as soon as reasonably practicable”.

4.5 It is logical to set up the Trust now because Swan has paid to the Council the first of 4 tranche payments of £250,000 for the Trust’s operations and, whilst the new central park will not be completed immediately, the Trust, once established, can commence its wider work for the benefit of the expanding local community as described in paras 9.2 – 9.4 below of the report. Any delay in

establishing the Trust would delay the provision of this wider regeneration benefit.

#### 4.6 **Need for the Proposed CPO**

The present owner of the open space to be acquired is Robin Hood Millennium Green Trust ("MGT"), which was established to own (freehold) and manage a newly created Millennium Green in 2001. As the report explains the MGT is not in a position to maintain its existing land holding; nor could it deliver and then maintain the necessary improvements as part of the overall renewal of the existing green.

4.7 To enable Swan to carry out the essential landscaping improvements to this central open space area and so that the Council can grant a lease to the Blackwall Trust to guarantee its retention as open space and to ensure its on-going management, the Council is contractually required to acquire the land for which the CPO is to be made. The provision of the new Trust and the proposed CPO, as set out in the report, are necessary steps to deliver the Council's existing commitments.

4.8 Similarly, in the event that negotiations with the Millennium Green Trust fail or do not proceed in a timely fashion, the Council must make the CPO in order to complete its acquisition of the entire Millennium Green as it will need to vest other residual plots of land in the eastern section of the green, for which the Council already has the appropriate consents (to re-landscape / improve management), by December 2018.

4.9 Without a CPO for the three plots of land identified the Council would not be able to assemble the whole green and thus would be unable to:

- fulfil its pre-existing obligations as set out above and explained in the report;
- ensure the comprehensive renewal of the entire existing green, or its future retention as a single open space via a lease to the new Trust;
- enable future cogent management and maintenance of the whole renewed green.

4.10 In such a scenario the Council would have no right to enter onto the green nor to grant a lease of it to the Blackwall Trust, which would mean the regeneration work would remain incomplete. Future management arrangements would be unnecessarily complicated due to the dual ownership of the open space, particularly as the existing Millennium Green Trust accepts that it cannot maintain its existing land holding.

## **5 BACKGROUND**

### **5.1 Blackwall Reach Project Partnership**

- 5.1.1 Blackwall Reach Regeneration is a flagship Council scheme, comprising eight hectares of homes, former and existing business sites and open space, located between Cotton Street, Aspen Way, the Blackwall Tunnel Approach and East India Dock Road in E14. The project sites are clustered around the Council's Robin Hood Gardens (RHG) Estate in Poplar Ward, in an area that was ranked in the top 2% most deprived in England, in 2010.
- 5.1.2 The project is a long-term partnership between the Council and GLA, combining their adjoining land holdings and funding the enabling stages, including ongoing land assembly, to comprehensively transform a wider area than would have been possible acting alone. This has enabled delivery of significant numbers of new homes of all tenures. Swan Housing Association was appointed following a competitive procurement exercise in 2011 to deliver the partners' outline scheme in 5 phases: 1A, 1B, 2, 3 and 4. All the partners are joint signatories to a Principal Development Agreement (PDA), under which each party has specific responsibilities.
- 5.1.3 The scheme is a priority for the Council, to improve the lives of existing residents - many of whom are taking up an "option to remain" - and to create new housing opportunities in a modern and sustainable setting. The regeneration brings in cross-sector resources of more than £430 million to build c.1,575 new homes including:
- 679 affordable homes (51% by habitable rooms)
    - of which 561 (an increase of nearly 300%) are for rent by existing relocating tenants and other registered local applicants, all at social rents.
- 5.1.4 These replace the original 207 rented and 45 privately owned homes at Robin Hood Gardens. The scheme also increases and improves open space and play space provision, creates new community facilities and generates funding, for example to expand the local Woolmore Primary School, now completed.
- 5.1.5 Contributions from ground rents plus a phased payment of £1 million from Swan Housing Association as developer will support a new "Blackwall Trust". The Trust will have dual roles to:
- oversee the new central park under a long-term lease from the Council and
  - sponsor and develop community initiatives for years to come.

## **5.2 Blackwall Reach - Scheme Progress**

- 5.2.1 A full update on the project, including its finances and the outcome of the Council's CPO process, was provided to the Mayor in Cabinet on 26<sup>th</sup> July 2016. The scheme is well underway. Phase 1A was completed by Swan in the north-west corner of the site in 2015, providing 98 new homes for social rent and shared ownership, primarily for decanting existing Council tenants and resident home owners from RHG. Swan's new community centre opened in 2016 and the new 3-form entry Woolmore School has also been completed, extending across an enlarged site acquired using Council capital resources, providing places for the much larger Blackwall Reach community as future scheme phases are delivered.
- 5.2.2 Further Building Agreements and lease have been entered into between the partners. Swan is progressing well with the construction of 242 new homes on the Phase 1B site in the south-west corner of the scheme area and has obtained planning approvals to commence Phase 2, incorporating the western blocks of Robin Hood Gardens, and neighbouring Anderson House. The Phase 2 site is hoarded off and demolition work has started, which will continue into 2018. This site is bringing forward 268 new homes, including 114 affordable dwellings that will provide new homes for the remaining residents on the estate who have chosen to stay in the area. Council and GLA officers joined Swan earlier this year as Swan selected architects for Phase 3 of the project (the eastern part of the estate), and Swan will submit designs for planning consideration for an envisaged start on Phase 3 by 2019/20.

## **5.3 Land Assembly**

- 5.3.1 As reported previously the Council and GLA have been engaged in land assembly, particularly to facilitate Phases 1 - 3 of the scheme, including the purchase of sites and properties within their respective freehold areas. To date some 179 tenants have been decanted, including those moving within the regeneration area, and 27 await decant from Phase 3. Of the 45 original home-owners, 39 have sold their properties to the Council, including those moving within the scheme, and 6 remain in Phase 3, including 3 awaiting a new home when Phase 2 is completed.
- 5.3.2 An area-wide (2013) CPO was confirmed for Phases 1 – 3 by The Secretary of State for Communities and Local Government in 2015, including specific approval for the acquisition of the open space that was in the freehold ownership of the Robin Hood Millennium Green Trust. Negotiations with MGT to date for the voluntary disposal of their land interest are summarised in para 6.9.3.
- 5.3.3 Phase 2, including the western section of the existing central open space (Robin Hood Millennium Green) was vested in May 2017, following confirmation of the 2013 CPO. Vesting of the eastern section

of the open space within the Phase 3 area is outstanding and remains necessary. However a further CPO is now required on the basis that the reasons under which the 2013 CPO was originally granted, in respect to parts of the eastern section, have changed: this is because Swan's approved designs for Phase 2 of the project will now retain the renewed central green within its *existing* boundaries, rather than reconfiguring and reshaping the green in order to build on part of it.

- 5.3.4 The vesting of the western section of the Millennium Green following the confirmed CPO has also triggered a 2 year timeline for the Council to establish the new Blackwall Trust. Setting up the Trust is required under the PDA and also under a separate undertaking to Natural England, which retains an interest in the area as the historic funder (lottery monies) of the Robin Hood Millennium Green at its inception. Natural England withdrew its objections to the Council's 2013 CPO on certain conditions, including the Council entering into the undertaking.

## **5.4 Robin Hood Millennium Green**

- 5.4.1 The central green amenity area between the two main Robin Hood Gardens Estate buildings was in Council ownership until it became a Millennium Green in 1999 - 2001, under the national Millennium Green initiative. On 15 June 2001, the Council transferred its freehold land to Robin Hood Millennium Green Trust (MGT) for £1, with a covenant requiring that:

- 1) MGT maintains and manages the property in good order suitable for use as a park/open space.
- 2) MGT uses the open park/space for general public at all times; and
- 3) if it ceases to be used as a park or the Trust desires to sell it then the Council has an option to reacquire it.

