Subject: DOVER TOWN CENTRE INVESTMENT ZONE – THE DOVER DISTRICT COUNCIL (ST JAMES’S STREET/RUSSELL STREET, DOVER) COMPULSORY PURCHASE ORDER 2014

Meeting and Date: Special Cabinet – 20 December 2013

Report of: Tim Ingleton, Head of Inward Investment

Portfolio Holder: Councillor Paul Watkins, Leader of the Council

Decision Type: Key Decision

Classification: Unrestricted

Purpose of the report: Members will recall that a Compulsory Purchase Order (CPO) report was made to Cabinet on 10 September 2012 so as to seek authority to make a Compulsory Purchase Order in order to assist and support the Developer Partner (Bond City Consortium) in the implementation and delivery of an approved scheme for the redevelopment of Dover Town Centre (approved by DOV/11/1056).

(NB: A copy of the report and the decision are appended hereto for ease of reference, Appendix A).

The Developer Partner subsequently requested that the CPO process be held in temporary abeyance to enable further negotiations to be undertaken with key operators and end users, including a major cinema operator.

These negotiations have proved very successful and a fresh planning approval has been sought for a slightly amended scheme under DOV/13/00907 (which is expected to be considered by the Planning Committee at its meeting on Thursday, 19 December 2013).

In order to avoid any uncertainty, it has been agreed to place a fresh CPO report before Cabinet for a new authority to make the CPO. The necessary processes can then commence as soon as planning permission has been issued.

This report seeks authority to commence the necessary enabling processes and procedures for a CPO to be made by the Council to enable the implementation of planning permission DOV/13/00907 and Stopping-Up of Highways to be processed by the Developer. These processes relate in particular to the acquisition of land interests required for Phase 2 of the scheme (such interests being identified on the draft Order Map) together with the stopping-up of existing highways within the site which are no longer required, and is necessary to allow Phase 2 of the scheme to proceed.

Recommendation: Cabinet is recommended to agree the following in respect of Phase 2 of the scheme:
1. That the Council makes a Compulsory Purchase Order under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) for the acquisition of the land and interests within the area shown edged in black on the plan enclosed at Appendix C to this report for the purpose of enabling the carrying out of a scheme of development, redevelopment and improvement of part of the town centre which comprises of Phase 2 of the St. James’s/Russell Street area (DTIZ) (Demolition of existing buildings to provide 7429m² of retail (A1) floorspace in 2 main blocks together with 2472m² of cinema (D2) floorspace, 1060m² of restaurant (A3) in separate block, 362m² of restaurant (A3/A4) in a further block and 44m² of retail (A1) in a kiosk to Flying Horse Lane, together with associated car parking, highway works and landscaping at St James Site (DTIZ) generally between Townwall Street, Castle Street/King Street, Russell Street, Woolcomber Street and including land fronting Flying Horse Lane, Dover (“Order Land”), the Cabinet being satisfied that (i) the acquisition will facilitate the carrying out of the development, redevelopment or improvement on or in relation to the land, and (ii) the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental wellbeing of Dover town centre and the surrounding District;

2. To authorise the Chief Executive to:

   (i) Take all necessary steps to settle the Statement of Reasons, and to secure the making, confirmation and implementation of the Compulsory Purchase Order including the publication and service of all notices and plans and the presentation of the Council’s case at any Public Inquiry;

   (ii) To acquire interests in land within the Compulsory Purchase Order either by agreement or compulsorily; and

   (iii) Reach agreement or undertakings with land owners setting out the terms for the withdrawal of objections to the Compulsory Purchase Order, where appropriate seeking exclusion of land from the Compulsory Purchase Order and/or making arrangements where appropriate for the relocation of occupiers;

3. To authorise the Chief Executive to take all necessary steps to:

   (i) Support the application to be made by the developer to the Secretary of State to secure the Stopping-Up of the public highways required to undertake the development under Section 247 of
(ii) Support the making of all necessary Traffic Regulation Orders.

4. That, subject to the completion of an appropriate prior Works Agreement, the Chief Executive, be authorised to exercise the powers and take all necessary steps, including steps under Section 15 of the Local Government Miscellaneous Provisions Act 1976 or Section 324 of the Town and Country Planning Act 1990, to achieve prior entry to any parts of the land falling within the area of redevelopment for the purposes of carrying out soil investigations, archaeological and site surveys.

5. To authorise the Chief Executive (in consultation with the Leader of the Council) to conduct all negotiations and settle all terms as may be necessary in order to progress and complete any further agreements to be made in respect of the development to enable the delivery of the scheme.

6. To confirm authority by the Chief Executive to enter into a further Planning Financial Contribution Agreement (PFCA) with Bond Coty Limited pursuant to S.1 of the Localism Act 2011, necessary so as to provide adequate security for the payment of £10k in respect of archaeological works, in respect of DOV/13/00907. (See para 3.22)

1. Summary

1.1 The comprehensive redevelopment of this part of Dover Town Centre is a long standing major corporate aim for the Council and other stakeholders who have supported the scheme, including the Homes and Communities Agency who inherited the earlier interests of the South East England Development Agency which funded several acquisitions of property within and adjacent to the scheme.

1.2 Following the abandonment of an earlier approved scheme, which was to be underpinned by Asda as the main retail anchor, the Council has been working with its chosen development partner, the Bond City Consortium, who have prepared alternative proposals which has ultimately led to a fresh series of planning applications for the comprehensive redevelopment of the Town Centre of Dover (the DTIZ site). Separate applications are now being made for (i) the hotel and restaurants (Phase 1); (ii) the retail and cinema component (Phase 2); and (iii) a separate residential application (Residential Component).

