

**TOWN AND COUNTRY PLANNING ACT 1990**

**THE LOCAL GOVERNMENT  
(MISCELLANEOUS PROVISIONS) ACT 1976**

**and**

**THE ACQUISITION OF LAND ACT 1981**

**THE METROPOLITAN BOROUGH OF DUDLEY**

**(CASTLE HILL, DUDLEY)  
COMPULSORY PURCHASE ORDER 2023**

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**STATEMENT OF REASONS**

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**[DATE]**

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## Glossary of Terms

In this Statement of Reasons, the following terms are used:

**1976 Act** means the Local Government (Miscellaneous Provisions) Act 1976;

**1981 Act** means the Acquisition of Land Act 1981;

**1990 Act** means the Town & Country Planning Act 1990;

**1998 Act** means the Human Rights Act 1998;

**2004 Act** means the Planning and Compulsory Purchase Act 2004;

**Council** means the Dudley Metropolitan Borough Council;

**CPO** means the Metropolitan Borough of Dudley (Castle Hill) Compulsory Purchase Order 2023 made by the Council on [XXX 2023];

**CPO Guidance** means the document entitled “Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion” (published by the Ministry for Housing, Communities and Local Government on 16th July 2019);

**Dudley Learning Quarter** means high quality sixth form and further education facilities co-located within Dudley town centre;

**DLUHC** means the Department for Levelling Up, Housing, and Communities;

**Dudley College** means Dudley College of Technology;

**Midland Metro Scheme** means the scheme for the Midland Metro being delivered pursuant to the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005

**Order Land** means the plots of land with an area of approximately 1.3 hectares comprised in the CPO, appended to this Statement of Reasons at Appendix (2) and shown edged red on the Order Map;

**Order Map** means the plan attached to the CPO showing the Order Land;

**Planning Permission** means the planning permission with reference P21/1505 granted by the Council on 16<sup>th</sup> December 2021 for the following development:

“Demolition of existing buildings and redevelopment for a higher education facility together with associated access, car parking and landscaping”;

**Scheme** means the redevelopment of the site to provide a three storey higher education facility with high quality, flexible and adaptable learning space following the demolition of the existing buildings at the former Dudley Hippodrome theatre, 13 Castle Hill (a martial arts club), and 15-21 Castle Hill (the former JBs nightclub) to the east of the Hippodrome ;

**Schedule** means the schedule to the CPO;

**Site** means 1.3 hectares of land in Castle Hill comprising a car park, storage land, public realm and landscaping belonging to Dudley Zoo and Castle, land of the former Plaza Cinema, the former Hippodrome Theatre, 13 Castle Hill, 15-21 Castle Hill, and parts of Zoological Drive and Station Drive;

**University** means the University of Worcester; and

**University Park** means a collaboration of higher education institutions providing a range of learning opportunities and 'pathways' for learners within the Dudley Learning Quarter.