- 5.4.2 The existing Millennium Green is a large grassed expanse with tree planting and a high knoll in the middle. During master-planning the Council identified that the green is not landscaped or laid out to the modern standards of an urban park within a high-density urban area. It will need substantial improvements by Swan to be suitable for the larger community in the new development, which will have a higher number of family dwellings. The green is recognised however as a valued amenity for existing residents, including those who are opting to stay in the area and its improvement has been central to the regeneration proposals. The initial proposal had been to reconfigure the green but Swan's approved designs for Phase 2 will now improve and preserve the green within its existing boundaries.

- 5.4.3 The Trust Deed for the Robin Hood Millennium Green sets out the key provisions, being that the "Millennium Green will be used forever for inhabitants for informal recreation play and leisure". It also goes on to quote a "statement of aims" which states that "...it should be able to be enjoyed by people of all ages and abilities, be open and evident to the

locality as well as inhabitants, be an attractive place to take air and exercise and include an area for suitable community events and celebrations and natural areas". The improvements to the green within the regeneration scheme will uphold these principles and the steps proposed in the report will help to achieve this.

- 5.4.4 Initial funding of £38,000 from the National Lottery Fund enabled some improvements works to be carried out to the newly formed Millennium Green, which included tree and shrub planting and the installation of public art features such as a sundial mosaic. Responsibility for maintenance lies with MGT, either by means of fund-raising by the Trustees amongst the local community or by reaching formal agreement with the Council. It is understood that no such arrangement was sought by MGT, which remains legally responsible for - but unable to pay for or deliver - maintenance of the green.
- 5.4.5 As explained in paras. 5.3.2 – 5.3.4 above and in Section 6 below, the Council has now confirmed its 2013 CPO and has vested and taken back ownership of the western section of the Millennium Green. Tower Hamlets Homes is maintaining this whilst still permitting access to MGT to run community events should it so wish. This will be licensed to Swan in due course to carry out the first part of its central park renewal, after which the new green will be restored to its existing boundaries.

## **6 JUSTIFICATION FOR A CPO**

- 6.1 The Council has previously made CPOs to support its own, or its Registered Provider (RP) partners' regeneration projects. The need for this provision arises where acquisition of land interests is necessary to fulfil commitments to deliver new affordable homes and/or to achieve wider regeneration benefits, such as the provision of related infrastructure or community facilities.
- 6.2 In respect of Blackwall Reach the Council has successfully confirmed its 2013 CPO across the Robin Hood Gardens Estate, as reported to the Mayor last year, which includes Phases 2 and 3 of the scheme. As part of the CPO process specific consents were applied for and granted by the Secretary of State (DCLG) to enable the Council's acquisition of the Millennium Green - an area of approximately 7,398 sq metres.
- 6.3 A new CPO is required however because the scheme design in relation to the central open space has changed and different powers must now be used to ensure the acquisition of three specific plots of land which are to be retained as open space. The new CPO is necessary to facilitate the eastern part of the Millennium Green on the basis that the reasons under which the CPO was originally granted, in respect to the eastern section, have changed: Swan's approved designs now retain the enhanced central green - the new park - within boundaries which are contiguous with those of the existing Millennium Green, rather than reconfiguring the green in order to build on part of it as originally envisaged.

- 6.4 Appendix 1 shows how the 2013 CPO has to date been applied to specific plots within the existing Millennium Green. This was done using powers under section 226(1)(a) and 226(3)(b) of the Town and Country Planning Act 1990 and the Secretary of State granting certificates to the Council to acquire the open space as follows:
- 6.4.1 Section 19(1)(aa) was used for land that is to be retained and re-landscaped as open space but needs improvements to management arrangements i.e. the entire western section of the green (plot 59) and part of the eastern section of the green (plots 60,62 and 70) – this equates to around 5,338 sq metres;
- 6.4.2 Section 19(1)(a) was used where construction and some reconfiguration of the existing green's boundaries had been envisaged at the time the application was made i.e. solely in the eastern section (plots 61, 71 and 74) – this equates to an area of 2,060 sq metres.
- 6.5 The Council duly vested the western section of the green (plot 59) in May 2017 and is registering its freehold ownership. The eastern section of the Millennium Green remains in the freehold ownership of MGT, which has no financial resources to improve or maintain it. MGT has asked the Council to step in to mow the grass, keep the area tidy and to generally maintain it, because it cannot do so.
- 6.6 Because Swan's approved scheme designs now keep the existing boundaries of the whole green intact it is not necessary for the Council to acquire any plots for construction purposes. The Council can use its compulsory powers through the existing CPO up to December 2018 to acquire plots 60, 62 and 70 in the eastern section for landscaping and to improve their management. In total this means the Council either has acquired - or is authorised to compulsorily acquire - around 72% of the current Millennium Green area using the powers it has obtained which are still relevant in the context of the existing scheme.
- 6.7 However plots 61, 71 and 74 in the eastern section, which were originally to have been built on, must now be acquired either voluntarily or compulsorily for purposes which are different to those which are authorised by the existing CPO, namely the purposes of bringing the plots within the overall landscaping scheme for the remainder of the new park, and improving their on-going management. This means that in the event that ongoing negotiations with the Trustees of the Robin Hood Millennium Green Trust are unsuccessful, the Council must make a fresh CPO, pursuant to its power under 226(1)(a) of the Town and Country Planning Act 1990 as amended, the Council being satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the Order Land. The Order Land equates to around 28% of the proposed new central park, so its acquisition is important if the Council is to enable comprehensive improvements to the central open space as a whole, to create the new park and implement its intended ownership and management structure to make it a success for the whole community.

## **6.8 Current Management of the Millennium Green**

- 6.8.1 Given that the green is located in a central urban area with high levels of deprivation, the arrangements under which MGT was established as an essentially voluntary entity did not provide for adequate resources or secure income. Whilst its occasional community events and voluntary activities are acknowledged and appreciated, MGT accepts that it is simply not able to maintain the land it owns. The Trust is now largely moribund and although a number of Trustees remain technically registered, only a single Trustee remains involved in any practical way.
- 6.8.2 It is officers' understanding that historically there has not been much engagement and consultation by the trustees with local residents over the use, maintenance, layout and management of the open space. This is understandable as the Trust has not had, or actively sought the resources required, apart from at its inception, to make significant changes, or even to maintain the existing green as it is. Until the pre-CPO discussions flagged the Trust's limitations to maintain the land the trustees had not formally approached the Council to discuss options for the maintenance and management of this area.
- 6.8.3 Due to its limited resources, there has been little by way of active maintenance of the Millennium Green by the MGT. The Council is aware that there has been occasional tree pruning by Trees for London, evidently commissioned by the Millennium Green Trust. There has also been periodic volunteer activity to help keep the area usable. But apart from that, the Trust has not been able to adhere to the covenants to ensure that the green is suitably managed and maintained for public use.
- 6.8.4 Given that the Council owns the surrounding buildings and areas of housing amenity land, it has had to take on a role of basic maintenance such as cutting the grass. During periods when the Council has stopped doing it the area has become overgrown and unkempt. In 2011 the Council sought to recoup its costs by invoicing the MGT, but this was not remunerated so the Council stopped grass cutting. However, following concerns of neglect, Tower Hamlets Homes was forced to resume and continues to cut the grass so the area does not become unkempt.
- 6.8.5 In making its 2013 CPO the Council acknowledged that the MGT trustees will have done their best, but that over time interest had waned and lack of resourcing in terms of staff and finances prevented the Trust from carrying out its duties as freeholder of this space for the benefit of the community. This situation remains unchanged.
- 6.8.6 The Council explained when it made the now confirmed 2013 CPO that the MGT is no longer a viable body to:

- fund necessary day-to-day management and maintenance of the entire park;
- act if there are squatters on the park; or
- carry out any capital investment in the park

6.8.7 The new central park will provide an amenity for a much larger local community at Blackwall. The space will have to 'work much harder' and will require much more intensive management and maintenance than it does now. The required new ownership structure and resourcing arrangements set out in this report are necessary in the context of the overall regeneration to ensure there is/are:

- clear roles and responsibilities with respect to the park area;
- secure and sustainable funding of maintenance and management;
- suitable authority to deal with squatters and any anti-social behaviour in or around the park area; and
- an adequate decision-making process to allow capital investment in the park area in the future (ie long after the planned improvements which Swan will carry out within the scheme).

