

Date: **27 January 2017**

Subject: **Mayoral/Combined Authority Compulsory Purchase Powers**

Report of: **Councillor Richard Farnell, Portfolio Lead for Planning and Housing and Eamonn Boylan, Lead Chief Executive for Planning and Housing**

PURPOSE OF REPORT

To advise the Greater Manchester Combined Authority of the powers of compulsory purchase recently granted to it, and to outline the proposed framework for exercising those powers

RECOMMENDATIONS:

Members are recommended to note and comment on the proposed framework set out in the report

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Risk Management – N/A

Legal Considerations – N/A

Financial Consequences – Revenue – N/A

Financial Consequences – Capital – N/A

BACKGROUND PAPERS:

N/A

TRACKING/PROCESS		
Does this report relate to a major strategic decision, as set out in the GMCA Constitution (paragraph 14.2) or in the process (paragraph 13.1 AGMA Constitution) agreed by the AGMA Executive Board:		No
EXEMPTION FROM CALL IN		
Are there any aspects in this report which means it should be considered to be exempt from call in by the AGMA Scrutiny Pool on the grounds of urgency?		No
AGMA Commission	TfGMC	Scrutiny Pool
N/A	N/A	N/A

1. Introduction

1.1 The Greater Manchester Combined Authority (Functions and Amendment) Order 2016 was made on 22 December 2016, and came into effect on 23 December 2016. The Order grants to the Greater Manchester Combined Authority ('GMCA') the following functions in relation to compulsory acquisition:

- functions under section 17 (acquisition of land for housing purposes) of the Housing Act 1985 ('the 1985 Act');
- functions under section 226 (acquisition of land for planning purposes etc) of the Town and Country Planning Act 1990 ('the 1990' Act);
- functions under section 9 of the Housing and Regeneration Act 2008

1.2 These functions are exercisable by the GMCA before 8th May 2017. From that date, the functions can only be exercised by the Elected Mayor.

The exercise of these functions requires the consent of-

- (a) all members of the GMCA appointed by the constituent councils whose area contains any part of the land subject to the proposed compulsory acquisition, or
- (b) substitute members acting in place of those members.

to be provided at a meeting of the GMCA.

2. Protocol

2.1 A protocol setting out, in broad terms, the roles and responsibilities of the GMCA and the constituent Councils in relation to the acquisition and appropriation of land for planning and public purposes under the combined authority arrangements (including compulsory acquisition) is currently being drafted. Subject to any amendments to that protocol, the process envisaged by it is set out in a little more detail below.

2.2 At the moment, the GMCA does not have the resources to initiate or promote a CPO itself. We are awaiting details of the Government's recently announced Housing Infrastructure Fund and discussions are also under way with Government in relation to the possibility of funding for the purposes of land remediation. If funding is secured, it may be that the GMCA would be able to resource the promotion of a CPO itself, for the purposes of acquiring land for remediation and subsequent development

2.3 In the meantime, it is envisaged that CPOs made by the GMCA will be promoted at the request of a constituent Council or Councils. It is anticipated that this could happen where, for example, there is a development site that crosses one or more boundaries between constituent authorities (such that one constituent authority could not make a single CPO covering the whole site) or where the site is significant in scale and/or is strategic in nature and the constituent Council does not have the power to make such a CPO (for example, where the proposals do not meet the tests for a CPO under the 1985 Act or 1990 Act, but where the GMCA's power to make a "regeneration" CPO under the 2008 Act may apply). It may also be the case that the nature of the CPO is such that the constituent Council does not have the capacity/experience to deal with it in-house and requests assistance from the GMCA.

2.4 In deciding whether to promote a CPO pursuant to a request from a constituent authority, it is anticipated that the GMCA will have regard to the extent to which the proposed development would achieve or contribute to the strategic objectives contained within the Greater Manchester Spatial Framework.

3. Process

3.1 Where a constituent authority requests that the GMCA makes use of its CPO powers, it is anticipated that the following steps would be taken:

- **A decision to request that the GMCA makes a CPO must be taken by the constituent authority in accordance with its constitution and having regard to all the circumstances.**

It is anticipated that such a decision is likely to be made by the Executive, Cabinet or Mayor of the constituent authority, though this will be determined by their Constitution and scheme of delegations. In coming to a decision, it is also expected that the constituent authority will have discussed the proposed request with Members of the CA, particularly the relevant Leader with responsibility for the Portfolio within which the proposed development falls, with a view to seeking their support for the proposal. The constituent authority should also consider liaising with the GM Land Commission before deciding to request the exercise of GMCA CPO powers.

- **Assuming approval is given, a report will then be presented to the GMCA seeking its agreement, in principle, to promote a CPO.**

This report will outline the basic justification for the CPO, including the CPO power relied upon, and the reason for seeking the exercise of GMCA CPO powers (rather than the constituent authority using its own CPO powers). It is envisaged that this report will seek a delegation back to the constituent authority (or one of them) in respect of the preparation of a further report which will set out the full, reasoned justification for the use of CPO powers by the GMCA, as well as dealing with any ancillary matters such as the authority to seek to

acquire the land in question by agreement, and the completion of any indemnity agreement(s).