1.3 The proposals for the comprehensive redevelopment of this part of Dover town centre (DTIZ) have been brought forward through planning applications which allow a phased approach. This is on the basis that Phase 1 of the scheme, which comprises a hotel and restaurants, is on land owned by the Council and can be brought forward separately as a CPO is not required. The Residential Component is also land already in Council ownership and can now be brought forward by the Council separately at the earliest opportunity. Phase 2, which relates to the main retail and
cinema application, requires a CPO the subject of this report. Implementation of Phase 1 or the Residential Component are not dependent on Phase 2 and vice versa. References to the "scheme" in this report are generally intended to be a reference to the Phase 2 scheme.

1.4 Planning applications have been submitted for the proposals in respect of the Retail/Cinema Component and the Residential Component (the application in respect of the Retail/Cinema will be reported to the Planning Committee on 19 December 2013). The Hotel element (including advertisement consent for the LED mast which sits next to the hotel) will also be the subject of a new replacement application to be submitted in January 2014.

1.5 The plan attached at Appendix B illustrates the scheme for Phase 2 of the comprehensive development (together with the area to be the subject of the hotel application in respect of Phase 1 and the site of the residential development on the corner of Castle Street and Maison Dieu Road).

1.6 As with the previously approved scheme, following the granting of the relevant planning consents, Cabinet needs to agree to the process for making a CPO, support the Stopping-up of highways and other ancillary consents where needed.

1.7 Through liaison with Bond City, agreement has been reached on the appointment of the professional team who will advise, support and assist the Council in taking forward the CPO process. This work will be undertaken and funded by Bond City through a CPO Indemnity Agreement.

1.8 Initial preparatory work has been undertaken and is ongoing by agreement with Bond City. This comprises comprehensive ‘referencing work’ (which was first undertaken in 2012 and is being further updated) by a specialist company called Persona Associates to establish the detailed land ownerships and property interests both within Phase 2 of the scheme and adjacent to it. A detailed portfolio of information has been established to inform the CPO process. From this exercise the boundary of the area which will comprise the CPO has been established. This is shown edged in black on the plan at Appendix C. There are a number of proposed changes to the previous CPO boundary which have been requested by the Developer:-

(i) Exclusion of the Pocket Park at Flying Horse Lane/King Street – this will be more appropriately considered at a future date as it is included in the area to be covered by the Waterfront proposals which will come forward in due course (the subject of Policy CP8 of The Adopted Local Development Framework Core Strategy (CS)):

(ii) Removal of the area of land at the corner of Castle Street/Maison Dieu Road – to be the subject of separate residential development by the Council (the Residential Component).

1.9 As a consequence of this work, a draft CPO map has been prepared and is enclosed at Appendix D. This shows, coloured in pink, the various plots situated within the boundaries of the CPO where interests or land need to be acquired, which have been identified as necessary in relation to Phase 2 of the scheme. This map and the Schedule (listing relevant interests) will form part of the published CPO.

1.10 This report provides more detailed information regarding the scheme and seeks authority from Cabinet to progress the CPO process and other approvals to enable Phase 2 of the scheme to progress.
1.11 Considerable progress has been made on the opportunity acquisition of sites within the scheme over the past few years. These include the former Stagecoach Bus Depot, the former MFI/LIDL site, the Charringtons site, the rear of 50 Castle Street and most recently, the P&O site at Fanum House, Russell Street which are shown on the plan at Appendix E.

1.12 A number of interests and small plots remain to be acquired to allow the scheme to proceed. The making of a CPO does not mean that negotiations for the acquisition of the outstanding interests and plots will cease. Government guidance (Circular 06/04) acknowledges that making a CPO can be a helpful step in encouraging negotiations. During the CPO process, the developer will continue to try and acquire these interests by agreement if it is possible to do so on reasonable terms. In the event that Cabinet agrees the resolution to make a CPO, it would be several steps, and many months, away from acquiring any pursuant to a CPO.

1.13 When the Council resolve to make the CPO, notice of the making of the CPO will be published, and interested parties will be notified. There will then be a 3 week period within which any objections may be made. If no objections are received, the Order may be confirmed by the Council itself. In the event that an objection is made by parties who have a legal interest in the affected land and property, it will be necessary to hold a public inquiry to consider the objections. In this event, it is likely to be at least six to nine months before the outcome of the inquiry is known.

1.14 Running in parallel with the CPO process, an application will also be made by Bond City to the Secretary of State for the stopping-up of highways within the scheme. These have been agreed with Kent County Council as Highway Authority and are shown on the plan attached at Appendix F (and will also be referred to in greater detail at your meeting).

2. Introduction and Background

2.1 The redevelopment of this part of the town centre has been a long standing ambition of the Council which has been promoted through the Development Plan and has been recognised through the Corporate plan as a key priority for the Council. In addition to this, the redevelopment of this part of the town centre linked to Dover Waterfront comprises one of 12 Spatial Priorities identified by East Kent Regeneration Board.