## **6.9 Negotiations with Robin Hood Millennium Green Trust.**

6.9.1 The Council has confirmed to Trustees throughout its discussions going back over several years that in delivering the regeneration with its partners it will seek to meet the requirements that Natural England have set down, which reflected those of the Trustees, i.e. that the existing central open space be improved and preserved in perpetuity; that the Millennium Green name be retained, and that some form of transitional membership be given to an existing Millennium Green Trustee on the board of the new Blackwall Trust.

6.9.2 It is hoped that Council officers can reach agreement with the MGT to acquire these land interests voluntarily. The MGT did not object to the 2013 CPO and after extensive discussions between the Council, Trustees and Natural England, the latter withdrew its objection to the Council's CPO when the Council provided an undertaking to preserve the central green by acquiring and retaining the freehold and setting up the new Blackwall Trust to be custodian of the green – the undertaking is summarised in para.9.6.1 - 9.6.2. Natural England was satisfied that the Council's proposals for the new Trust and new management arrangements would deliver an assured future for this important open space.

6.9.3 Officers from the Council and Swan have continued to meet with the sole participating lead MGT Trustee and have kept the other registered but non-participating Trustees collectively apprised of all meetings and discussions. The Council has explained its position to the Trust and has urged that a settlement be reached for the Trust to hand over its remaining land holdings voluntarily, recognising that the Trustees will need help and advice to fulfil this, for which the Council will pay.

- 6.9.4 The lead Trustee with whom officers are negotiating understands the Council's need to acquire this land and has indicated a willingness to agree the disposal of these plots to the Council, so they can be retained and renewed as open space. However to make such a voluntary disposal the approval of all registered Trustees is required and this may not be achievable.
- 6.9.5 The recommendations in this report will enable the Council to fulfil its obligations with regard to the set-up of the new Trust and to take the necessary steps to ensure both the comprehensive renewal of the green and its preservation as open space for future generations.
- 6.9.6 This report explains why the proposed CPO is needed to support the wider regeneration at Blackwall Reach. In partnership with Swan, the Council is committed to the establishment of a properly funded Trust and to put in place sustainable management and maintenance arrangements for the new park and the entire public realm across the new estate.
- 6.9.7 If the proposal for the necessary CPO is agreed, officers will continue and accelerate attempts to formally negotiate with Trustees, offering whatever appropriate support is required, including legal and financial assistance, to help achieve this land disposal if at all possible by avoiding the use of compulsory acquisition powers.
- 6.9.8 However the proposed CPO is essential as a precaution because the nature of the present ownership arrangements means that a collective decision by all Trustees is required to agree a voluntary disposal. It is important to commence the CPO processes for the non-acquired land interests within the red-line boundary shown in **Appendix 1**.
- 6.9.9 In accordance with statutory guidance, the Council needs to demonstrate that compulsory purchase is used as a measure of the last resort and that all reasonable efforts to acquire by agreement have been exhausted. The Council has been and will continue to be vigorously seeking a voluntary negotiated settlement with those whose interests will be acquired.

## **7 COMPULSORY PURCHASE OF PLOTS 61, 71, 74 OF THE MILLENNIUM GREEN**

- 7.1 Using compulsory purchase powers will facilitate the delivery of this regeneration project as described above. The 2015 "Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion" (the Statutory Guidance) sets out statutory guidance to acquiring authorities in England making CPOs.
- 7.2 The Statutory Guidance states that "Compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of

assembling the land needed to help deliver social and economic change. Used properly, they can contribute toward effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.”

7.3 The Statutory Guidance provides that “Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.”

7.4 The Statutory Guidance also provides that “if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to: plan a compulsory purchase timetable as a contingency measure; and initiate formal procedures. This will also help to make the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.”

7.5 The Statutory Guidance refers to the balance that has to be struck between ensuring a compelling case in the public interest and that the regeneration project sufficiently justifies interfering with the human rights of those with an interest in the land affected. It reads as follows:

*“When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected”.*”

7.6 The Statutory Guidance states –

*“If an acquiring authority does not: have a clear idea of how it intends to use the land which it is proposing to acquire; and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.”*

7.7 Consideration is given to the human rights implications of the decision to make a CPO in section 12 below.

## **8 WHEN COMPULSORY PURCHASE IS TO BE USED**

8.1 The circumstances in which CPO may be used by relevant authorities is summarised as follows:

- To unlock situations where a scheme is being blocked by an owner (or owners) unwilling to dispose of property.

- To ensure effective negotiations for land assembly where there is a multiplicity of ownerships and absent landlords
- Where there are unknown owners

8.2 The use of CPO in the case of the Millennium Green accords with the first of these circumstances.

8.3 People affected by the CPO have rights to object, to be heard at a public inquiry and receive compensation. The acquisition of land designed to facilitate a development that will promote the economic, social or environmental well-being of an area is an acceptable use of compulsory purchase powers under the legislation.

## **9. THE NEW “BLACKWALL TRUST”**

9.1 The Council has been committed since the start of the Blackwall Reach project to preserving and improving the central green space (Millennium Green). This is to be done by Swan as part of the regeneration scheme, after the Council has acquired the freehold of the open space from the existing MGT, which is partially achieved.

9.2 The Council also wanted to find a way to broaden the regeneration benefits to the wider community, beyond the bricks and mortar and other non-physical provisions secured through the development and planning agreements.

9.3 To this end it obtained from Swan a commitment to join a new charitable company that will safeguard and oversee the new park and crucially to provide funding of £1 Million, plus a contribution from the ground rents of the private homes for sale, for the Trust to use to fund future works to the park and worthwhile projects for the benefit of local residents, long into the future. The grant from Swan is to be paid in four stages, upon completion of each successive scheme phase. The first payment of £250,000 has now been received and can be drawn upon by the new Trust once it is established. The next payment will come when Phase 2 is complete in c.2020.

9.4 The key issues to be addressed in setting up the new Blackwall Trust are:

- Freehold ownership by the Council and preservation of the new central park for the future enjoyment of local people, in compliance with the Council’s commitments and undertakings.
- Management and maintenance of the new central park when the improvement works are completed.
- Creation of a charitable company limited by guarantee to oversee this new park.
- Enabling of the company to utilise resources comprising Swan’s contribution plus income generated from its own fund-raising; this will fund beneficial projects for the community as soon as the Trust is established and any capital improvement works to the park in the longer term.

## 9.5 Undertakings by the Council

9.5.1 The Council is required to establish the new “Blackwall Trust” under the Principal Development Agreement, and has also given undertakings in an agreement with Natural England that it will fulfil a number of obligations in relation to its acquisition of the existing Millennium Green, for which Natural England provided initial funding in 1999. The obligations of the Council are broadly to:

- retain the freehold of land it acquires from the existing Robin Hood Millennium Green Trust (MGT);
- establish the Blackwall Trust as defined in the PDA, with a constitution broadly in line with that agreed with Natural England (ie covering Principles of Land Ownership, Draft Heads of Terms and a Deed of Covenant): the indicative principles of operation are set out in the paragraphs below;
- grant a lease of 250 years to the new Blackwall Trust for the central green, for which it will become custodian;
- ensure the preservation of the central green as an open space for the use and benefit of the whole Blackwall Reach community;
- retain the name “Millennium Green” for this open space;
- set up management arrangements by entering into a contract with Swan to manage and maintain the new park.

9.5.2 It is thus envisaged that the Council will retain the freehold and that the new Blackwall Trust will hold a long lease of the central open space at Blackwall Reach - which will retain the “Millennium Green” name - for the use and enjoyment of the local residential community. This space is to be used as an area for informal recreation and a place for community events which are consistent with the Trust’s objects. The Trust as leaseholder of the park would be its custodian and have an overview of its management, in liaison with the Council as freeholder and Swan as the Council’s partner with a contractual responsibility to maintain it.