## **1 Introduction**

- 1.1 This document is the Statement of Reasons that relates to the CPO made by the Council for the acquisition of various land, property, and other interests, along with new rights of access and construction in the Order Land. The Council's Cabinet approved the making of the CPO on 14<sup>th</sup> December 2022.
- 1.2 The Council originally approved the making of the CPO on 24<sup>th</sup> March 2022 in relation to the proposed development of a larger four storey higher education building on the Order Land. Since then, the main construction period has slipped from 2024/2025 to 2025/26 and with construction cost inflation the Scheme costs have increased. This has led to a shortfall in funding of £5m. As part of a revised Scheme, a smaller three storey building is now proposed, omitting the fourth floor and plans for a community facility within the building to ensure the Scheme costs falls within the available funding. Also, since March 2022 the CPO documents have been refined, including some minor changes to the Order Land and so in view of these and the proposed Scheme changes, approval was therefore sought again to proceed with a CPO to facilitate the revised Scheme.
- 1.3 On **[INSERT]** 2022 the Council made the Metropolitan Borough of Dudley (Castle Hill) Compulsory Purchase Order 2023. In making the CPO, the Council has had regard to the CPO Guidance.
- 1.4 The Council made the CPO pursuant to powers in section 226(1)(a) of the Town and Country Planning Act 1990 to purchase compulsorily the land and new rights of access and construction described in section 4 (Enabling Powers and Purpose of the CPO) of this Statement. It will facilitate the redevelopment of the Order Land for the purpose of delivering regeneration of a landmark site in Dudley town centre in a sustainable location adjacent to the Wednesbury to Brierley Hill Metro Extension. This will be achieved by the construction of a new higher education facility that will contribute to the promotion and improvement of the economic, social, and environmental wellbeing of the Council's area. It will contribute towards the development of a 'University Park' as part of the wider Dudley Learning Quarter which has seen significant investment in educational facilities over recent years to inspire post 16 learners.
- 1.5 The Council has used its powers under section 203 to 205 of the Housing and Planning Act 2016 to override private third party rights in the Order Land. On 24<sup>th</sup> March 2022, the Council's Cabinet was advised that restrictive covenants existed on the titles of the former Hippodrome theatre and Plaza Cinema. The Council has therefore, pursuant to a delegated decision made on the 25<sup>th</sup> July 2022 (reference DRE/15/2022 and DRE/16/2022) appropriated the land for planning purposes on the same day.
- 1.6 The Order is being made and submitted to the Secretary of State for Levelling Up, Housing and Communities for confirmation pursuant to the above Acts. If confirmed, the Order will enable the Council to acquire compulsorily the land and rights required to facilitate the Scheme.
- 1.7 The Council is also the local planning authority and the local highway authority for the Order Land.

- 1.8 This Statement of Reasons is a non-statutory document that sets out the reasons why the powers of compulsory purchase contained in the CPO are necessary and why there is a compelling case in the public interest for the CPO to be confirmed.
- 1.9 To date, the Council has been unable to acquire all the interests in the Order Land by private treaty, despite endeavouring to do so, (as further set out in paragraph 11 to this Statement).
- 1.10 The Order Land on which the Scheme will be implemented has an area of approximately 1.30 hectares and is bounded by Castle Hill, the south eastern boundary of Dudley Zoo and castle, and Station Drive. It comprises the vacant and disused Dudley Hippodrome theatre, gym (13 Castle Hill) and banqueting suite (former JBs nightclub at 15-21 Castle Hill)<sup>1</sup>, along with land used for informal car parking and storage of materials.
- 1.11 The construction of the Scheme will be undertaken by the Council and the management of the building and its facilities will be undertaken by Dudley College pursuant to a seven year lease (see paragraph 12.8 of section 12 (Implementation and Funding of the Scheme) of this Statement for further information about the potential lease alternative). The academic programmes will be delivered by the University. The Scheme will make a significant contribution to the economic, environmental and social wellbeing of the area and deliver very significant benefits. These are summarised in section 5 (the Scheme) of this Statement.
- 1.12 This Statement explains why the Council considers that, for the purposes of the powers enabling the Order, the Scheme will contribute to:
- 1.11.1 the development, redevelopment or improvement of the Order Land;
  - 1.11.2 improving the economic and social wellbeing of the borough of Dudley through the provision of a new high quality higher education facility; and
  - 1.11.3 the environmental wellbeing of the area as a consequence of the high quality public realm facilitated by the Scheme.
- 1.13 The Council already owns the freehold of the Hippodrome theatre and adjacent storage land, which amounts to 90% of the Order Land. However, there are a small number of other interests in the Order Land that the Council has been unable to acquire voluntarily, as set out in the Schedule.
- 1.14 The CPO is therefore considered necessary to assemble the remaining interests required to deliver the Scheme. Private treaty negotiations with the holders of those interests are at a stage where offers have been made but agreement has not been reached, such that no real progress is now being made. The Council has and will continue to negotiate with all third parties that have interests in the Order Land to acquire their interest by agreement, but it is clear that compulsory purchase powers will need to be employed to

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<sup>1</sup> Lawful planning use is a sui generis 'nightclub' use. Previous planning applications for events venue/weddings were refused in 2012/13 and a subsequent planning appeal was dismissed.

ensure that vacant possession can be achieved, and that the Scheme can be delivered within an appropriate timescale.

