

APPENDIX TO CABINET REPORT

Compulsory Purchase Requirements

1 PURPOSE OF THIS APPENDIX

- 1.1 This Appendix has been prepared to provide additional context and analysis to the decision to promote a CPO for the SVEZ Scheme. It is intended to assist Cabinet in considering whether to resolve to adopt the recommendations in the main Cabinet Report. It should be read alongside that Report and supplements the information contained within it.
- 1.2 The Appendix adopts the same headings as the Report (where relevant) and uses the same defined terms.

2 THE ISSUE

- 2.1 In order to construct the SVEZ Scheme, it is necessary to acquire the land and rights required for the commercial development, together with several small parcels of land outside of the existing highway boundary required for the associated highway improvements (such as cycle and pedestrian path connectivity). Negotiations for the acquisition of the land and rights needed for the delivery of the SVEZ Scheme have been ongoing.
- 2.2 To ensure certainty of delivery and timescales for delivery of the SVEZ Scheme, Council officers have been considering the use of additional statutory mechanisms to support the land assembly required for the SVEZ Scheme. On 1 February 2024 Cabinet gave the Council the authority to proceed with initial steps making the necessary steps to consider various statutory mechanisms to enable the land delivery required to deliver the SVEZ Scheme, as substantiated in the report supporting that decision (the In Principle Report) (Appendix 3). One of the statutory mechanisms contemplated was the use of compulsory purchase powers (Appendix B of the In Principle Report).

- 2.3 The SVEZ Scheme will include the acquisition of special category land such as Crown Land (and bona vacantia land) which cannot be included in the CPO otherwise than by agreement (see below).

3 RECOMMENDATIONS

- 3.1 In addition to the recommendations listed in the Report, Cabinet is asked to note, informally, the 8 ambitions outlined in the Ambitions Paper) and the SVEZ Scheme's compliance with these as outlined in section 6.4 of the main Report.

4 BACKGROUND

- 4.1 The SVEZ Scheme is a proposed sustainable commercial development in the Somer Valley. It has been allocated for a mixed-use employment proposal in the Council's Local Plan since 2007, but has not been brought forward by the private sector. This is due to the challenges faced by land assembly and the high costs of delivering the enabling infrastructure, which mean the SVEZ Scheme is not viable for private developers. The Council has determined that public sector intervention is required, and with the support of WECA funding there is now an opportunity to deliver this important new development which will bring ring a range of benefits to the area.
- 4.2 In order to ensure certainty of delivery and timescales for delivery of the SVEZ, Council officers have been considering the use of additional statutory mechanisms to support the land assembly required for the SVEZ Scheme. On 1 February 2024, Cabinet gave the Council the authority to proceed with making the necessary steps to progress and enable the acquisition required to deliver the SVEZ Scheme (see the In Principle Report). This included an in-principle decision to take steps toward the use compulsory purchase powers, up to the preparation of a CPO but not to finalise, serve and publish a CPO.
- 4.3 The Council has also promoted a LDO which applies across the SVEZ Scheme and includes highway enabling works to assist in bringing the site forward. This LDO was confirmed by the LPA on 22 February 2022. The

LDO in effect grants permitted development rights for planning which will allow the SVEZ to be delivered in plots, in accordance with defined parameters, uses and a design code.

5 LAND ASSEMBLY AND NEGOTIATIONS

5.1 Description of the CPO Land

5.2 This sub-section sets out an overview of the site of the SVEZ Scheme.

5.3 The main SVEZ site comprises approximately 13.5 ha (excluding related land required for highways works) of greenfield land located at Old Mills and is made up of nine agricultural fields spread across five landholdings that are defined by hedgerows. Midsomer Norton town centre is located 1.25 miles from the site, which sits on the north-western edge of the settlement.

5.4 To the east of the site is a mixed-use employment/retail development that is enclosed by mature trees. Currently, the site comprises an office building and retail warehouse.

5.5 The A362 lies adjacent to the site which links to the A37, Bristol and the M4/M5 to the north. There is currently no access road to the site from the A362.

5.6 The village of Paulton lies to the north, the intervening land intersected by agricultural fields that slope upwards away from the site, towards the village.

5.7 To the west of the site is Royal Oak Farm and Old Mills Lane. To the south is the A362, as well as some terraced cottages that have historic links to the former railway located to the southwest.