9.5.3 These arrangements will provide a twofold assurance that:

(a) the renewed green (the park) will remain as open space for generations to come and will be properly funded in terms of its day-to-day management through the direct arrangement between the Council and Swan, and

(b) that the Blackwall Trust will have funds immediately to support socially beneficial projects and in the longer term for further improvement works if these are desired.

## 9.6 Ownership of the New Park

- 9.6.1 The Council will own the **freehold** of the new park area with covenants in place to ensure that it remains fully accessible to the public (see below). This requires the Council to complete its acquisition of the existing land interest held by MGT. Agreeing to make a CPO will assist in this.
- 9.6.2 The new Blackwall Reach Trust, once established, would be granted a **long lease of 250 years** on the park area. The new central park area would continue to be referred to as a Millennium Green.

## 9.7 Covenants to Guarantee the Open Space

- 9.7.1 There would be a covenant in the Council's freehold title (and the Trust's leasehold title) requiring that the park area be permanently and fully accessible for the use and benefit of the general public and the residents of Blackwall Reach and surrounding area, thus guaranteeing its continuation as open space.

## 9.8 Transition from Existing Arrangements

- 9.8.1 Under the original transfer documents that established the Millennium Green there are covenants requiring the MGT "to maintain and manage [the Green] in good order suitable for use as a park or open space" and "to use [the Green] as a park or open space open for the use of the general public". The proposed structure and delegation of roles and responsibilities to the new Blackwall Trust is designed to deliver these objectives.
- 9.8.2 At present THH is maintaining the western half of the green as this has been vested to the Council. There will be a change to the management of the green whilst Swan takes temporary possession under license firstly of the western half, to carry out the improvement works within its Phase 2 programme, and secondly of the eastern half, once this is fully acquired for renewal in Phase 3. During the period that Swan is licensee it will assume responsibility for maintaining the open space until works are complete, at which point the improved green will be transferred to the new Trust as set out above.
- 9.8.3 The Blackwall Trust, apart from its leasehold / overview of the new central park, would have a different function from the existing MGT. It would primarily be a charitable company set up to deliver participation by all stakeholders in the regeneration; it would hold substantial funds, arrange activities and help fund and run initiatives for the benefit of the expanding local community at Blackwall Reach and the surrounding area. It is envisaged such activities and initiatives should be focused around education, training, personal development and improved well-being, and enhancing community cohesion.

- 9.8.4 The Trust would be representative of those with interests at Blackwall Reach, including the resident community (tenants and leaseholders), the estate management (Swan), the Council and Woolmore School.
- 9.8.5 The structure of the Trust would have mechanisms in place to ensure good governance and that the activities of the Trust are fully transparent to the residents at Blackwall Reach and for stakeholders to have an input into the programme of initiatives funded by the Trust.
- 9.8.6 The Trust would have the ability to propose additional capital investment in the park. A mechanism would be required for coming to agreement on any such proposals with the Council and with Swan, in particular dealing with circumstances where any such investment may lead to additional management/maintenance burdens. The Trust would also have the ability to organise activities and events in the park

## **9.9 Management Responsibilities**

- 9.9.1 The Council as freeholder will be responsible for procuring the ongoing management and maintenance of the park. Under the envisaged arrangements the Council will enter into a management contract with Swan Housing Association to manage and maintain the park to an agreed standard at nil cost.
- 9.9.2 Definition of the 'standard' to which the park must be maintained could be reviewed from time-to-time with the Council and the leaseholder (the Trust). This would fulfil the Trust's remit to overview the new park and ensure it is being run satisfactorily.
- 9.9.3 Under the management contract, the Council as freeholder would give authority to Swan to deal with any squatters on the park and to act in the case of anti-social behaviour, etc.

## **9.10 Funding for Blackwall Trust**

- 9.10.1 As explained above, the Trust would be funded by a combination of:
- £1 Million capital provided from Swan on a phased basis during the development of Blackwall Reach: the first £250,000 has now been paid to the Council in readiness for the Trust to be set up;
  - ground rents from across Swan's Blackwall Reach estate (estimated to be around £80,000 per year at scheme completion);
  - interest generated from the capital held;
  - fund raising (in capacity as a charity) and applications for grants.

## **9.11 Establishing the Trust - Operational Area**

- 9.11.1 Like the ownership structure, the objects of the Trust are to be finally determined but indicatively would support local initiatives and activities for the benefit of the local residential community at and around the new Blackwall Reach development. Such activities and initiatives should generally be focused around education, training, personal development and improved well-being and enhancing community cohesion.
- 9.11.2 It is envisaged that the operational area of Blackwall Trust should be contiguous with the Blackwall Reach regeneration area, as bounded by the major elements of infrastructure. The intention is that activities and initiatives of the Trust should be primarily focused on Blackwall Reach itself. For example a service could be funded to operate out of the new community facilities at Blackwall Reach (i.e. should be based at Blackwall Reach), or be based externally but be funded to provide services within the Blackwall Reach area. An example is a youth group, which could be based at the local community centre but might also have membership from a wider area.

## **9.12 Objectives of the Trust**

9.12.1 As the Blackwall Trust will ensure the green:

- makes a substantial contribution to the life of the whole community
- is enjoyed by people of all ages and physical abilities
- is open to visitors to the locality as well as inhabitants
- is an attractive place for people to take air and exercise, meet others and pursue leisure activities and pastimes consistent with shared enjoyment of the whole of the land
- is used for community events and celebrations
- makes a positive contribution to the local environment

9.12.2 In terms of its control of substantial resources Blackwall Trust's wider social objectives should include the:

- advancement of education
- relief of financial or other hardship in the community
- creation of training and employment opportunities
- maintenance, improvement or provision of public amenities
- assistance in or direct provision of recreational facilities for the public
- protection or conservation of the environment
- promotion of public health
- promotion of public safety and prevention of crime
- provision of recreational facilities and activities for residents including specific groups including young people, women, disabled and elderly residents

## **9.13 Powers of the Trust**

9.13.1 It is envisaged these will be wide, to include power to:

- raise funds (but not borrow nor raise a mortgage)
- accept donations
- apply for grants
- secure services local initiatives/activities for the benefit of the community
- fund capital investment in the park (and public realm around Blackwall)
- provide grants for local initiatives/activities for the benefit of the community

## **9.14 Limitations**

9.14.1 The Trust will not:

- fund any political activities
- support any specific religious activities
- fund anything which is not legal or could be deemed immoral or contrary to public policy
- act in any way which is in breach of statute or any by-laws
- carry out any profit making business activity (i.e. grants may be given to local businesses, but not loans nor taking shares in companies)
- provide direct financial assistance for specific individual gain
- erect any permanent building on the Millennium Green which is dedicated for use by one particular group in such a way as to exclude other inhabitants or visitors

## **9.15 Financial Limitations**

9.15.1 The following issues need to be further refined and agreed, in consultation with Swan, Natural England and other stakeholders, under the proposed delegated authority:

- consideration of a limitation on the Trust's capital expenditure in the early years (or perhaps an annual limit): this might for example limit the Trust to spending interest accrued and funds raised, but not the capital lump sum payment from Swan.
- consideration of a defined limit to what the Trust can spend of its monies in any one year on administration and management, though it will incur running costs and require specialist advice (and perhaps ongoing support from the Council and Swan).