- 1.15 A copy of this Statement, the Order and the accompanying maps and background documents are available on the Council's website <https://www.dudley.gov.uk/residents/planning/compulsory-purchase-orders-cpos/> and available for inspection at the Council's Dudley Council Plus offices at 259 Castle Street, Dudley DY1 1LQ on Mondays to Friday during normal office hours.

## **2 Context of the Order**

- 2.1 Located on the western edge of the West Midlands region, the town of Dudley lies southeast of Wolverhampton and northwest of Birmingham. Dudley forms part of the West Midlands conurbation, which is home to some 2,626,000 people. Dudley is a large market town and was one of the birthplaces of the industrial revolution and grew into an industrial centre in the 19<sup>th</sup> century with its iron, coal, and limestone industries before their decline. As a result of this industrial heritage, it is often known as the historic capital of the West Midlands. There are four main towns in the borough which are Dudley towards the north, Stourbridge in the southwest, Halesowen in the southeast, and Brierley Hill in the centre.
- 2.2 According to the Office for National Statistics, the latest population estimate for the borough of Dudley (2020) is around 322,400. The population has been growing at a modest rate in recent years with 17,700 more people in the borough now compared to the estimate in 2,000, fuelled by international migration from the wider European Union and Asia. In the period between 1998 and 2018, the borough had a growing elderly population with 57.8% more people aged 80 and over, 17.5% more people aged 45 and over, and 13% fewer people aged 25 to 44.
- 2.3 The borough of Dudley is ranked as the 104<sup>th</sup> most deprived of the 317 local authority districts in England (Indices of Deprivation 2019 in Dudley). The historic dominance and subsequent decline of the narrow range of traditional industries has had a significant impact upon the environmental, economic and social landscape of many parts of the borough. 28.1% of the Dudley borough population live in areas that are counted in the 20% most deprived in England.
- 2.4 As of December 2021, there were 10,625 people in the borough claiming benefits principally due to unemployment, which constitutes 5.5% of the population of the area aged 16 to 64. The equivalent figure for England is 4.5%. 7.9% of those aged 18 to 24 living in the borough are claiming benefits, notably higher than the 5.4% proportion for England as a whole. In 2020, Dudley had 13,600 households with at least one person aged 16 to 64 where no one aged 16 or over was in employment. This equates to 15.2% of households, compared to 13% for England. Earnings data from 2021 shows the median pay for full time workers living in the borough was £29,438 per year, compared to the median pay for England of £31,490, which equates to 93% of the national average earnings for households in England.
- 2.5 The proportion of the working age population with NVQ level 4+ qualifications has been consistently lower than the West Midlands and UK average since 2010 and currently stands at 30.9% for the borough of Dudley compared to 43% for England. The number of residents with no qualifications has fluctuated over the last decade, however since 2015

the levels for Dudley have been higher. In 2020, the figure stood at 11.3% for the borough of Dudley compared with 8.5% for the West Midlands region and 6.6% for the UK.

- 2.6 The average Attainment 8 score, which measures the average achievement of school age pupils in up to eight qualifications, including English and maths, for the borough of Dudley has remained below the West Midlands and England average every year since 2015. The percentage of students in Dudley achieving grades AAB or above at A level, of which two are facilitating subjects, is 13.8% in 2020, compared to 20.3% in the West Midlands and 24.2% in England the same year.

### **3 Location and Description of the Order Land**

- 3.1 The Order Land comprises 1.30 hectares of land and is made up of the following parcels of land;

- Dudley Zoo staff car park, public realm and Zoological Drive (Plots 1, 4, 5, 9, 10, 11, 12, 13, 14),
- Unused storage land previously occupied by the Plaza Cinema (Plot 2)
- Former Dudley Hippodrome building within the centre of the site which is owned by the Council but empty and derelict (Plot 3),
- Strip of unused storage land situated between the former theatre and 15-21 Castle Hill (Plot 5),
- 13 Castle Hill which is a privately owned martial arts club (Plot 6),
- 15 - 21 Castle Hill which is a privately owned banqueting suite (the former JBs nightclub) to the east of the Hippodrome (Plot 7),
- Land forming half width of highway known as Station Drive (Plot 8).
- Land forming part of the private road of Zoological Drive (Plot 15)

- 3.2 The former Hippodrome Theatre, along with other near-by buildings provide a strong 1930's architectural character of large buildings at the north-eastern gateway into the Town Centre Conservation Area. More information about the architectural merit of the theatre building and its impact on the conservation area is set out in paragraph 8.2 of section 8 (Special Considerations affecting the Order Land) of this Statement.