5.8 The Somerset Coalfield covers Midsomer Norton and Paulton and the site was used for coal mining until 1966. The landscape surrounding the site is indicative of its coal working past, including a visible conical Batch which is located 20m from the east of the site boundary. The Batch is a

recolonised spoil heap surrounded by woodland, grassland and scrub habitat.

5.9 Highways Land and Works

5.10 A number of associated highways works are required to deliver the SVEZ of which will require the use and development of third-party land.

5.11 These include:

- (a) Straightening the A362 to include a new roundabout to provide the necessary access to the SVEZ site;
- (b) Widening the road at 'Sunnyside' on the A362 to enable vehicles to pass one another easily and without causing delays during busy times;
- (c) Additional active and sustainable travel provision including new and improved bus stops and a
- (d) pedestrian and cycle path between the SVEZ and the Norton Radstock Greenway; and
- (e) Potential junction improvements at Thicketmead Roundabout.

5.12 As with the main site, the Council is continuing to try and acquire this land via agreement and its agents are in talks with the relevant affected parties.

5.13 As part of acquiring the land required for the highway improvements, the Council is also seeking to acquire title to some parts of the existing public highway to ensure that all necessary land and rights are available. The existing highway land is currently unregistered and therefore the ownership position is uncertain. The ownership of this land falls to be considered under the 'ad medium filum' principle, which presumes that the subsoil of the highway (i.e. the sub-surface beneath the land which forms part of the adopted highway) is owned up to its midpoint by the adjoining land owner. Due to the uncertainty as to ownership, the Council will rely on the ad medium filum principle to include presumed subsoil owners in the CPO and ensure that any interests they do have are formally acquired

to allow works to be undertaken. This will result in a significant number of landowners being included in the CPO, but only to ensure the acquisition of that subsoil interest. A nominal compensation payment will also be made, reflecting that those presumed subsoil owners have no beneficial use of that land (and may not even know that they have an ownership claim).

5.14 The CPO Land also includes areas required to deliver the highway works such as site compounds and working areas. These areas are the only part of the CPO which is not within the LDO boundary. The planning position in respect of these areas is considered further below.

5.15 **Land referencing**

5.16 The in-principle decision to take steps towards making a CPO (Appendix 3) included authority to appoint land referencing agents. The Council has appointed land referencing agents, and work has been undertaken to understand and record all interests in land required for the SVEZ Scheme.

5.17 The Council's agents are in the process of undertaking a series of activities to contact landowners, including desktop searches, door-knocking and the issue of Requisitions for Information (also known as Land Interest Questionnaires) to ensure that the Council has a complete record of landowners and those with an interest in land to inform the CPO process.

5.18 As part of the land referencing process, the Council is carefully scrutinising the land to be acquired through the CPO to ensure that each plot can be justified. This work is well-advanced but still ongoing, and to the extent that any minor changes to the CPO Land are required, the approvals sought through the Report include a delegated authority to make those changes.

5.19 **Negotiations Update**

5.20 Negotiations with the main landowners who own land required for the SVEZ have been ongoing for some time.

5.21 The Council, via their appointed agents, wrote to all parties identified as owners of land required for the main commercial development of the SVEZ

Scheme to explain the Council's intentions to negotiate heads of terms for the acquisition of land and rights required for the SVEZ.

5.22 All of the main parties with interests in land required for the SVEZ Scheme have been approached, directly and via their agents where appointed. The Council has proposed terms for land and rights acquisitions in order to progress negotiations.

5.23 Negotiations are continuing and all reasonable attempts to acquire the land voluntarily will be made. The risk of negotiations failing or becoming significantly protracted drives the need for compulsory purchase powers to be available. The Council needs to be in a position to demonstrate that it can assemble the land required to deliver the SVEZ to attract the necessary investment. The CPO would only be used as a last resort.

5.24 If all of the land and rights required for the SVEZ Scheme can be acquired voluntarily, it will not be necessary to implement the CPO.

5.25 **Complexity of land assembly**

5.26 Although negotiations with landowners have commenced and will continue, it is currently anticipated that the land and rights required for the SVEZ Scheme cannot be assembled without the use of compulsory purchase powers.

5.27 The land assembly for the SVEZ Scheme is complex and requires the acquisition of a range of different land interests over a number of landholdings. It is unlikely that this can be achieved without a CPO.

5.28 The CPO is therefore required to ensure the delivery of the important benefits of the SVEZ Scheme to the area, and it is considered that there is a compelling case in the public interest for the CPO to justify doing so. This case will be advanced in more detail through the statement of reasons prepared at the point of making the CPO, if authorisation is secured to progress to that stage. Ultimately, the Secretary of State will need to confirm the CPO before it can be implemented and be satisfied that a compelling case has been made.