## 9.16 Structuring Options for the Trust

- 9.16.1 Specialist legal advice has been obtained and considered. The suggested mechanism is for a **Charitable Company limited by guarantee (CLG)**. This is set up with charitable articles, and is registered both at Companies House (as a company) and with the Charity Commission as a charity in its own right.
- 9.16.2 As a CLG is an incorporated body, it can own property, will be liable for its own debts, and can transact business with third parties without the need for the trustees to do so in their personal capacity.
- 9.16.3 A CLG has a two-tiered governance structure consisting of a board of directors with day-to-day control (the “charity trustees”), and one or more Members (who are analogous to the shareholders in a company limited by shares). Often, in a CLG, the members and directors will be one and the same persons.
- 9.16.4 As a limited company, the charity will have directors and members; the directors will also be trustees of the charity for the purposes of the Charities Act 2011. The CLG will be limited by guarantee and will have its liability limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up. The CLG will be liable for its debts and the people behind it are fully protected by limited liability.
- 9.16.5 The charity trustees assume fiduciary duties as charity trustees as well as Companies Act duties as directors of the company.
- 9.16.6 The Members will give a nominal guarantee (normally £1 or £10) to cover the company’s liability, e.g. on liquidation. Their liability is limited to this nominal amount.
- 9.16.7 Members have certain rights in respect of particular issues, but the day-to-day decision making and responsibility sits with the board of charity trustees. For instance, only the members can authorise amendments to the Articles of Association and the name of the company. The members also have the right to see copies of the company’s official records (accounts, etc), and to remove charity trustees.
- 9.16.8 The charity trustees meanwhile, in the absence of a separate executive team, are responsible for day-to-day running of the CLG.
- 9.16.9 A CLG has its own legal personality and can enter into contracts, transact with third parties and own property in its own right. Charity trustees will not have personal liability for the CLG’s business, except in limited circumstances (e.g. fraud/dishonesty).

- 9.16.10 A CLG will have to make returns and submit accounts on an annual basis to both Companies House and the Charity Commission, and must also comply with both charity and company law.
- 9.16.11 The benefit of establishing the Blackwall Trust up as a charity is that because of its charitable status, the Company will operate as a public trust and be able to claim certain tax reliefs. A CLG will however face a higher level of regulation and is not as quick to set-up as, for example a Community Interest Company.
- 9.16.12 The alternative structure considered was that of a “Trust”, which is managed and controlled by a group of trustees or a corporate trustee. A Trust, in the legal sense, does not have its own legal personality and so cannot enter into contracts, own property or employ staff in its own right. Trustees are liable personally to the extent that they cannot rely on their trustees’ right of reimbursement from the charity’s funds or the right to be relieved from liability by the Charity Commission. Whilst the administration of a Trust structure is simple when compared to the CLG model, given the objects of the charity and the need for the charity to hold a lease of the Millennium Green, this may not be a viable option.
- 9.16.13 It is therefore considered that the CLG model is most appropriate to the role, objects and composition of the proposed Blackwall Trust.

## **9.17 Appointment of Directors (and “Charity Trustees”)**

- 9.17.1 It is recommended that this is reviewed with the partners, particularly Swan as main funder of the Trust, and considered under the requested delegated authority. The Undertaking to Natural England permits negotiation on key provisions and officers are likely to propose that the Board of Directors/Trustees should comprise 10 trustees as follows:
- 2 x resident representatives
  - 1 x nominee from existing MGT (to provide transitional continuity) - to convert once the first term has expired to:
    - 1 x nominee from Swan’s Estate Residents Board
  - Up to 2 x nominees from London Borough of Tower Hamlets
  - Up to 2 x nominees from Swan
  - 1 x nominee from the Woolmore Primary School (Board of Governors)
  - 2 x independents with specific skills as desired by the Board of Trustees (being people who live or work in the Borough) (e.g. an accountant to act as treasurer)
- 9.17.2 Trustees should normally be appointed for a term of 3 years, which can be renewed periodically. It may be preferable for the LBTH and Swan nominees to be permanent appointments, from which they will stand down when their employment ends with LBTH or Swan (as the case may be). Trustees should not be able to vote on matters in which they have a conflicting interest, for example regarding funding for services

provided by an organization they control or work for, or if they have a connection with a potential recipient of a grant from the Trust.

9.17.3 Selection of new trustees will be done by advertisement, application and interview by the Board.

9.17.4 For specific consideration will be the balance of Trustees. Once set up the Trust will be an independent charitable organization with a requirement to act in compliance with its terms of reference and regulations, but it will be holding substantial resources contributed primarily by Swan. It may be considered appropriate to seek a further independent nominee to ensure that the Trust has robust advice as it pursues its remit

9.17.5 The Corporate Director, Place, shall nominate which officers of the Council are to be the directors/trustees of the CLG.

## **9.18 Administration**

9.18.1 The Trust may decide to have an administrator employed on a part/full-time basis, as required. Mechanisms will be required for selection of administrator and as indicated above the costs for this may be limited.

## **9.19 Eligibility for Trusteeship/Directorship**

9.19.1 There should be clear terms of reference and appropriate checks to ensure that Trustees/Directors are responsible people. All trustees are required to be fit and proper persons in accordance with HMRC rules.

## **9.20 Mechanisms**

9.20.1 Mechanisms are to be set out for meetings, selection of Chair, special meetings, quora, voting, minutes, accounts and publishing minutes.

9.20.2 There must be one annual general meeting which may be attended by all residents at Blackwall Reach, which must be suitably advertised in advance and held in a convenient location which can accommodate attending residents.

9.20.3 Minutes and proceedings of the AGM must be made available to all residents at Blackwall Reach.

## **10 COMMENTS OF THE CHIEF FINANCE OFFICER**

10.1 This report outlines the progress on the Blackwall Reach Regeneration scheme and seeks the approval of the Mayor in Cabinet to establish a new charitable company - the Blackwall Trust - to oversee the new central park area and to authorise the making of a Compulsory Purchase Order to acquire the open space from its current owners - the Robin Hood Millennium Green Trust.

- 10.2 Funding for the Blackwall Reach scheme was initially approved by Cabinet in July 2009, with the project expenditure mainly relating to the costs of land assembly and decants. The significant increase in property values over recent years necessitated an increase in the capital estimate for the project to £20.266 million which was approved by the Mayor in Cabinet on 26<sup>th</sup> July 2016. The increase in property values has given rise to a corresponding increase in the overage receipts that are likely to be generated by the project and which are cross-subsidising the scheme.
- 10.3 A key element within the site boundaries is the Millennium Green. This open green space is currently managed by the Robin Hood Millennium Green Trust following transfer of the land from the Council in June 2001, however negotiations are taking place to assign the land and the associated responsibilities to a new trust – the Blackwall Trust. This report seeks approval for Compulsory Purchase Order proceedings to be implemented should efforts to acquire the land by agreement fail. It should be noted that the CPO process is a last resort, and that negotiations with the existing Trust will continue, however arranging for these back-up procedures to be put in place now will reduce any subsequent delays in the regeneration programme that will arise if agreement cannot be reached. As open land held for charitable purposes, there are no capital acquisition costs associated with the CPO, however the Council will reimburse any reasonable costs that the existing Trust incurs as part of the transfer process.
- 10.4 The Council is committed to establishing the new Blackwall Trust in accordance with the terms of the Principal Development Agreement that was entered into with its partners - the Greater London Authority (GLA) and Swan Housing Association. It has also given an undertaking to Natural England that the Trust will be established, with the Council being at risk of having to repay a £38,000 Natural England grant if it is not set up by May 2019. The Trust will initially be established with £1 million of capital provided by Swan as part of the Blackwall Reach planning agreements, the first £250,000 of which has been received by the Council in line with the milestones within the agreements. This report seeks authority to transfer these and future funds to the Trust.
- 10.5 Once fully acquired, the lease of the open space will be transferred to the Blackwall Trust which in conjunction with Swan will undertake the on-going management and maintenance of the park. In addition to the initial funding of £1 million, the Trust will receive annual income estimated at £80,000 from the ground rents that Swan collects from across the Blackwall Reach estate. It will also seek to raise funds from other sources as set out in paragraph 9.10.
- 10.6 Although the Council currently has no responsibility for the open space, as outlined in paragraph 6.5 it has been undertaking limited maintenance of the site, including cutting the grass, because the Millennium Green Trust has no financial resources to maintain the area itself. These costs will be avoided in future if the responsibility is transferred to the Blackwall Reach Trust.