- 3.3 The Order Land comprises a prominent site in a sustainable location to the north-east of Dudley town centre, adjacent to Dudley Zoo and Castle. It is bounded by Castle Hill to the south with vehicular access to the Zoo staff car park. Dudley Zoo and Castle is located to the west. To the north lies the Zoo visitor car parks accessed off Zoological Drive and public realm leading to the Zoo entrance. The land to the east is being developed for the Wednesbury to Brierly Hill Metro extension and the proposed Very Light Rail Test Track and National Innovation Centre. There are pedestrian routes along its northern, eastern and southern site boundaries.



- 3.4 The parties that have a legal interest in the Order Land are set out in the schedule at Appendix 3 to this document.

#### Land Referencing

- 3.5 The Council has instructed independent agents to carry out the referencing exercise for the Order Land. The actions taken by the agents to investigate title and owner/occupier details for inclusion in the Order have included:
- 3.5.1 Land Registry searches and a review of available deeds and similar information;
  - 3.5.2 Service of Requisitions for Information pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976 on behalf of the Council and a review of information returned in response;
  - 3.5.3 Virtual and physical site inspections.
- 3.6 The referencing exercise has been kept under review and subject to updating until the date on which the Order was made. It is considered the Schedule to the Order is therefore as accurate as it can be based on diligent inquiries made on behalf of the Council.
- 3.7 The CPO Map identifies the Order Land (see Appendix 2). Individual plot numbers and boundaries on the CPO Map correspond with the Schedule. The persons who are believed, after diligent enquiry, to have interests in the Order Land are set out in the Schedule.

## **4 Enabling Powers and Purpose of the CPO**

- 4.1 The CPO has been made pursuant to s.226(1) (a) of the 1990 Act along with s.13 of the 1976 Act in respect to new rights of access and construction to facilitate implementation of the Scheme. Section 226(1)(a) of the 1990 Act empowers an acquiring authority, on being authorised by the Secretary of State, to acquire compulsorily any land in their area:
- 4.1.1 if the acquiring authority thinks that the acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to that land; and
  - 4.1.2 the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social, or environmental well-being of their area.
- 4.2 The purpose of the CPO is to facilitate the development, redevelopment, and improvement of the Order Land for the purpose of delivering regeneration of a landmark site in Dudley town centre in a sustainable location adjacent to the Wednesbury to Brierley Hill Metro Extension. This will be achieved by the construction of a new higher education facility that will contribute to the promotion and improvement of the economic, social, and environmental wellbeing of the acquiring authority's area. Redevelopment of the Order Land will result in an improved gateway to the town centre and complement other proposed projects such as the reconstruction of Dudley Bus Station, the Midland Metro Scheme and the upgrade to the public realm in the streets between the Scheme and town centre.

4.3 The CPO will give the Council the power to acquire compulsorily all interests in the Order Land to provide the Scheme, should continued efforts to acquire these interests by private treaty prove unsuccessful. Compulsory acquisition is necessary in order to achieve implementation of the Scheme within a reasonable timescale. The benefits that implementation of the Scheme would bring cannot be achieved without acquisition of all interests in the Order Land.

4.4 Paragraph 1 of the CPO Guidance states that:

*“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”.*

4.5 The CPO Guidance provides general advice on the use of compulsory purchase powers by acquiring authorities and Section 1 of Tier 2 provides specific guidance to local authorities on the use of their powers under section 226 of the 1990 Act. Paragraph 95 of the CPO Guidance provides that the power is:

*“intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement the proposals in their Local Plan or where strong planning justifications for the use of the powers exist”.*

4.6 The Acquisition of Land Act 1981 sets out the process for compulsory acquisition and applies to the Order, and the acquiring authority is the Council.

4.7 The CPO has been made in accordance with the CPO Guidance and in particular Tier 2 Section 1 which provides advice on orders made under s226 of the 1990 Act.