5.29 **Special category land**

5.30 'Special category land' is land with special statutory status in the CPO process. Depending on the category of land, it can require the provision of replacement land or the need for alternative consents and approvals.

5.31 This can include land designated as a common, open space or fuel or field garden allotment. At present no such land has been identified, but land referencing is continuing. If any land of that description is identified, the ALA 1981 requires that special parliamentary procedure must be completed unless the Secretary of State issues a certificate under section 19 of the ALA 1981.

5.32 A section 19 certificate can only be issued where the Secretary of State is satisfied that suitable replacement or exchange land is being provided (where relevant), or where:

- (a) the land does not exceed 250 square yards in extent; or
- (b) is required for the widening or drainage of an existing highway (or partly for the widening and partly for the drainage of an existing highway; and
- (c) where providing exchange land is unnecessary, whether in the interests of persons with rights over the land being acquired or in the interests of the public.

5.33 There is no land included in the CPO Land in respect of which exchange land has currently been identified as being required. If any such land is identified, the need for and process of securing a section 19 certificate will be considered on its merits.

5.34 The only special category land which has been identified as part of the initial land referencing is Crown land. This relates to areas of both unknown ownership and areas belonging to the Duchy of Lancaster and Duchy of Cornwall within the CPO Land. S226 of the TCPA 1990 does not authorise the Council to compulsorily acquire Crown land, and the Council will need to either exclude those interests from the CPO and acquire the

land by agreement or secure the agreement of the Crown and/or Duchies to include the land in the CPO.

5.35 Specific queries will need to be raised of both the Crown and the Duchies. The Council is progressing this with the assistance of its advisers.

5.36 It has also been identified in initial land referencing that there may be some land held 'bona vacantia' (i.e. now ownerless) which would now be owned by the Crown or the Crown Estate by operation of law. Similar enquiries will need to be made of this land to ensure that the Crown consents to the land either being acquired by agreement or included in the CPO.

6 NEED AND JUSTIFICATION FOR COMPULSORY PURCHASE POWERS

6.1 CPO guidance

6.2 Government guidance provides further advice on the use of compulsory purchase powers. The Department for Levelling Up, Housing and Communities 'Guidance on Compulsory purchase process and The Crichel Down Rules' (2019) (the CPO Guidance) provides that:

- (a) Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.
- (b) A compulsory purchase order should only be made where there is a compelling case in the public interest.
- (c) Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.

6.3 Having regard to paragraph 106 of the CPO Guidance, the Council notes that, where a compulsory purchase order is promoted pursuant to section

226(1)(a) of TCPA 1990, the Secretary of State will take into account the following issues:

- (a) Whether the purpose for which the order land is being acquired fits with the adopted local plan for the area or, where no such up to date local plan exists, with the draft local plan and NPPF;
- (b) The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area;
- (c) Whether the purpose for which the order land is to be acquired be achieved by any other means within a reasonable timeframe;
- (d) The potential financial viability of the scheme.

6.4 The guidance also requires the Council to have regard to the following when considering making a CPO:

- (a) that the purposes for which the CPO is made sufficiently justify interfering with the human rights of those with an interest in the land affected;
- (b) whether it is likely that the scheme will be blocked by any physical or legal impediments to implementation (including the need for planning permission).

6.5 These tests and considerations are addressed in further detail in the Report and in the following sections.

6.6 **The Well Being Tests and benefits of the scheme**

6.7 As explained in the main Report, in promoting the CPO the Council must ensure that the wellbeing tests in s226(1A) of the TCPA 1990 are met. In doing so, the Council is also able to highlight the benefits of the SVEZ Scheme which are central to demonstrating that there is a compelling case in the public interest of the CPO.