## **11 LEGAL COMMENTS**

### **Millennium Green CPO**

- 11.1 The Council is empowered under section 226(1)(a) of the Town and Country Planning Act 1990 (“TCPA 1990”) as amended, to acquire any land in its area if it is satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. Alternatively, if the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area, the Council may rely on section 226(1)(b) TCPA1990.
- 11.2 In order to make an acquisition under section 226(1)(a) TCAP 1990, section 226(1A) provides that the Council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of its area.
- 11.3 The London Borough of Tower Hamlets (Blackwall Reach) CPO 2013 was confirmed in 2015 which enabled the Council to acquire the entire Millennium Green. Certain plots of the Green, mostly to the west, were to be acquired for the purposes of securing its management. A large portion of this land has now been vested by the Council pursuant to a General Vesting Declaration made in May 2017. Other plots of the Green, to the east, were to be acquired to be built upon and this would in turn require the Council to provide alternative open space in exchange. However, Swan Housing Association Limited, the developer, no longer requires these plots of land for the purpose under which the CPO permitted acquisition. Accordingly, the western part of the Green is now in the Council’s ownership and the eastern part remains in the ownership of the Millennium Green Trust. For the reasons set out in the report (which reflect the reasons for which the Secretary of State confirmed the CPO in 2015 in respect to the western part of the Green), the Council considers it necessary to acquire those remaining 3 plots to the east identified in the plan at Appendix 1 (the “Order Land”). For the reasons set out in the report, the redevelopment of the Order Land will result in a significant improvement to the economic, social and environmental well-being of the area. Acquisition will both facilitate the carrying out of the wider Blackwall Reach redevelopment project and improve the quality and management of the open space to be acquired.
- 11.4 Section 19 of the Acquisition of Land Act 1981 (ALA 1981) requires that where a CPO includes public open space it must be subject to Special Parliamentary Procedure unless a certificate is obtained from the Secretary of State. “Open space” is defined in section 336 TCPA 1990 as “...any land laid out as a public garden, or used for the purposes of public recreation...”, which applies to the existing Green.
- 11.5 Under section 19(1)(aa), the Secretary of State may grant a certificate where the acquisition is necessary to secure the preservation or improve the management of the land. When confirming the existing CPO, the Secretary of State issued a certificate on these grounds in relation to plots 59, 60, 62 and 70. The reasons for that decision are essentially the same as the reasons why

the Council now needs to acquire plots 61, 71 and 74: the Council wish to take control of the Order Land, both to enable it to be re-laid as improved public space and to secure its management going forwards. Accordingly, a certificate under section 19(1)(aa) ALA 1981 will be sought from the Secretary of State to authorise the acquisition of the Order Land through the CPO. The application is made at the time that the CPO is submitted to the National Planning Casework Unit for confirmation.

- 11.6 If the Order Land is acquired (voluntarily through negotiations with the Millennium Green Trust or compulsorily) the freehold of the entire Green would then be in the Council's ownership. In turn, the Council intends to grant a 250 year lease for a premium of £1 to the new Blackwall Trust in order that the land can continue to be used as open space and for the Trust to oversee the Green and, through various funding streams, to fund works to the Green and carry out various activities and initiatives for the benefit of local residents.
- 11.7 Section 10 of the Open Spaces Act 1906 provides that a local authority that has acquired control over any open space to which the 1906 Act applies shall, subject to certain conditions, hold and administer the open space in trust to allow the enjoyment of it by the public as an open space and for no other purpose. When granting the lease, the Council must ensure, therefore, that there is adequate protection so that the Green will continue to be available as public open space.
- 11.8 Section 123 of the Local Government Act 1972 enables the Council to dispose of its land in any matter that it may wish. However, except in the case of a short tenancy (i.e. leases of less than 7 years), the consideration for such disposal must be the best that can reasonably be obtained. Otherwise the Council requires consent of the Secretary of State for the disposal. Scope exists for the Council to dispose of such land at less than best consideration and without the specific consent of the Secretary of State if it can bring itself within the provisions of the General Disposal Consent (England) 2003. The Consent provides that the Council can dispose of the land if it considers it will help to secure the promotion or improvement of the economic, social or environmental well-being of its area, and the undervalue is at less than £2m. In this regard, proper advice must be obtained in respect to the value in accordance with the Consent.
- 11.9 As the Green is open space, 123(2A) of the Local Government Act 1972 requires that any intended disposal, which includes the grant of a lease of a term of seven years or longer, must be advertised for two consecutive weeks in a local newspaper. Any objections to the disposal must be taken into account before the disposal is effected
- 11.10 The ALA 1981 provides that the authorisation of a compulsory purchase is to be conferred by an order, called a compulsory purchase order ("CPO"). A CPO is required to be made in a prescribed form and must describe by reference to a map the Order Land. Where the Council makes a CPO, it must submit it to the Secretary of State for confirmation. Prior to submission, the Council must publish notice of the making, such notice containing prescribed information. The

Council must also serve a notice in prescribed form on affected owners, tenants or occupiers of the land allowing them the opportunity to object. The procedure for confirmation of the CPO is specified in the ALA 1981 and it may require the conduct of a public inquiry if there are objections.

- 11.11 As the Council may ultimately be compulsorily acquiring the Order Land, it should take care that it does not contravene the rights of individuals under the European Convention on Human Rights (“ECHR”). Section 6 of the Human Rights Act 1998 makes it unlawful for the Council to act in any way which is incompatible with a right under the ECHR. Pursuant to Article 1 of the First Protocol to the ECHR, every person is entitled to the peaceful enjoyment of his or her possessions and no one shall be deprived of those possessions except in the public interests and subject to the conditions provided for by law and by the general principles of international law.
- 11.12 In order to avoid contravening individual human rights by making a CPO, it must be demonstrated that the CPO is in the public interest and that it is necessary and proportionate to make the CPO. It is considered that, as the requirements of section 226(1)(a) and 226(1A) TCPA 1990 have been fulfilled (i.e. the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the area), this will provide a very substantial basis upon which to make the case that the CPO is policy based, is consistent with statutory objectives, and is necessary and proportionate.
- 11.13 The making of a CPO should be a last resort and should be preceded by vigorous attempts to acquire the land by agreement. There should be evidence of intransigence on the part of owners such that the purpose for which the CPO is sought is put at risk. It must be clear that the reason for the CPO offers public benefits, such as improved amenities for the area. The balance of interests between the protection of individual rights and the public benefits to be obtained must be considered and there should be a compelling case in the public interest for the CPO. In this regard, it is relevant that individuals whose rights may be affected have a right to object to the CPO, and to have their objections heard at a Public Inquiry.
- 11.14 Statutory guidance, “Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion”, which was issued in 2015, provides guidance to acquiring authorities on the use of compulsory acquisition powers. The guidance has been referred to, as appropriate, in the preparation of this report.
- 11.15 Before making a CPO, 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. An equalities analysis has been conducted, the outcome of which is that it does not appear that the CPO will have any adverse effects on people who share Protected Characteristics.

11.16 The Council is a best value authority within the meaning of section 3 of the Local Government Act 1999 and is obliged to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficient and effectiveness”. This is expanded upon at paragraph 14 of the report and officers must continually keep under consideration whether the CPO process is discharging the best value duty.

### **BLACKWALL TRUST**

11.17 The Council is required, under the Principal Development Agreement dated 19 April 2011 (as varied on 10 December 2013), to establish the Blackwall Trust, which is to be a charitable company limited by guarantee (the “Trust”).

11.18 The purpose of the Trust is, inter alia, to own and hold the leasehold interest in the Millennium Green as open space, to arrange activities and to run initiatives for the benefit of the local community. These activities and initiatives will be focussed around education, training, personal development, improved well-being and enhancing community cohesion.

11.19 As distinct from a ‘local authority company’, the Council is not taking an interest in the Trust and so it can rely on its general powers for its establishment. The powers in relation to the establishment of a non-local authority company, therefore, can fall under section 1 of the Localism Act 2011, which is the Council’s power to “do anything that individuals generally may do”. The entering into agreements, agreeing governance documents, incurring expenditure, and submitting documents to Companies House and the Charity Commission, or anything else which is incidental to establishing the Trust can be carried out under section 111 of the Local Government Act 1972, which is the power to do anything “...which is calculated to facilitate, or is conducive or incidental to, the discharge of any [function].”