## **5 The Scheme**

5.1 As stated in 4.2 above, the purpose of the CPO is to facilitate the development, redevelopment, and improvement of the Order Land for the purpose of delivering regeneration of a landmarked site in Dudley town centre in a sustainable location adjacent to the Wednesbury to Brierley Hill Metro Extension. This will be achieved by the construction of a new higher education facility that will contribute to the promotion and improvement of the economic, social, and environmental wellbeing of the acquiring authority’s area. Redevelopment of the Order Land will result in an improved gateway to the town centre and complement other proposed projects such as the reconstruction of Dudley Bus Station, the Midland Metro Scheme and the upgrade to the public realm in the streets between the Scheme and town centre.

5.2 To achieve the aims and purpose of the Scheme will involve the demolition and clearance of the existing buildings on the Site, including the redundant and now derelict former Hippodrome Theatre and redevelopment of the Order Land to provide a high profile and visible three storey higher education facility with high quality, flexible and adaptable learning space on a gateway site leading into Dudley town centre. It will further establish the University Park as a key part of the Dudley Learning Quarter in the development of the borough. It will have its own car parking, servicing arrangements, and landscaping. It will respect the historic and social setting of Dudley Castle (a designated

World Heritage Site) within the Dudley Town Centre Conservation Area as the dominant heritage focus on the main eastern approaches into the town.

- 5.3 The new University building will comprise of approximately (3,618 sqm (38,944 sq. ft.) of high quality, flexible, and adaptable learning space over three stories of the building. It will be a high quality building occupying a gateway site that will improve the visual quality and built character of this part of the town centre. It will open up views to the Castle and its environs (World Heritage Site) from approaches to and up Castle Hill. The aspiration for the building is that it will achieve zero net carbon, incorporating many fundamental features essential to low carbon buildings such as natural ventilation, high levels of natural lighting, abandoning use of fossil fuels, and high levels of insulation and air tightness in the building.
- 5.4 The Order Land is adjacent to the proposed 11km Midland Metro Scheme which will provide improved accessibility to public transport across the West Midlands, including the proposed HS2 station at Curzon Street, Birmingham. More specific to the Order Land, it will provide a transport link in Castle Hill up to Dudley Town Centre, with a metro stop planned at Dudley Castle, some 200 metres northeast of the Order Land. Construction for the extension is underway in Castle Hill and is anticipated will connect Dudley and Birmingham in around 40 minutes by 2024.
- 5.5 The building and its environs will be constructed by the Council and its principal contractor and leased to Dudley College on a (seven) year lease (less four days). Dudley College will be responsible for the management and maintenance of the facility pursuant to the lease, whilst the University will deliver the curriculum, assessment and certification within the new facility, with all students paying their tuition fees directly to the University. The University will be responsible for paying Dudley College for the delivery of central services (security, reception, cleaning, administration, estates and IT infrastructure maintenance, etc). The construction of the buildings and its associated public realm will be complete and operational from autumn 2025.
- 5.6 The design of the building seeks to keep the memory of the Hippodrome theatre alive with its modern interpretation of early twentieth century modernism and art deco design, whilst at the same time aspiring to achieve net zero carbon from its construction and operation. It will be a central part to the ongoing transformation of the Castle Hill area of the town and increase the flow of students and staff between Castle Hill and the town centre. This will increase expenditure in town centre businesses and support the Council's strategic approach to diversifying activities, as the retail core shrinks and resident/town centre living increases.
- 5.7 Dudley College will work in partnership with the University to deliver NVQ level 4 and 5 degree and post-graduate programmes in the new facility. Their aim is to attract new students to Dudley, provide new technical skills and degree programmes which align with local employment opportunities to raise skills and improve progression rates from local schools and colleges for local people into higher skilled employment opportunities, as well as drive longer term productivity growth through higher level skills and raise the Gross Value Added (GVA) in the borough's local economy. The project will also provide vital skills resources to the local NHS providers and raise awareness of health and wellbeing issues and opportunities to local people. It will be the first dedicated higher education institution building in the borough.

5.8 Delivery of the Scheme will continue the development of the University Park, within the Dudley Learning Quarter of Dudley Town Centre. The University Park already includes the Black Country and Marches Institute of Technology specialising in higher level technical education which opened in October 2021, and the Very Light Rail Innovation Centre which opened in September 2022.