- (a) **The promotion or improvement of the economic well-being of the area**
- (i) Supporting the Somer Valley to thrive and become more self-reliant by enabling economic growth through the creation of 1,300 new jobs increasing prosperity for the area;
 - (ii) Diversifying the type of employment available in the area, offering flexible space to accommodate new and expanding local businesses and creating circa 35,800sqm of new commercial space;
 - (iii) Delivering new highly sustainable and attractive new commercial and industrial space, helping to address business demand and employment land losses experienced in the Somer Valley;
 - (iv) Offering opportunities for expanding local companies and businesses relocating to the area that are attracted by the skilled local workforce;
 - (v) Delivering important jobs to the local area and to assist with achieving the Local Plan aspirations for at least 900 new jobs by 2029;
 - (vi) Generating business rates income. The potential business rates income (estimated to be in the region of £10,500,000 by 2040 / 2041) that would at least partially be retained by the Council;
 - (vii) Contributing circa £51,000,000 pa of net additional GVA to the West of England economy, and raising employment in this area by approximately 0.2%; and
 - (viii) Securing external funding through the West of England Combined Authority (WECA) to deliver infrastructure improvements that will benefit the Somer Valley.

- (b) **The promotion or improvement of the social well-being of the area**
 - (i) Improvements to connectivity through support for superfast broadband which will help people communicate and stay in contact.
 - (ii) Delivering new jobs resulting in higher employment rates and opportunities.
 - (iii) Higher standard of living and better health.
- (c) **The promotion or improvement of the environmental well-being of the area**
 - (i) Delivering a sustainable, Net Zero mixed-used commercial development which will achieve 10% biodiversity net gain;
 - (ii) Reduce out commuting in the Somer Valley through the provision of new jobs and providing a range of active and sustainable travel improvements.
 - (iii) Improvements to traffic flows on the A362 between Old Mills and Farrington Gurney through speed limit regularisation and widening of the Sunnyside pinch-point;
 - (iv) Supporting a sustainable travel modal shift through the provision of improved bus infrastructure and through the provision of a pedestrian and cycle track between the SVEZ and the Norton Radstock Greenway to the East;
 - (v) Improvements to traffic flows through upgrades to the Thicketmead roundabout; and
 - (vi) The development will achieve a 100% regulated operational carbon emissions reduction from Building Regulations Part L 2021 (or future equivalent legislation), in line with the hierarchy set out in Policy SCR7 and the B&NES Sustainable Construction Checklist SPD (2023). The SVEZ

will help to reduce vehicle-related CO2 emissions through the provision of EV charging on site, in line with the Council's local transport policies and climate emergency declaration.

- 6.8 The Council is confident that it is able to put forward a strong and positive case that the objects of the wellbeing tests are met by the SVEZ Scheme.

7 PLANNING POSITION

- 7.1 The SVEZ forms part of the land identified and allocated in the Local Plan Partial Update which has been progressed by the Council as LPA whilst the Council prepares the New Local Plan to be adopted in 2025.

- 7.2 The Council adopted the LDO (Planning Reference 23/00076/LDO) on 22 February 2024. The LDO grants planning powers for the development of the SVEZ that accords with the uses specified and parameters set in the LDO. The LDO is being promoted by the Council in order to encourage investment in the SVEZ and to facilitate delivery of employment development by reducing uncertainty and planning risks for investors and developers.

- 7.3 The CPO Land is aligned (almost entirely) with the LDO boundary, within which planning powers have been granted for the SVEZ Scheme. The compliance of the LDO with both Local and National Policy was outlined in greater detail in the Statement of Reasons for the LDO (see paras 5.30-5.47) (Appendix 9).

- 7.4 The LDO as adopted permits the development of an employment-led Enterprise Zone, including:

- (a) Commercial buildings within Use Classes E (b, g), B2 and B8 (including ancillary trade counter);
- (b) A range of food, beverage and hotel buildings within Use Classes C1 and Sui Generis, including a public house and hot food takeaways.

- (c) Highways related works including a new roundabout and related works to A362, road widening and safety improvements to the A362, new cycle, pedestrian and bus connections.
- 7.5 The LDO also provides use classes for each plot as per table 2.15 in the LDO (Appendix 9)
- 7.6 Operations and engineering works as well as minor operational development is also permitted as is associated infrastructure both specified in the LDO.
- 7.7 The LDO provides controls over the development which can be delivered. It sets out matters which remain to be approved before development can proceed, through a process called of submitting a Compliance Application to the LPA. Once a Compliance Application has been approved and related conditions have been discharged, construction work may begin (subject to other statutory approvals such as building regulations).
- 7.8 It is important to note that whilst the LDO provides planning approval for the vast majority of the SVEZ scheme, any areas outside of the LDO red line boundary on the LDO plan (Appendix 11) will require alternative consents. It has been identified in preparing the draft CPO Map that there are construction compounds and working areas required for the highway improvements which will fall outside of the LDO redline boundary. It is currently anticipated that the Council will need to obtain consent for the use of those areas by either:
- (a) Applying for a new separate planning permission; or
- (b) Relying on permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO 2015).
- 7.9 The Council is taking advice on this point from its legal advisors and will confer with its design team to resolve this point. However, this is not considered to present an impediment to development if the CPO was granted given the limited extent of those areas and the temporary works

required upon them. There are appropriate permitted development rights available.

