1 Purpose of Report
1.1 To request specific authority for the use of Compulsory Purchase Order (CPO) powers in relation to the Stanton Cross Southern Access (Route 2)
1.2 This action meets the following Council’s objectives;
- Secure the commencement of the development of Wellingborough East (WEAST) to established principles.
- Provide and support infrastructure which offers increased opportunity and choice of modes of transport for access to facilities.

2 Executive Summary
2.1 Bovis Homes Ltd, the main developers for WEAST, submitted an outline planning application to the Council on 9th August 2004, which confirms the main accesses for the Stanton Cross development. In order for the development to proceed beyond its first phase two of the main access routes (routes 2 and 4) will need to be completed before further development can commence. Bovis Homes Ltd has written to the Council requesting support in acquiring 3 parcels of land across route 2 which are owned by Whitworth Brothers Ltd (see drawings numbers 611071/R2/L060, 611071/R2/L053E, 611071/R2/L054D, 611071/L059D, in Appendix 1). Negotiations have progressed between Bovis and Whitworth’s over a number of months, however, this has not resulted in a negotiated purchase at this point, therefore Bovis has requested the Council uses its CPO Powers to deliver Stanton Cross’s Route 2. Further to this, land also needs to be acquired for a pedestrian/cycleway link to the Prologis Site which needs to connect to route 2. A planning obligation exists for Prologis to provide a bridge link across the River Nene. The terms of this obligation are set out below however an agreement is proving difficult to reach on the purchase of this land by Prologis from the Owners. (See indicative drawing in Appendix 2).

3 Proposed Action
The members of the resources committee RECOMMEND to Council:

3.1 The making of a compulsory purchase order under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) to acquire all estates and interests in the land [shown hatched red on the drawings at Appendix 1 and 2] to be entitled the Borough Council of Wellingborough (Stanton Cross Southern Access (Route 2)) Compulsory Order 2007.
3.2 That the Solicitor to the Council be authorised to take all necessary steps to secure the making and sealing of the Order, the signing, publication and serving of all notices, the submission of the Order for confirmation (and if relevant objections are received, the making of arrangements for a Public Inquiry) and the making of a General Vesting Declaration under the Compulsory Purchase (Vesting Declarations) Act 1981.

3.3 That the Solicitor to the Council prior to making the Compulsory Purchase Order be authorised to enter into a deed to indemnify the Council:

3.3.1 with Bovis Homes Limited in respect of all administrative and legal costs of preparing and confirming the Order and all costs arising in the purchase and acquisition of the land in Appendix 1.

3.3.2 with Prologis Limited in respect of all administrative and legal costs of confirming the Order and all costs arising in the purchase and acquisition of the land in so far as they relate to the land in Appendix 2.

4 Policy and Development Framework

4.1 The principle of using Compulsory Purchase Order (CPO) powers for WEAST and for route 2 was previously approved by Members at the Policy and Resources Committee on 2nd November 2004.

4.2 Policy Framework

4.2.1 The policy to justify use of compulsory purchase powers is set out in the Council’s Local Plan (1990). It states at A3.18 (pg A9) that "The Borough Council may consider the need for compulsory acquisition of allocated sites, or associated land, where necessary to secure compliance with the planned development programme".

4.2.2 Guidance on the use of compulsory purchase orders was issued by The Office of the Deputy Prime Minister in Circular 06/2004. The Circular opens by saying ‘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 pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay’

4.2.3 The policy justification for WEAST has been established through the Borough of Wellingborough Local Plan and its subsequent Alteration adopted in 2004 policy U14 – U19. The allocation is also confirmed through the Strategic Development Area (SDA) designation in the County Structure Plan adopted in 2001.
4.2.4 Further to this the Milton Keynes South Midlands (MKSM) strategy which was developed in response to the Government’s Sustainable Communities Plan (2003) identifies WEAST as part of the growth proposals and was incorporated within the Regional Spatial Strategy for the East Midlands which was adopted in March 2005. This is further reinforced by the North Northamptonshire Core Spatial Strategy which seeks to allocate the growth in this sub region to 2021 and is currently awaiting a Public Examination.

4.2.5 More detailed guidance was produced by the Borough Council in relation to WEAST in the form of a Development Framework which was adopted as Supplementary Planning Guidance in November 2003. Access for the development is shown in Figure 3.8 and the general alignment for route 2 is indicated this is replicated through the Movement Strategy in Fig. 4.1 showing the southern access principal internal route and the requirement of the link for the Prologis employment site.

4.2.6 Through technical planning events and consultation for the WEAST Development Framework the principle of where all the WEAST access routes will connect with the development site have been well established. An Alternative Routes report was submitted with the masterplan and outline application in August 2005. This document provided analysis as to why these specific routes had been chosen as the optimum access routes and why other alternatives discounted.