11.20 A company limited by guarantee is the usual legal structure for creating a new charitable company. The key features include of the company include:

- it is incorporated under the Companies Act 2006 without issuing shares but instead requiring its members to guarantee a sum of money in the event of insolvency;
- it gives limited liability rights;
- the directors have duties and responsibilities under the Companies Acts and additional duties because of it being a registered charity;
- it is regulated by Companies House, and subject to the Charity Commission’s regulation.

11.21 Given the purpose for which the Trust is being established, a company limited by guarantee is the most appropriate model; the structure is well known in the private sector, which makes external funding and partnerships much more likely. However, as there are requirements for administration, annual reports and meetings, and audited accounts, this can make it more expensive and administratively burdensome than others. The various funding streams for the

Trust, which include the receipt of ground rents, fund raising and a capital receipt from Swan Housing Association Limited, will be sufficient for this purpose.

- 11.22 Swan Housing Association Limited is required under the PDA to release to the Trust, in four tranches, a total of £1m to use in furtherance of its objects. The first sum of £250,000 has been received by the Council and is being held on trust, pending the establishment of the Trust. Once the Trust is established, these funds are to be released.
- 11.23 On establishment of the Trust, the Council's involvement in it will cease, save for in respect to nominated officer(s) being appointed as directors/members.
- 11.24 It is proposed to appoint up to two Council officers as directors and trustees of the Blackwall Trust. Whether one or two officers are to be appointed will depend on the final governance structure, as there are certain restrictions on local authority board membership. In accordance with section 167 of the Companies Act 2006, all director appointments must be notified to Companies House and there are similar provisions relating to the appointment of Trustees under the Charities Act. Under para 2.2 of part 3 of the constitution (Responsibility for Functions), in relation to executive functions, the Mayor may appoint officers to external bodies where the position is unpaid.
- 11.25 An officer of a local authority, who is also a director of an external body, must be aware of their duties in respect to each role. Conflicts of interest may arise in a number of areas for an officer who is also a director of the company and the directors referred to at para 9.17.5 should be mindful of their responsibilities, including those under the Local Government Act 1972, the Local Government Act 2000, and the constitution.
- 11.26 When establishing the Trust, 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. An equalities analysis has been conducted, the outcome of which is that it does not appear that the creation of the Blackwall Trust will have any adverse effects on people who share Protected Characteristics.

## **12 HUMAN RIGHTS IMPLICATIONS OF THE CPO**

- 12.1 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. Various convention rights are likely to be relevant to the Order, 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.
- **Right to respect for, private and family life**, in respect of which the likely health impacts of the proposals, will need to be taken into account in evaluating the scheme (Convention Article 8).

12.2 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.

12.3 The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. In the present case, the CPO would amount to an interference with the property rights of the MGT. However, it is relevant that the use which the Trustees can make of the land is limited by their own obligations to hold and maintain the land for the benefit of inhabitants of the area; and that, if the CPO is confirmed, inhabitants would continue to be able to use the open space in circumstances where its long term maintenance and management was significantly improved. For the reasons set out above, it is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the social, physical and environmental regeneration that the project will bring.

### 13 ONE TOWER HAMLETS CONSIDERATIONS

13.1 The Council has a range of statutory duties to facilitate development in the borough and provide affordable homes for local residents. Regeneration and development is a key factor to ensuring economic prosperity for the individual and for the community. The council has to plan for the overall social infrastructure to meet the needs of the rising local population. Previous reports to Cabinet and the Mayor in Cabinet, and evidence to the CPO Public Inquiry in 2014 have confirmed that the Blackwall Reach regeneration scheme will contribute to One Tower Hamlets objectives. The three objectives are to reduce inequalities; ensure community cohesion; and, strengthen community leadership.

13.2 On **reducing inequalities**, the scheme in delivery will lead to a massive increase in genuinely affordable social housing on the site. The scheme will also lead to new socio-economic infrastructure for the area, i.e. new education, community and retail facilities that will improve community well-being for local residents.

- 13.3 On **ensuring community cohesion**, the Council has worked with community representatives to facilitate the regeneration project, and minimise disruption. The new scheme is intended to achieve transformational change and the high quality 'Place Making' objectives. The provision of new community facilities and services provided for all residents, plus increasing linkages with the local school, which is one of the hubs of the local community, are greatly increasing community cohesion.
- 13.4 On **strengthening community leadership**, the Council and Swan continue to work closely with residents. The successful redevelopment of Blackwall Reach and the Robin Hood Gardens Estate is predicated on continuing successful engagement with residents and other local stakeholders and the partners will continue to work with residents and stakeholders on that basis.

### Equalities

- 13.5 The current proposal by the Council will require the MGT to transfer the remaining land back to the Council. The negative impact will be on the 6 trustees themselves – 2 registered within the same ward, 3 registered within the borough and 1 unknown as they moved away from the area a number of years ago. An Equalities Analysis has been carried out and is attached at Appendix 2. In theory the negative impact to MGT trustees would be the acquisition of their land interest, ie the Millennium Green. Provision is to be made for their transitional representation on the board of the proposed new Blackwall Trust, so they would retain a voice, although only one trustee is currently actively involved. Because the existing trustees are a very small group an equality profile in this detail would identify them individually. Overall the equalities impact will be positive for the wider Poplar community which is illustrated in Table 1 below.

| Residents by Age | 0-15  | 16-64 | 65   | Total |
|------------------|-------|-------|------|-------|
| Poplar Ward      | 1,797 | 4,766 | 394  | 6,957 |
| Poplar %         | 25.8% | 68.5% | 5.7% | 100%  |
| Tower Hamlets %  | 19.7% | 74.1% | 6.1% | 100%  |

(Source: Census 2011 QS103EW - Age by single year)

The council and its partners as part of the estate regeneration are ensuring that the park is better maintained, managed, and resourced with the creation of a new 'Blackwall Trust'. The financial provisions for the new Trust will provide resources to be used for the wider benefit of the community than is presently the case.

- 13.6 The specific proposals in this report are intended to action the setting-up of the new Blackwall Trust, whose functions as broadly set out in paras 9.4 – 9.13 are to oversee a crucially important open space at the heart of the existing and new expanded community in the area. The objects and heads of terms for the new Trust will ensure that it focuses on addressing inequality in the area, through the availability of an attractive public open space for the enjoyment of all residents, and critically via the provision of funding for socially beneficial

activities and projects, with funding secured for years to come. The Blackwall Trust, as explained in this report, is to be operated by a board on which local residents and other stakeholders have a strong and decisive voice in allocating resources where they are needed, and in taking responsibility for generating improvements in the lives of other local people.

- 13.7 Throughout the process of developing the regeneration masterplan and then taking the scheme forward at Blackwall Reach, including exercising its CPO powers in 2013, the Council has had regard to the equalities implications for affected land interests and the wider community, including existing residents and stakeholders, and the future community who will arrive at Blackwall Reach as the scheme is developed. This is considered above under “One Tower Hamlets” considerations.
- 13.8 The action proposed by the Council to make a further CPO for three residual plots of the Millennium Green which will remain in the ownership of MGT unless the Council takes this action, or secures a disposal by voluntary agreement, is intended to enable comprehensive renewal of existing open space – including those plots which the Council has acquired or has CPO powers already to do so. The renewal of the park and the introduction of new management arrangements through the set-up of the new Blackwall Trust, will, as demonstrated, be for the benefit of residents of all tenures, without exclusion. The CPO requested will help to secure this much-valued open space and retain it as a viable and sustainable community resource for literally centuries to come.
- 13.9 It is recognised that the existing owners of the plots of open space that are to be compulsorily purchased do not have the resources to maintain or improve their land under the present ownership arrangements. It is acknowledged that as a voluntary trust they are not properly resourced.
- 13.10 The contribution of the MGT historically is valued and the Trustees will be invited to put forward a nominee for a transitional period (it is suggested for the first term) whilst the new Blackwall Trust takes shape and develops its wider role. The Council will continue to set out this proposal to MGT Trustees as it seeks to meet its contractual and other commitments and its undertaking to Natural England who helped to broker this approach with MGT and has supported it, in respect of the Council’s proposals for the new Trust and the relationship of the existing MGT to it.
- 13.11 MGT has welcomed the design changes that will retain the green in its present boundaries as a positive step and recognises that disposal of the land identified is necessary to help achieve the renewal and long term viability of the transformed open space, alongside guarantees of its preservation in perpetuity and the offer of transitional representation for continuity to an existing Trustee.
- 13.12 The steps proposed in this report are not considered to be prejudicial in their equalities impacts upon MGT Trustees because they will in fact achieve similar purposes to the MGT’s own objects, which it can no longer deliver without intervention by the Council. Rather the actions proposed are considered to be

for the benefit of the wider community and stakeholders, including those who may benefit as a result both of the open space being renewed, maintained and preserved into the future and/or from the wider social initiatives which the new Blackwall Trust can support via its sustainable funding mechanisms.