8 OTHER STATUTORY CONSIDERATIONS

8.1 In addition to the statutory considerations outlined in section 9 of the Report, Cabinet is asked to note the following.

8.2 As an acquisition under the Act will extinguish third party rights, the Council will need to take care that it does not contravene the rights of individuals under the European Convention on Human Rights (the 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 interest and subject to the conditions provided for by law and by the general principles of international law. 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. Provided the requirements of s226(1) and (1A) of the Act 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 local authority's area), this will provide a very substantial basis upon which to make the case that the scheme is policy based and is consistent with statutory objectives.

8.3 The PSED under s149 of the Equality Act 2010 requires the Council to have due regard to: (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 and (ii) the need to advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Council has prepared an equality impact assessment (EqIA) to support the authorisations sought in this Report (see Appendix 7 and section 11 of the Report). The EqIA will be revisited throughout the process.

- 8.4 Officers must ensure that any processing of personal data in connection with the CPO complies with the provisions of the Data Protection Act 2018, although the Council notes that there are some exceptions to the publication of personal data as part of the CPO process.

9 HUMAN RIGHTS

- 9.1 Section 11 of the Report considers equalities issues. The following paragraphs address human rights considerations.

- 9.2 Paragraph 2 of the CPO Guidance states that:

“when making...an order, acquiring 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. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention”

- 9.3 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (the Convention). It includes provisions in the form of Articles which aim to protect the rights of the individual. The relevant articles can be summarised as follows:

- (a) Article 1 of The First Protocol ‘Protection of Property’: protects the rights to peaceful enjoyment of possessions. No one can be deprived of their possessions except in the public interest.
- (b) Article 6 of the Convention Rights and Freedoms ‘Right to a fair trial’: entitles those affected by compulsory powers to a fair and public hearing.
- (c) Article 8 of the Convention of Rights and Freedoms ‘Right to respect for private and family life’: protects the right of the individual to respect for his private and family life, his home and his correspondence. Interference with this right can be justified if it is in accordance with law and is necessary in the interests of, among

other things, national security, public safety or the economic wellbeing of the country.

9.4 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the Convention.

9.5 Paragraph 13 of the Guidance states that:

“The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest.”

9.6 The CPO, if made, may infringe the human rights of persons with an interest in land. This infringement is authorised by law provided that:

- (a) There is a compelling case in the public interest for the compulsory acquisition powers included within the CPO, and that proper procedures are followed.
- (b) Any interference with a human right is proportionate and otherwise justified.

9.7 The Council notes that the CPO Land does not include the acquisition of any residential or commercial buildings. Some land within residential curtilage (i.e. domestic garden) is proposed to be acquired and some land used for commercial access/amenity land. However, the degree of interference with human rights is constrained by the nature of the land to be included in the CPO which is primarily agricultural and highway land.

9.8 It is recognised that the SVEZ Scheme may have an impact on individuals; however, this is outweighed by the significant public benefits that will arise from the Scheme, as set out in this Report. The Council must strike a fair balance between the public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the compulsory acquisition powers being obtained) and the private rights which would be affected by the compulsory acquisition.

- 9.9 In relation to both Articles 1.2 and 5.29, the compelling public interest case for the compulsory acquisition powers included within the CPO has been demonstrated in this Report. The land over which compulsory acquisition powers are sought is the minimum necessary to ensure the delivery of the SVEZ Scheme. The SVEZ Scheme has been designed to minimise detrimental impacts, whilst achieving its publicly stated objectives. In this respect the interference with human rights is both proportionate and justified.
- 9.10 In relation to Article **Error! Reference source not found.**, it is the case that proper procedures have been followed for both the consultation on the SVEZ Scheme and for the determination of the compulsory purchase powers included within the scheme. Throughout the development of the SVEZ Scheme, persons with an interest in the land have had full opportunity to comment on the proposals in a non-statutory capacity, and the Council has endeavoured to engage with landowners. The Council has been responsive to landowner feedback which was sought during consultation as outlined in section 13 of the report.
- 9.11 Any person affected by the exercise of compulsory acquisition powers may be entitled to compensation.