2.2 The Council formally completed a Development and Lease Agreement (and a CPO Indemnity Agreement) with Bond City Limited (the developer) and Stonehurst Estates Ltd (the guarantor) on 10 November 2011. Under the terms of this agreement, the developer has agreed to use reasonable endeavours to procure the carrying out of a phased redevelopment of the St James’s (DTIZ) area, subject to the developer first fulfilling a number of pre conditions, namely: (i) Planning Condition (ii) Land Acquisition Condition (iii) Highway Condition (iv) Traffic Management Condition (v) Viability Test Condition (vi) Letting Condition and (vii) Funding Condition. On practical completion of the relevant phases of the development, the Council will be required to grant 250-year headleases in an agreed form of the respective hotel and the retail/cinema elements. The retail/cinema headlease will include the public car park area, but the Council will manage the car park in accordance with an agreed Car Park Management Agreement and a Car Park Order.
3. **Planning Policy Context**

3.1 The Planning Policy context for the area and other material considerations are set out below.

3.2 The former Regional Spatial Strategy for the South East (South East Plan) contained a number of relevant policies. The Strategy identified Dover as a Regional Hub, a Growth Point and as a Secondary Regional Centre. Policies SP2, TC1, EKA1 and EKA4 were of particular significance. The former Strategy also promoted the need to foster accessibility and avoid the need for travel, encourage regeneration measures, provide significant improvements to the built environment and the environmental character.

3.3 The CS takes forward the thrust of the former South East Plan at the local level and aims to deliver transformational change in the socio-economic wellbeing of Dover based on population growth and the regeneration of infrastructure and services to create a place where people will want to live, work, visit, shop and spend leisure time. The CS identifies Dover town centre as generally underperforming in its role as the District’s principal centre and of lagging behind other competitive East Kent centres which have seen major improvements, notably Canterbury, Westwood Cross and Folkestone.

3.4 The CS recognises that securing transformational improvements in the appearance and range of facilities in Dover such that it becomes a location of choice to live, work, visit, shop and spend leisure time are a clear objective. Dover town centre is fundamental to the overall growth strategy and identifies the St James’s scheme as particularly important to this end. To achieve the strategy the CS carries forward saved Local Plan policy AS9 for St. James’s and makes two other strategic allocations in the town centre at Waterfront and Mid Town. In terms of implementation the CS envisages that St. James’s should occur first, followed by Waterfront with Mid Town a longer-term initiative. The CS’s overall objective is to promote and deliver modern town centre shopping development in a format that addresses retailer requirements and provides a greater range of consumer choice. This would reduce the need for residents’ to travel to alternative centres and make the centre more attractive to visitors.

3.5 As mentioned above, delivering this change comes against a backdrop of underperformance in town centre retailing in Dover with significant leakage occurring to other centres. This is particularly acute for (non-food) comparison expenditure. While Dover has potential for additional comparison capacity, the LDF CS notes that the town centre has been bereft of any major retail (or other) investment in recent years. This is in stark contrast to neighbouring towns and that this has further depressed residents’ confidence in Dover as a retail destination – indicating that a new viable retail development is acutely needed. The leisure component now embedded in the scheme will extend the opportunities for local residents such that they will no longer be reliant on neighbouring centres to meet these needs. Additionally, there will also be a significant boost to the night time economy in the town centre.

3.6 Saved Local Plan Policy AS9 outlines site specific requirements for the redevelopment of the St James’s area. This is underpinned by the St James’s Area Planning Brief (2002) Supplementary Planning Guidance (SPG) which is a material planning consideration.
3.7 The site areas covered by the SPG, Policy AS9 and the application site are not entirely coincidental. The SPG excludes: The sports centre; St James’s Church; the BP garage; land south of Townwall Street including Camden Crescent car park and Granville Gardens; and 54 Castle Street (all of which are covered by AS9). The SPG includes: The former MFI premises; Dolphin House; and land either side of the River Dour (adjoining Dolphin House and Mill Lane). The planning application site is more coincidental with the SPG but excludes Dolphin House, the River Dour and land on the corner of Townwall St/Woolcomber St (to be the subject of the separate Hotel application). It also includes part of the rear curtilage of 48 – 52 Castle Street (not within either the SPG or AS9). These variations however are not considered to affect the underlying relevance of Policy AS9 and the SPG to the proposal.

3.8 The SPG refers to the redevelopment of the site as a ‘top priority’ and an opportunity to improve the appeal and vitality of the town centre. It identifies four objectives for the redevelopment of the site:

1. Comprehensive regeneration of this “brown field site”, thereby bringing a site of strategic importance back into full and effective use;

2. Provision of a suitable mixed-use scheme which will reinforce the role of town centre and contribute to its vitality;

3. Secure environmental enhancements through high quality design of new buildings and landscaping treatment; and

4. Secure townscape improvements of this highly visible location which reinforce this entrance to the town centre and enhance linkages between the core shopping area, sea front and neighbouring retail and tourism facilities”.

3.9 The National Planning Policy Framework (NPPF), published in March 2012, sets out the Government's planning policies for England in a single document which replaces the previous PPG/PPS policy statements. NPPF should be treated as a material planning consideration for the purpose of decision making.

3.10 The NPPF indicates that the planning system should do everything it can to help deliver sustainable economic growth through the key objectives of achieving sustainable development through the foundations of economic, social and environmental considerations. It should also support strong/healthy communities by providing accessible local services that reflect the community’s needs and support cultural wellbeing. With regard to retail development the NPPF requires planning authorities to promote the vitality and viability of their town centres and to promote competitive centres that provide customer choice and diverse retail offer. The NPPF also recognises that leisure is a key use to be promoted in a town centre environment and that, where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity. For this reason and from the foregoing there is a compelling economic and social case to see the St James’s scheme brought forward as soon as possible. It is considered that the CS's objectives and policies towards Dover town centre (and saved Policy AS9) are consistent with the NPPF and therefore remain an up-to-date basis for decision making. It should also be noted that the Delivery Framework in the CS sets out the need for the Council to be pro-active to ensure the delivery of its proposals. This revolves around varying levels of public sector intervention, including entering into development partnerships with the private sector and the compulsory acquisition of land.
3.11 While the socio-economic benefits form a very important backdrop, guidance in the NPPF also leads one to conclude that for the development to be sustainable and successful it must also deliver quality place making. In the case of retail development, the CS suggests that the retention of expenditure in Dover will be best achieved by good quality, comprehensive mixed-use retail and leisure based development. The need for good design is also important to achieving strong communities (NPPF).