4.3 Development Framework

4.3.1 Bovis Homes Ltd submitted an outline planning application, masterplan and supporting documents to the Council on 9th August 2004. The application confirms that the main accesses to the site are Route 2 (Southern Access from Turnells Mill Lane A45 junction to Irthlingborough Road); Route 4 (Midland Road Extension); Route 6 (Northern Access from Finedon Road Industrial Estate) and Route 7 (from Ditchford Lane) as adopted in the Council’s Supplementary Planning Guidance. The Full Council resolved to grant consent for the application (as amended) on 12th December 2006 subject to the signing of a Section 106 legal agreement and submission of details required by the Conditions.

4.3.2 In order for the development to proceed beyond its first phase two of the main access routes (Routes 2 and 4) will need to be completed before further development can commence. Bovis Homes Ltd has written to the Council requesting support in acquiring 3 parcels of land across route 2 which are owned by Whitworth Brothers Ltd (see Appendix 1). Discussions have continued between Bovis and Whitworth’s over a number of months, however, this has not resulted in a negotiated purchase. A request has been received to utilise the Council’s CPO powers..

4.3.3 The Prologis Site, is located within the Southern part of WEAST. A planning application was submitted for this site prior to the WEAST Development Framework being adopted. The Prologis development gained Outline Planning Consent in 1996. The Planning Permission was subject to a Section 106 Agreement. As part of the Section 106 Obligations a vehicular access link was required to join to the embankment. This would have provided a transport link back into the town and was considered to be a sustainable solution prior to the
route 2 proposal coming forward.

4.3.4 With the revised route 2 access to the WEAST Development the obligation placed upon Prologis and that development was revised. The Prologis Section 106 was amended due to the fact that Route 2 would provide a sustainable route to the town for WEAST. As a result the vehicular access link was substituted for a requirement to provide a pedestrian and cycleway to link into route 2.

4.3.5 The most appropriate alignment for the pedestrian/cycleway bridge link to route 2 is to utilise the existing disused railway embankment and old bridge arches which still exist. Negotiations by Prologis to purchase this piece of land from Bovis Homes have been ongoing for some time however a disagreement over the valuation of the land has prevented the land being acquired by Prologis. To provide the new sustainable pedestrian and cycle link it is considered appropriate to seek compulsory powers to acquire the necessary land.

4.3.6 The terms of the obligation to provide the Link Road are set out in a Deed dated 25th May 2004 which refers to the occupation of buildings constructed on the site (pursuant to an earlier planning permission issued in December 1996).

The 2004 planning obligation provides that these buildings were not to be occupied until "the construction of a Link Road is completed in accordance with details approved by the Council" (Clause 2.1.6).

This was subject to obtaining all necessary consents which Prologis had to use all reasonable endeavours to obtain. The obligation to provide the Link Road remains binding on the land although subsequent correspondence between the Council and Prologis has weighed in the balance the enforcing of the obligation against the desirability of the building being occupied and providing employment opportunities.

4.3.7 Negotiations on the provision of the Link Road have subsequently faltered.

A way of achieving the construction of the new Link Road is for the Council to assist Prologis in acquiring the land that is necessary to construct the Link. In this way the use of compulsory powers would enable them to secure compliance with the planning obligation

5 Discussion

5.1 The Council is responsible through its Local Plan for ensuring the delivery and efficient planning of future housing and employment growth within the Borough. Wellingborough East is the town’s initial major urban extension through the plan period to 2016.

5.2 As the access route is to serve the development and provide essential infrastructure for the development to proceed the Borough Council can utilise its Compulsory Purchase Order powers under the Town and Country Planning Act (1990).

5.3 Both developers are anxious to ensure that access to and for the southern link to
the A45 is secured as soon as possible. In order to ensure that the present owners have sufficient incentive to formally agree to the proposed purchase, it is considered necessary for the Council to resolve to make a Compulsory Purchase Order if satisfactory terms cannot be agreed with them.

5.4 The previous resolution by this Committee to use CPO powers for Route 2 was made on a previous alignment of the road which has now been superseded by a revised route which has now been approved by Full Council. It is therefore now important to resolve to utilise CPO powers on the approved route and to include the requirements to link to the Prologis site.

5.5 A letter will be written to inform Whitworth’s and Bovis of the proposed action that the Council intends to take and invite them to attend a meeting to try to explore options which would resolve the matter without the need for the Council to invoke its CPO powers. This is in line with the recommendations in the Guidance that acquiring authorities should try to acquire land by agreement wherever practicable. Bearing in mind the time the CPO process can take, authorities are encouraged to start formal CPO procedures in parallel with their efforts to acquire by agreement. This has the extra advantage of, in the words of the Guidance "making the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."