- **Once the case for a CPO has been prepared, a further report will be presented to the GMCA.**

As mentioned above, this will set out the full justification for the making of the CPO, demonstrating that there is a compelling case in the public interest for the use of the CPO power. The justification will have to address the relevant statutory tests for the CPO power used and have full regard to the Government guidance extant at the time (current guidance was issued in October 2015). This report should include appropriate and relevant delegations to allow Officers to carry out the necessary procedural steps that follow on from a resolution to make a CPO, including drafting and sealing the Order and related Statement of Reasons, publicising the same in accordance with statutory requirements, submitting it to the Secretary of State, confirming it where appropriate (including representing the CA at any public inquiry) and carrying out the necessary steps to vest the land in the GMCA, as acquiring authority.

4. Justifying the use of CPO powers

4.1 The final report to the CA, seeking a decision to authorise the making of a CPO, will need to contain the full justification for the CPO. This will need to include an explanation as to why the CA is being asked to exercise its powers, rather than the constituent authority promoting the CPO in the way that it may previously have done, as well as explaining why the particular CPO power is being used.

4.2 There are some fundamental principles which apply to all CPOs, and which will need to be addressed in any report. In particular, it will need to be demonstrated that there is a compelling case in the public interest for the use of CPO powers, and that the purpose for which the CPO is made justifies the interference with the human rights of those with an interest in the land. In practice, this means that a report for any CPO will typically need to address the following issues:

- The acquiring authority must have a clear idea of how it intends to use the land in question, once acquired.
- It must be demonstrated that all necessary resources will be in place in order to achieve the intended use within a reasonable time. For example, is there funding available both for the acquisition of the land and for the scheme for which the land is to be acquired? What is the source of the funding and when will it be available? Guidance indicates that it is only in exceptional circumstances that it would be reasonable to acquire land where there is little prospect of the scheme being implemented for a number of years.
- Whether there are any physical or legal impediments to the scheme being implemented and, if so, how and when these will be overcome. Examples given include whether there is a need for any infrastructure

works or remedial works on the land, or whether planning permission or some other consent or licence is required to enable the scheme to be implemented.

- The efforts made to acquire the land by agreement. Compulsory purchase is intended as a last resort to secure the assembly of land for the implementation of projects. Evidence will need to be produced to show that genuine attempts have been made to negotiate the acquisition of the land by agreement, save in those cases where ownership of the land cannot be determined (it is recognised that these negotiations can run in parallel with the preparation and making of a CPO).
- Consideration of the impact of the CPO on human rights and also the effect of the Public Sector Equality Duty should be expressly set out in the report.

4.3 In addition to this, the following will need to be addressed, depending on the CPO powers relied upon:

Section 17 of the 1985 Act – can be used where the land is to be acquired for housing purposes (including ancillary purposes). In addition to the information outlined above, the report for a housing CPO will also need to demonstrate that the CPO will result in a quantitative and qualitative housing gain, as well as showing the need for housing in the area. Typically, the information required will include the total number of dwellings in the area, unfit dwellings, other dwellings in need of renovation and vacant dwellings. It should also include the total number of households and the number for which, in the Council's view, provision needs to be made. If it is being suggested that this scheme will provide a particular type of housing that is needed in the area, then evidence to justify that opinion will also be required. If the scheme is to be provided to meet special housing needs (examples given in the guidance are single persons, the elderly, disabled or homeless) then specific information about those needs will be required.

Section 226 of the 1990 Act – can be used where the authority thinks that acquiring the land will facilitate the carrying out of development. The references above to showing that there are clear intentions for the site and that there are no planning impediments to the implementation of the scheme are particularly important here. In order to use this power, it must also be demonstrated that the scheme is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area. These are widely interpreted, but it is important that the benefits of the scheme are clearly explained and are linked to the improvement of the economic, social or environmental well-being of the area.

Section 9 of the 2008 Act – can be used to acquire land to improve the supply and quality of housing; to secure the regeneration or development of land or infrastructure; to support in other ways the creation, regeneration or development of communities or their continued wellbeing, or; to contribute to the achievement of sustainable development and good design. A report and statement of reasons for a CPO using these powers will need to demonstrate

as many of these purposes as possible, as well as any other valid reasons for the acquisition. It will also need to demonstrate that the land is in need of housing development and/or regeneration, that there are no planning impediments to the proposals, and that the development will be implemented within a reasonable timescale. Guidance indicates that there may be occasions, for example where a CPO is made using these powers to stimulate private sector investment, when a CPO can be made in the absence of specific development proposals. However, this does not avoid the need to address the other issues outlined.

5. Indemnity

5.1 It is not anticipated that the CA will incur any costs as a result of the exercise of its CPO powers.

5.2 Where there is a developer partner in place, there will be a need for the developer to provide an indemnity to the CA as acquiring authority in respect of the costs associated with making the CPO and acquiring the land.

5.3 It is anticipated that the work carried out in preparing the CPO reports, statement of reasons and related papers, as well as in conducting any public inquiry would be carried out by the relevant constituent authority. However, the CA will retain liability for compensation to dispossessed landowners and so must be indemnified in respect of any such costs or liabilities. Such an indemnity would be expected to cover the constituent authority's costs too.

5.4 Where there is no developer in place, consideration will need to be given to the funding of the scheme because, as mentioned above, the justification for the CPO will need to set out how the scheme is funded and how it will be delivered within a reasonable timescale. It is anticipated that a CPO promoted in this scenario would require that the constituent authority requesting the CPO would provide an indemnity to the CA in respect of any costs or compensation liability. The constituent authority may then seek an indemnity from any developer subsequently involved in the scheme.

6.0 Recommendations

6.1 Recommendations are set out at the front of this report

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