3.12 The four main objectives of the 2002 SPG continue to reflect the urban design requirement for good contextual design. They are also in tune with the NPPF which states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions and that planning should enhance the vitality of the main urban areas, encourage the effective use of land and deliver mixed-use developments. The CS (Dover Spatial Issues) also covers this objective identifying the need for a more vibrant town centre. On this basis, the SPG Objectives continue to be relevant.

3.13 The wider context for the regeneration of the town centre is also defined by how the locality is functioning in relation to adjacent towns.

3.14 Despite Dover’s strategic international position and recognition, in common with other parts of East Kent, the town experiences some of the highest levels of deprivation in the country. Although the port attracts many millions of people to Dover each year only a very small proportion choose to visit and spend money in the town.

3.15 The East Kent Regeneration Board’s Strategic Plan, Open for Growth identifies Dover Port, Town Centre and Waterfront (including St James) in particular as one of the 12 strategic priorities which are critical to East Kent’s future growth.

Planning Application Position

3.16 The developer has previously submitted and received approval to the following planning applications:

(i) Hotel Permission:

   DOV/11/1049 - Erection of a hotel building with restaurant/bars (A3/A4) and mast (to house telecommunications equipment) with LED screen, construction of a vehicular access, hard and soft landscaping and car parking, site west of Woolcomber Street & South of, St James Street, Dover;

(ii) LED Advertisement:

   DOV/11/1050 – Display of an internally illuminated LED screen (forming part of hotel development subject to planning permission DOV/11/1049 at site West of Woolcomber Street and South of St James Street, Dover).

(iii) A previous Main Permission (which is shown in part on the plan at Appendix B):

   DOV/11/1056 - Demolition of existing buildings and carrying out of a redevelopment to provide new retail (A1) floorspace, (A3/A4) floorspace, 8 residential units with associated car parking, highway works and landscaping at St James's Street site (DTIZ) generally between Townwall Street, Castle Street/King Street, Russell Street, Woolcomber Street and including land
fronting Flying Horse Lane and a pocket park at the corner of King Street and Flying Horse Lane, St James's Site (DTIZ) between Townwall Street, Castle Street/ King Street, Russell Street, Woolcomber Street, Dover.

3.17 The planning applications were reported to and approved by Planning Committee on:


(ii) DOV/11/1056 – Planning Committee 10 may 2012: Consent issued following completion of legal agreement on 13 June 2012.

(iii) DOV/13/00457 – Planning Committee 8 August 2013: Consent issued for amendments to DOV/11/1056 (in respect of Block A) following completion of legal agreement on 23 August 2013.

3.18 Following the Developer Partner's negotiations with the Cinema Operator and the signing up of Marks and Spencer for Block A, it has proved necessary for the Developer Partner to seek a number of amendments to the Main Application. In order to ensure the certainty of a composite planning permission for Phase 2 of the scheme, it was agreed that the Developer should submit a fresh planning application for Phase 2. This was duly submitted and validated on 5 November 2013 under reference number DOV/13/00907 (which now comprises the 'current scheme' for Phase 2).

3.19 In parallel, letting agents, Shelley Sandzer and Stephen Buckle & Co have now been instructed to begin marketing the 3 restaurant units adjoining to the Multiplex cinema, targeting specific national operators.

3.20 Terms have been agreed on the restaurant unit adjacent to the cinema, and solicitors instructed with a view to exchanging an Agreement for lease/lease in the first quarter of 2014. This will then set the rental tone/levels for the next two lettings, where operators have already expressed in principle interest.

3.21 A separate application will be submitted in early January 2014 for revisions to the Hotel and Restaurants (Phase 1) and a separate application is also being submitted in respect of the Residential Component (which is to be the subject of separate development by the Council at the most appropriate time).

3.22 The planning consents are likely to contain a number of conditions which will need to be discharged by the submission of details. Application DOV/13/00907 is also likely to be accompanied by a prior Planning and Financial Contribution Agreement which will secure funds to be held by the Council for archaeological works.

3.23 Under the terms of the Development and Lease Agreement, the developer has the opportunity to advise the Council if it considers that there are any "onerous conditions" and there has to be a challenge free period to expire before a 'satisfactory Planning Permission' is deemed to be in place.

3.24 Other related consents include:

- DOV/04/01181 Screening Opinion relating to proposals subsequently covered by DOV/05/0814
• DOV/05/0814 – No EIA required.

• DOV/05/0814 Erection of 7 retail units (including Asda superstore) 53 flats, Hotel with restaurant/bars (A3/A4) and mast (incorporating telecommunications equipment) “feature” Building/pavilion, canopy structures, hard and soft landscaping and car parking – Approved.

• DOV/10/0949 Demolition of retail warehouse – Approved.

3.25 Comparison of the current scheme to the earlier abandoned scheme, DOV/05/0814 (which is shown at Appendix G and was also to be phased) indicates a number of significant improvements. These include:

• Recreation of the historic street patterns
• Enhanced pedestrian linkages
• A reduction in car parking
• Public realm adjacent to the River Dour
• Improved boundary treatment along Townwall Street
• Improved views from above (the Castle/Western Heights)
• Softer varied design, massing and scale.
• A significant extension of town centre leisure uses which will help in a sustainable manner with the vitality and vibrancy in the area.