6 Legal Powers
6.1 Section 226(1)(a) of the Town and Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 enables the compulsory acquisition of land. These powers provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. Under these powers, an acquiring authority can acquire land compulsorily for the purposes of development, redevelopment or improvement if they think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, that land; and the development, redevelopment or improvement will contribute to the economic, social or environmental well-being of their area.

6.2 The use of the words "on, or in relation to" means that the scheme of development, redevelopment or improvement for which the land needs to be acquired does not necessarily have to be taking place on that land so long as its acquisition can be shown to be essential to the successful implementation of the scheme.

6.3 The Guidance advises that before making an Order, the acquiring authority should be satisfied, so far as is possible, that the proposed scheme would not be blocked by any impediments to implementation:

“In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account. These include the programming of any infrastructure accommodation works or
remedial work which may be required, and any need for planning permission or other consent or licence”

6.4 Whilst there is clear benefit when seeking to exercise powers of compulsory purchase in having the certainty of extant, implementable planning permission this is not always possible. This situation is explicitly acknowledged in the Guidance which recognises that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up, and planning permission obtained, before proceeding with the order.

6.5 The Guidance advises that evidence to establish the financial viability of the scheme CPO powers are being used to support will need to be provided in those cases where it is an issue. This does not mean, though, that the acquiring authority will be required as a matter of routine to submit a full financial approval of the proposed scheme in justification for its compulsory purchase proposal.

6.6 Given the developer’s financial standing the financial viability and funding of the scheme is not considered to be an issue.

Human Rights Considerations

6.7 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (“the Convention”). The Convention includes provision in the form of Articles, the aim of which is to protect the rights of the individual. In resolving to make a CPO order the Council has to consider the rights of property owners under the Convention, notably under Article 1 which protects the right of everyone to the 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.

6.8 In the case of each of these Articles (and indeed other provisions in the Convention) the Council has to be conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit which would arise from the implementation of the scheme, officers have concluded that it would be appropriate to make an order. Officers do not regard the use of CPO powers in this case as constituting any unlawful interference with individual property rights.

6.9 This opportunity has been given to landowners to make representations regarding the Council's planning policies which underpin the scheme for which the Council is considering use of its CPO powers. Further representations can be made in the context of the compulsory purchase process which allows objections to be made which may be considered by the Secretary of State if not resolved. Also, those directly affected by the order will be entitled to compensation proportionate to the loss which they incur as a result of the acquisition.

7 Financial and value for money implications
There are numerous cost implications arising out of the use of CPO powers including administrative costs, legal costs, compensation costs and inquiry costs. All costs incurred by the Council relating to a CPO including compensation payments and the administrative costs of processing the order will be funded by the developer(s) by way of Deed of Costs Indemnity with the Council. Any CPO will not be made until an appropriate Deed of Costs indemnity agreement has been entered into in respect of each proposed acquisition. Bovis and Prologis have given a written assurance to provide this indemnity.

8 Risk analysis and Implications
There is a significant risk that the WEAST development could not proceed as proposed if the developer cannot acquire land required for the construction of the main access routes. There is also a significant risk that the bridge link will not be built or that employment accommodation will remain vacant through the enforcement of the planning obligation if land is not acquired to deliver the link.

<table>
<thead>
<tr>
<th>Nature of risk</th>
<th>Consequences if realised</th>
<th>Likelihood of occurrence</th>
<th>Control measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land is not acquired</td>
<td>The WEAST development could not proceed as proposed.</td>
<td>High</td>
<td>Move forward with the CPO Process to purchase this land.</td>
</tr>
<tr>
<td>Land is not acquired</td>
<td>The Prologis development will not deliver its obligation to provide a bridge link</td>
<td>High</td>
<td>Move forward with the CPO Process to purchase this land.</td>
</tr>
</tbody>
</table>

8.1 Implications for Resources
(a) This scheme would be handled through the WEAST consultant’s consortium with the legal advisers Hewitsons taking a lead. Valuation matters will be dealt with by the District Valuer. A certain amount of time would be required from the Property Manager and Growth and Development Manager to manage the process.
(b) Any land acquired would be transferred to the Developer.

8.2 Implications for Stronger and Safer Communities
This action will help facilitate WEAST which is being planned as a national exemplar of sustainable development.

8.3 Implications for Equalities
None resulting directly from this report.

9 Author and Contact Officer
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Corporate Manager, Sustainable Development

10 Consultees
Bob Entwistle, Executive Director Stronger Communities
Robert Vaughan, Property Manager
Victoria Phillipson, Growth and Development Manager
Brian Stewart, Connectlaw

11 Background Papers
11.1 Compulsory Purchase Order – WEAST Southern Access (Route 2) Report to Policy and Resources Committee – November 2004