## **14 BEST VALUE (BV) IMPLICATIONS**

- 14.1 The Blackwall Reach project as a whole aims to achieve best value in delivery through the pooling and best use of land assets between the Council and its partner, GLA, and other enabling investment, to enable comprehensive regeneration, within a financial model that will off-set costs as far as possible through substantial overage. The scheme will cost £430 million, set against a Council enabling contribution £20.266 Million (i.e. 4.7% of the overall cost, most of which is met by the developer). The main value of the project – and the council’s enabling contribution - is the near 300% increase in affordable rented homes for local people in housing need, along with substantial environmental improvements and other community benefits.
- 14.2 The council’s expenditure on the overall project is essential to deliver the overall scheme and its associated benefits. The Council has been predominantly successful in facilitating land assembly for Phases 1b, 2 and 3 of the scheme, and as a result the scheme will progress and substantial numbers of new homes are being built for local people.
- 14.3 Costs in relation to the measures proposed in this report will be met from the existing capital estimate, which was revised and approved by the Mayor in Cabinet in 2016.
- 14.4 The set-up of the Blackwall Trust requires the provision of specialist legal advice and some initial council officer time to facilitate its establishment. Thereafter the Trust predominantly funds itself and will operate initially through the provision of the first of 4 payments which the council has already received from Swan, of £250,000. The fledgling Trust will invest most of this to start generating interest and utilise an amount which it will determine to kick-off its independent fund-raising and other socially beneficial activities. The provisions for set-up also indicate there should be a limitation on the Trust’s expenditure on itself: this can be determined by the Trust or under the delegated work to finalise the rules for its operations.
- 14.5 Potential costs which may arise in relation to the land assembly / CPO primarily include officer time in relation to:
- ongoing negotiations and legal or other relevant support for MGT to assist in the voluntary disposal, for which the council will pay reasonable costs in line with good practice
  - the cost of making the CPO (officer time, process compliance including relevant notices, external legal validation etc.)
  - land referencing
  - preparation and representation at any subsequent Public Inquiry, if the CPO is contested.

## **15 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 15.1 The action requested in this report will enable the council to meet its contractual commitments and undertakings to make the renewed green space a viable and sustainable community resource for generations to come, within its existing boundaries. The implications for the environment are positive and beneficial. The green will be safeguarded through the new ownership and management arrangements, along with new participatory structures to be put in place, and future funding and secured. The overall regeneration will have three key sustainability benefits.
- 15.2 Firstly, the housing stock being redeveloped was designed to an environmental performance consistent with standards for build in place at the time the properties were built (mainly circa. 1970). They are being replaced by homes and buildings built to a far higher standard of environmental performance, which will mean they are far more cost effective to run, thereby reducing the potential for fuel poverty amongst low income households that are expected to occupy the new affordable homes within the scheme, including those being rehoused from the properties to be replaced. All the new homes will meet a minimum standard (Code of Sustainable Homes Level 4) and there may be scope to deliver a higher standard later in the project. The scheme also seeks to facilitate better approaches to energy conservation and waste recycling.
- 15.3 Secondly, a key element of the sustainability agenda is using land in urban environments to maximum effect. This both maximises the value of the land in strategic planning terms, and reduces pressure to build on green-field sites.
- 15.4 Thirdly the proposals involve the development of a high quality environment that will encourage bio-diversity as well as providing recreation space and amenity.

## **16 RISK MANAGEMENT IMPLICATIONS**

- 16.1 The measures proposed in this report will deliver specific contractual commitments between the council, GLA and Swan to establish the new Blackwall Trust, and will also meet covenants agreed with Natural England (who funded earlier works) as a condition of its withdrawal of objection to the council's original CPO for the area in 2013. This will avert uncertainty and ensure that the green space currently known as the Robin Hood Millennium Green is preserved for centuries to come as an accessible community space, whilst also putting in place a viable structure and funding for its ongoing management, overseen as a partnership with the local community.
- 16.2 Failure to make the requested CPO would jeopardise the comprehensive re-landscaping and improvement works for the existing green as a whole, and retain an unnecessary and unsustainable maintenance arrangement for those specific plots. This risk will be mitigated by the CPO and by ongoing discussions and negotiations with the Millennium Green Trustees to seek a voluntary handover of their interest, as described in the report.

## **17 CRIME AND DISORDER IMPLICATIONS**

- 17.1 The regeneration and redevelopment of the area will reduce the current high incidence of crime and anti-social behaviour, deriving in part from the poor physical condition of the current housing and environment, by improving the social, economic and environmental well-being of the local residents.
- 17.2 Good design will improve safety and security across the area for example through developing previously derelict or underused sites, better overlooking of shared spaces, community engagement in management, new routes through the area, local housing office.
- 17.3 The Blackwall Reach project is being designed carefully by Swan, with housing and open space layouts taking on board the advice of specialists and planners to reduce the opportunities for criminal and other anti-social activity.
- 17.4 The new Blackwall Trust will fulfil the council's aspiration that holistic ownership and management arrangements be set up for the entire central open space. This will ensure that the improved green area at Blackwall Reach is held as an open recreational space in perpetuity, remaining accessible to the whole community, and providing efficient and well-funded day-to-day management and maintenance. Provision for organised events, which have been a feature of the existing space, will continue. Through the operations of the new Trust, which will include local residents and stakeholders in its management structure, recognition of the green as a valued community resource will be encouraged, and its use and management closely monitored so that any problems of anti-social behaviour or other incidences of crime can be addressed responsively.
- 17.5 There are likely to be other positive impacts in terms of crime and disorder through the community-focused projects that the new Trust will sponsor.

## **18 EFFICIENCY STATEMENT**

- 18.1 Section 3 of the Local Government Act 1999 requires best value authorities, including the Council, 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". It is considered that the use of Council resources, within a model that delivers significant housing, educational and community provision for the area, while aiming to recover costs, will satisfy that duty.
- 18.2 The Blackwall Reach Regeneration Project is providing up to 1575 new homes with some 207 Council rented homes being replaced with up to 679 new affordable homes (including 561 homes for rent at traditional social rent levels) and 45 private homes with up to 896 new ones, including replacement homes for displaced resident owners, at nil extra cost. Value is also being demonstrated by the regeneration project generating up to £14,480,456 in S106 planning gain contributions for the area in addition to other benefits of the

scheme. This funding has already contributed to early delivery of a new expanded local school.

- 18.3 This report is to enable the set-up of a new Trust to broaden regeneration benefits to the wider community. This charitable body will establish and support worthwhile projects for the benefit of local residents, long into the future and funded by Swan Housing Association as the Council and Mayor of London's development partner for this regeneration project.
- 18.4 This report is also to help enable an area of open space to be assembled, protected from development, landscaped and leased to the new Trust as custodian, whilst being maintained by Swan Housing Association. Much of this land was transferred to the MGT in 2001, but as the MGT is lacking the resources to look after the site, the Council and Tower Hamlets Homes had been required to step in to maintain the area.

### **Linked Reports, Appendices and Background Documents**

#### **Appendices**

- Appendix 1 Map showing the land proposed to be compulsorily purchased.
- Appendix 2 Equalities Analysis Assurance Checklist

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

- None

## Appendices

Appendix 1: Map showing land proposed to be compulsorily purchased (2018 CPO) or subject to acquisition under 2013 CPO.