3.26 The application seeks to transform the commercial offer in Dover. It is considered that it achieves this in a manner that ‘re-stitches’ and improves the urban form, whilst respecting the setting of heritage assets. The buildings have been arranged so that they reinforce some of the existing street frontages, forming a number of small urban blocks and a series of public spaces, streets and pedestrian routes. Some of these have been informed by the historic street pattern. The approach taken to the design and layout of the scheme should create a legible and coherent development which reinforces and complements the existing urban form.

4. Land Acquisition

4.1 The following activities have been undertaken and are in process:

(i) Since the earlier Asda scheme was approved, the Council has been able to progress through negotiated settlements with the acquisitions of several key sites. These include the acquisition of the former MFI site from LIDL on the corner of Castle Street and Maison Dieu Road, the P&O site (which was not included in the earlier scheme) and part of the garden land at the rear of Castle Street.

(ii) Initial and ongoing discussions have also taken place with the main land owners/interested parties situated within the scheme to advise them of progress and the Council’s intentions.
Consideration is also being given to the obligations contained with Section 233 (5) of the Town and Country Planning Act 1990 regarding the Council affording interested parties affected by the proposed CPO suitable opportunity for alternative accommodation if their land is subject to compulsory purchase. There appears to be no appetite at this time for the interested parties to consider relocation in the wider scheme where similar land uses exist, but this will be further confirmed.

Referencing Agents (Persona Associates) have been appointed following a tender process and with agreement of Bond City. Work on preparing a draft Schedule of interests and CPO Plan for discussion with the developer was substantially advanced by the date of the Cabinet meeting held in September 2012, but is now been refreshed. This will enable the clear definition of the remainder of third party land required for Phase 2 of the scheme to be delivered together with extinguishment of any historical or other rights that may need to be secured and possible rights over land sitting outside the scheme boundary.

In addition, we have also agreed on the appointment of the CPO team with the developer. This comprises a specific appointment of BBP Regeneration who have undertaken work on the preparation of the draft Statement of Reasons and Stephen Turnbull, a Partner at Lawrence Graham who will process the CPO in conjunction with your officers. All of these appointments have been reaffirmed following the delay in the CPO timetable.

In addition to this, by agreement with DDC, Bond City has appointed Drivers Jonas Deloittes, specialist surveyors/valuers to assist with the negotiations on land assembly.

A number of CPO team meetings have taken place.

4.2 The appointment of Lawrence Graham also has benefits in that it enables a comprehensive approach with Bond City on the necessary Stopping-up of the public highways within the scheme and changes to Traffic Regulation Orders which will be required to enable and give effect to the proposals as now approved. These matters are the responsibility of Bond City and will also need to be accompanied by agreements under Section 278 of the Highways Act with Kent County Council and the Highways Agency (HA) for the improvement and off-site works to the public highways required as a result of the scheme.

4.3 KCC has confirmed that the extent of proposed stopping-up of the public highways is acceptable. The improvements and changes to the highway required by the amended scheme, have also been considered by KCC and the HA as part of the application process and are reflected in conditions to be attached to the consents. Proactive liaison is taking place with both KCC and the HA on the incorporation of small slivers of highway land that sit within the scheme as a result of historic realignments of highway or highway improvements.

4.4 Your officers have also visited Winchester and Thanet to meet their opposite numbers at the Local Authority who have recently been engaged in similar CPO processes.
5. **Phasing of the Hotel, Retail/Cinema and Residential Elements**

5.1 The submission of separate planning applications for the hotel, residential and retail/cinema uses enables the carrying out of a comprehensive development of Dover town centre in a phased approach. In particular, this will also allow the residential component at the corner of Castle Street to be brought forward at the appropriate time as a separate phase. It will be necessary to settle a programme and timetable with the Developer Partner in due course, which includes the CPO process and timetable, as part of the expectations for comprehensive development of:

(i) Hotel/restaurants/mast;
(ii) Retail units/Cinema/car park; and
(iii) The residential element.

5.2 In addition to this, specific arrangements need to be agreed and put in place for the possible arrangements for determining:

(a) Provision, operation and management of the LED;
(b) Timing and marketing for the selection by the Council of a future residential developer.

6. **Compulsory Purchase Powers**

6.1 The Council has the power in section 226 of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) to make a compulsory purchase order in respect of any land in their area if the Council thinks that the purchase of the land will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.

6.2 The Council may not exercise the power unless it considers that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:

- The promotion or improvement of the economic well-being of their area
- The promotion or improvement of the social well-being of their area
- The promotion or improvement of the environmental well-being of their area.

6.3 It is immaterial that the development, redevelopment or improvement may be carried out by a third party.

6.4 Section 13 of the Local Government (Miscellaneous) Provisions Act 1976 enables the Council to compulsorily acquire new rights. The Developer has assured the Council however that it does not need any new rights over land outside the development site in order to be able to carry out the development.

6.5 ODPM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules) ("the Circular") provides guidance to acquiring authorities in England on the use of compulsory purchase powers. Paragraph 1 of the Memorandum to the Circular states:
"Ministers believe 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 towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business - leading to improvements in quality of life. Bodies possessing compulsory purchase powers - whether at local, regional or national level - are therefore encouraged to consider using them proactively wherever appropriate to ensure real gains are brought to residents and the business community without delay".

6.6 Particular guidance on orders made by local authorities under Section 226 of the Town and Country Planning Act 1990 is contained in Appendix A of the Circular. Paragraph 2 states:

"The powers in Section 226 as amended by Section 99 of the Planning and Compulsory Purchase Act 2004 are intended to provide a positive tool to help acquiring authorities with their planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can, therefore, be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed means that no single specific compulsory purchase power would be appropriate."

6.7 The Circular requires the Council to have regard to the following when considering making a Compulsory Purchase Order:

(a) that the purposes for which the Order is being made sufficiently justify interfering with human rights of those with any interest in the land affected;
(b) the degree to which other bodies (including the private sector) have agreed to make financial contributions to underwrite the scheme and on what basis such contributions or underwriting is to be made;
(c) evidence relating to financial viability; and
(d) where the scheme is likely to be blocked by other impediments to implementation.

6.8 The Circular looks to acquiring authorities to seek to acquire land by agreement wherever practicable. However, the Circular recognises that it may be sensible for acquiring authorities to start formal compulsory purchase procedures in parallel with their efforts to acquire by agreement. The Circular notes that this has the advantage of making the seriousness of the acquiring authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

6.9 A compulsory purchase order to which there are objections will require confirmation by the Secretary of State to become effective. The Circular provides that any decision by the Secretary of State about whether to confirm an order under Section 226 will be made on its own merit, but the factors that the Secretary of State can be expected to consider include:-
whether the purpose to which the land is being acquired fits in with the adopted planning framework for the area;

(b) the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;

(c) the potential financial viability of the scheme for which the land is being acquired; and

(d) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means, for example any alternative proposals put forward by the owners of the land.

6.10 The Circular requires that a compulsory purchase order should only be made (and confirmed) where there is a compelling case in the public interest.

6.11 A draft ‘Statement of Reasons’ for the CPO is being prepared and will be attached to the Order. This will provide a detailed overview, background to the scheme, planning history, planning policy and policy context and reasons why a CPO is appropriate.

7. The Case for Making a CPO

7.1 As mentioned earlier, it is an important policy objective of the Council to secure comprehensive regeneration of the town centre including the St. James’s site.

7.2 It is considered that use by the Council of its compulsory purchase powers to facilitate the Phase 2 scheme will contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the Council’s area.

7.3 The Scheme forms a key part of wider plans to regenerate the town centre which has experienced decline in its retail environment over many years in the face of competition from other east Kent locations. Despite Dover’s strategic international position and recognition, in common with other parts of East Kent, the town experiences some of the highest levels of deprivation in the country.

7.4 Social and economic deprivation is a significant issue for Dover District. The Indices of Multiple Deprivation 2010 (IMD) show that Dover has a national rank of 127 out of 326 local authorities in the country. In regional terms it is the fourth most deprived area in the County behind Thanet, Shepway and Swale. There is, however, great variance within the District and the IMD shows the issue is concentrated in a small number of wards. The majority of the most deprived wards in the district are in Dover and include (total wards or parts of) St Radigunds, Buckland, Tower Hamlets, Maxton, Elms Vale and Priory and Castle. Town and Pier Ward also has high levels of deprivation.

7.5 The local economy underwent a period of structural changes during the 1980s and early 1990s. This was due to the closure of the East Kent coalfield, and the introduction of Eurotunnel services and changes in European Union regulations on international freight movement, which combined to greatly reduce operations at the Port and in related industries. This resulted in large-scale job losses and an overall decline in jobs at a time when the rest of the region experienced jobs growth.
Overall despite improvements, in common with most of East Kent, the District lags behind the rest of Kent and the region on performance measurements such as unemployment, business start-ups, density of businesses, productivity, skills levels and economic activity rates. While average gross annual earnings are close to the England and Wales average they are 10% lower than the regional average.

The District's main shopping centres of Dover (the principal centre) and Deal have seen increasing competition from centres in neighbouring Districts over the past ten years, notably Canterbury, Westwood Cross, and to a lesser extent Folkestone, which dominate this part of East Kent and continue to expand. Consequently there is very little expenditure attracted to the District from other areas and the District only retained around 46% of total expenditure in the late 2000’s. Nonetheless, there is considerable potential for additional shopping facilities in the non-food sector, particularly at Dover (Retail Need Assessment Study 2008 Update). This potential would increase if the quality of new developments (such as proposed here) enabled the District to retain a larger share of residents’ expenditure. A 2012 Retail Report, which incorporated the commitments at Dover Town Centre and Waterfront, found that the District has improved its overall retention of both convenience and comparison shopping expenditure compared with the position in 2007. There is a particularly high retention rate of convenience expenditure in Dover and Deal (95%) and a lower rate of 65% in Sandwich. A lower rate in Sandwich is not unexpected as it is a smaller centre and competes with Dover, Deal, Canterbury and Westwood Cross.

The scheme can bring about significant change to the town centre and have a major impact on the levels of deprivation enhancing economic well-being. In total it is estimated that the scheme will accommodate up to 500 jobs across Phase 1 and Phase 2 and will create a similar number of construction jobs.

Currently, St James is an underused and run down area. There is no major attractor and in the main it is only a limited amount of passing trade which is captured by the existing hotel and restaurant. This lack of activity has led to the area being used for anti-social activity, with problems such as drunkenness, homelessness and drug abuse being experienced. The disused multi-storey car park and Stagecoach bus depot are frequently broken into by young people who consequently trespass, cause damage and endanger themselves.

There can be no doubt that redevelopment will help resolve these issues. The proposals will make the locality far more attractive, not only during the day, but also after dark as people will be drawn to the area by the retailing and leisure activities on offer. This will increase the vibrancy of the area, making it a far more attractive and secure environment and improving social well-being for the community.

Environmentally, Burlington House is commonly regarded as an eyesore detracting from views to and from the Castle, the Western Heights and other important local landmarks. The remainder of the site currently consists of a combination of low quality commercial buildings, long-term vacant buildings, cleared sites and surface car parking, all of which combine to create a very low quality environment which severely detracts from the visual character of this part of the town centre.

The scheme will address the environmental well-being by introducing retail and leisure uses in high quality buildings which are much more sympathetic to their surroundings in terms of use and scale. Significant investment will be made in the public areas including a new town centre car park, public square and creating strong linkages improving connectivity with the rest of the town centre. Overall the scheme
will breathe new life into the town centre helping to contribute to a more vibrant, viable and vibrant town centre.

7.13 As set out in section 3 above the scheme accords with local and national policies. In the light of previous planning decisions and the Council's approved Development Framework, planning permission for the amended scheme is likely to be granted (a verbal report will be given on the outcome of the Planning Committee meeting held on 19 December 2013) and it is not considered, therefore, that there would be any planning or other impediments to implementation of the scheme.

7.14 In particular the scheme will achieve the objectives of the SPG, Core Strategy and NPPF. The scheme (together with the phase 1 scheme and the Residential Component) will deliver a number of key benefits including:

- Transformation of the commercial offer of Dover
- A development which will reinforce and complement the existing urban form
- Recreation of the historic street patterns
- Enhanced pedestrian linkages
- Public realm adjacent to the River Dour
- New housing (including an element of affordable) close to the town centre
- An improved leisure offer

7.15 The Council has entered into a Development Agreement with a development company, with a track record of successfully delivering comparable projects, which followed a competitive procurement process. The agreement provides for partnership arrangements requiring the developer to obtain planning permission (now being achieved), acquire the outstanding property interests needed to implement the Scheme and to undertake the development. In return, and subject to indemnities, the Council agrees to use its compulsory purchase powers to support the acquisition of properties should it be necessary to use such powers.

7.16 Bond City has prepared a viability appraisal for the scheme which has been regularly updated following amendments to the scheme. This appraisal is commercially sensitive but has been vetted by the Council's advisors and the costs, rents and yields are considered sustainable in the current commercial market.

7.17 Significant resources have been expended to date by the Council's development partner in progressing the development through planning and by the Council, and its partners (the former South East Development Agency and the Homes and Communities Agency) in acquiring third party property interests by private treaty.

**Land ownership**

7.18 Appendix E in illustrating the properties acquired since 2007 also includes the Council's Scheme Title. Setting aside the leasehold interests which are situated within the scheme, and need to be secured by the Council, the remaining freehold land to be acquired comprises some 5% of the overall land shown within the CPO plan.
8. **Identification of Options**

8.1 The Council has two options:

(i) To proceed with the process for the Compulsory Purchase of the outstanding land interests, and support the stopping-up of highways within the site of the scheme together with the associated enabling consents and approvals; or

(ii) To not proceed with the compulsory purchase and related processes in the hope that the outstanding interests could be secured comprehensively through negotiation.

9. **Evaluation of Options**

9.1 In order to achieve the town centre redevelopment in accordance with the Development and Lease Agreement, the Council will need to undertake option (i) as this is an essential component to enable and support the delivery of the whole scheme. It is possible that, as part of the process, negotiated settlements for the outstanding land and interests may be reached. However, this cannot be guaranteed and assured. A ‘clean’ Title is required, which the making of a confirmed CPO will secure. Option (i) is the preferred way forward to enable the scheme to progress.

9.2 The approved scheme (in particular Phase 2) will not be able to be delivered in the event that Option (ii) is followed. This is, therefore, not a viable proposition.

10. **Resource Implications**

10.1 Aside from the time expended by your officers, which is incorporated within the Capital Programme, the process outlined in this report does not have resource implications for the Council. Bond City has entered into the CPO Indemnity Agreement which provides that the Council will be reimbursed for expenditure undertaken as part of this CPO process. Bond City will also be responsible for all compensatory payments to be made to interested landowners if and when a CPO is confirmed and implemented.

10.2 The estimated CPO costs relating to land acquisitions, interests and reimbursements are being treated on a commercial in confidence basis.

11. **Associated Issues**

11.1 A number of site/archaeological investigations which were subject to the completion of a license to the developer took place on site during 2008 with the exception of the sites of Burlington House, the County Hotel and the then Lidl/MFI site (subsequently acquired). Through liaison with Bond City, the investigations were not carried out on these sites given the sensitivity of negotiations which have been taking place. With the exception of the Lidl site, the position will need to be reviewed once the CPO process is engaged. Arrangements will need to be put in place to gain entry to Burlington House and the County Hotel to undertake such survey and condition reports as may be necessary to inform the processes going forward.

12. **Equality and Consultation Statement**

12.1 Further consultation is not appropriate at this stage. However, as members will be acutely aware the Council’s policies for the redevelopment of the town centre have been the subject of consultation. The current scheme, as now amended, has
included substantial levels of consultation with statutory bodies, interested parties and the public alike over the years while also attracting much publicity. In this respect, the responses to development of the proposals have been instrumental in and have formed the basis for the various discussions with the regeneration agencies and KCC while leading to the submission of the new planning applications as set out in Section 3 above. Appropriate and relevant consultation will be undertaken in due course, as and when future activities relating to the delivery of the scheme take place, and arising through the statutory processes, investigations or demolition etc.

13. **Human Rights Act 1998**

13.1 In deciding to make a CPO, the Council should be satisfied that there is sufficient justification for interfering with human rights of those with an interest in the land affected. In this respect the Human Rights Act 1998 incorporates certain provisions of the European Convention on Human Rights, namely:

- Article 1 - the right of everyone to peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.

- Article 8 - private and family life, home and correspondence. No public authority can interfere with these rights except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic wellbeing of a country.

- Article 14 - the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, or national or social origin.

13.2 In the light of the significant public benefit which would arise from the implementation of the scheme; it is considered that the use of compulsory purchase powers is necessary and proportionate. In particular, it is considered that the CPO would not constitute any unlawful interference with individual property rights.

13.3 The CPO process provides the opportunity for representations to be made and the holding of a public inquiry in the case of objections by affected parties. Those parties have an entitlement to compensation proportionate to the loss which they incur as a result of the acquisition of their interest in accordance with the statutory compensation code.

14. **Equalities Act 2010**

14.1 In exercising its functions in securing the redevelopment of the town centre and in the making of a Compulsory Purchase Order, the Council must show that it has had due regard to the Public Sector Equality Duty contained in S.149 Equality Act 2010. In particular, the Council must consider the need to eliminate discrimination and to advance equality of opportunity between persons who share relevant protected characteristics and persons who do not. However, in reaching a decision, the weight to be given to the duty will need to be proportionate to its relevance in the exercise of the particular function.

14.2 Members should be aware that the protected equalities groups have been considered through the development of the scheme the subject of the current application. For example, the scheme has been designed having regard to disability requirements and to improve accessibility for all sections of the population though the
range of uses proposed. Additionally, Members’ attention is drawn in particular to discussions which have been held regarding the need to relocate the Dover Soup Kitchen. Otherwise, there is no known likelihood of an adverse impact on persons with protected characteristics which might arise from the town centre redevelopment proposals. Furthermore, the economic, social and environmental improvements that will arise from the redevelopment should outweigh any adverse impacts. Officers can therefore advise that the duty under S.149 has been discharged in preparing this report and making the recommendations, but the duty will be kept under continuous review as the scheme is further progressed.

15. Impact on Corporate Objectives

15.1 The development and implementation of DTIZ represents one of the Council’s key Corporate Objectives and progress and delivery of the scheme will be seen as both a catalyst and barometer for the regeneration of Dover town centre and waterfront.

16. Corporate Implications

16.1 Comment from the Section 151 Officer: Given that any direct expenditure incurred by the Council as part of the CPO process will be reimbursed by Bond City Ltd (subject to the terms off the Indemnity Agreement being complied with), and Bond City are underwritten by their guarantors, Stonehurst Estates Limited, there is no direct resource implication for DDC.

The only significant financial exposure for the Council would arise if, at a point in the CPO process where it is too late to stop, Bond City and their guarantors failed financially, leaving the Council to bear the costs of completing the CPO.

The developers, Bond City have already committed significant funds to the development. In addition, key anchor and other supporting tenants have signed up, or are in the process of so doing, all of which confirm the viability of the scheme and strongly mitigate against the risk of cancellation or failure.

Finally, all stages of the CPO process will be actively managed to minimise risks to the Council (MD).

16.2 Comment from the Solicitor to the Council: Cabinet is advised to carefully consider the various issues set out in Section 7 of the report which sets out the Council’s case for making the CPO. The Council should only make a CPO if it is necessary to acquire the land and there is a compelling case in the public interest.

16.3 Comment from the Equality Officer: The Equality Officer has been consulted during the development of this report and has no further comments to make other than to remind members that in discharging their responsibilities they are required to comply with the public sector equality duty as set out in section 149 if the Equality Act 2010 http://www.legislation.gov.uk/ukpga/2010/15

16.4 It is a well known fact locally that the proposed Dover Town Investment Zone is currently a much run down area and has been for many years, suffering as it has from a lack of investment. Consequently, there is currently little or nothing there to encourage the law abiding members of our communities to go there. In fact, the Indian restaurant that was relatively well used has since closed down, removing one of the facilities in the area that was well used. People using the hotel and its restaurant tend to be passing trade or people who have planned a meal or function at the hotel; having used the facility they move on. Users of the Leisure Centre also do
not stay in the area, preferring to leave the area or go on into Dover Town itself. All this leads to the area being used for anti-social activity, and we currently experience issues with drunkenness, homelessness and drug abuse. Such activity is able to take place with little danger of being caught or reported through lack of legitimate use of the area. Also, the disused multi-storey car park and Stagecoach bus depot are frequently broken into by young people who consequently trespass, cause damage and endanger themselves. This in turn increases demand on limited resources, not only in dealing with these issues but also repairing damage.

16.5 At night, the area is not well lit and this reinforces the impression that it is not a safe area to be. Although crime levels do support that people are at risk, the perception of crime and anti-social behaviour create a fear of vulnerability amongst people.

16.6 There can be no doubt that any regeneration of this area is going to help resolve these issues. The proposals will make the locality far more attractive; not only during the day but also after dark as people will be drawn to the area by the various opportunities offered, such as shopping, restaurants and the night time economy. This will increase the vibrancy of the area, making it far more attractive to our communities and consequently increase feelings of safety.

17. Appendices

Appendix A - Report to Cabinet and Decision – 10 September 2012
Appendix B – Site Plan of Retail/Cinema and Hotel Phases
Appendix C – Boundary Plan for CPO
Appendix D – Draft CPO Plan
Appendix E – Sites of Opportunity Acquisitions and DDC Title
Appendix F – Draft Plans of Road Stopping-Up
Appendix G – Earlier Approved Scheme layout (DOV/05/0814) and Phasing Plan

18. Background Papers

St James's Area Dover – Supplementary Planning Brief
Dover District Local Development Framework Core Strategy
Dover District Council Corporate Plan
Dover District Statement of Community Involvement
South East Plan
National Planning Policy Framework
East Kent Regeneration Board’s Open for Growth Plan for East Kent
Planning Application DOV/13/00907

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