5.9 In conclusion, the Scheme will make a significant contribution to the economic, environmental and social wellbeing of the area and deliver very significant benefits, including the following:

#### Economic

- The new facility will increase the total number of undergraduate and post graduate students studying in Dudley each year by around 1,030 (FTE) from the fifth year of opening, building up from 225 learners when it opens
- Net additional increase in students progressing to higher levels of education (from NVQ level 3 to 4+), some of whom would not have studied at degree level, which will lead to increasing productivity levels regionally
- The Scheme will improve engagement with employers and so help expand the number of people already in the workforce involved in higher skills development. By (xxx), there will be collaborations with around (50) additional employers per annum
- Provide new technical skills and degree programmes aligned to local employment opportunities that will increase the number of University students retained within the local workforce
- 107 (FTE) new jobs will be created within four years of the new University facility opening

#### Environmental

- The Scheme will create a new contemporary gateway to the town centre through a new high quality building opening up views to the Grade I listed Scheduled Monument of the adjacent Dudley Castle (a designated World Heritage Site).
- Improved connectivity between Castle Hill and the town centre through 6,500 square metres of public realm and infrastructure improvements that will increase the flow of students and expenditure in the town centre businesses
- The location of the Scheme adjacent to the new Midland Metro will facilitate and encourage access by public transport rather than car for staff, students and visitors alike.

#### Social

- Raised aspirations and ambitions amongst the local community by bringing high quality facilities into a community that suffers from low levels of educational engagement and multi-generational levels of worklessness
- Increased retention of young people living and working in the town arising from better salaried jobs that will help to create a more mixed and balanced community
- Being located on a landmark site adjacent to the entrance of Dudley Zoo and Castle and the Midland Metro, the Scheme will help build confidence and improve perceptions of the town

## 6 Planning Policy Considerations

- 6.1 Paragraph 106 of the Guidance states where a CPO is promoted under s.226(1)(a) of the Town and Country Planning Act 1990, the Secretary of State will take into account whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.
- 6.2 A scheme involving the construction of a four storey building was granted full planning permission on 16<sup>th</sup> December 2021 (subject to conditions). However, for reasons set out in paragraph 12.7 of this Statement, the Scheme will now comprise a smaller three storey building to fit within the funding envelop of the Towns Deal. The planning permission will require amendments to reflect the reduced size of building now proposed. The Local Planning Authority (LPA) has confirmed that it would have no in principle objection to the reduction in scale of the Scheme Building (approved planning application ref. P21/1505) from four to three floors. It has indicated that the most appropriate course of action would be a Section 73 Application under the 1990 Act to vary the approved plan numbers in that the whole principle does not need to be re-opened but it still allows for full consultation. The revised Scheme to be delivered will generate the following benefits in compliance with the National Planning Policy Framework and the Development Plan for the Council:

### **Economy**

- 6.3 NPPF: Building a strong, competitive economy - The Scheme will be a central element of the ongoing transformation of the Castle Hill area of Dudley and increase the flow of students and staff between Castle Hill and the town centre. This will increase expenditure in town centre businesses and support the Council's strategic approach to diversifying town centre uses. The investment proposed by the Council and Dudley College will provide a direct stimulus, also creating a significant number of jobs during construction.
- 6.4 Furthermore, the proposed college will deliver NVQ level 4 and 5 degrees and post-graduate programmes which will align with local employment opportunities and improve skills and progression rates into higher skilled employment opportunities this raising employment levels and GVA for the borough's local economy.
- 6.5 NPPF: Ensuring the vitality of town centres: the proposed Scheme is expected to have a significant positive impact upon the vitality of the town centre, bolstering the local economy, serving the needs of local businesses and employees. The Scheme will support the expansion of the town centre's Dudley Learning Quarter which aligns with the Council's strategic approach to diversifying town centre uses.
- 6.6 Dudley Borough Development Strategy (2017) Policy S1: Presumption in favour of Sustainable Development - The Scheme sits within the regeneration corridor 11a (Dudley – Brierley Hill – Stourbridge). These are areas served by an extensive transport system providing the most sustainable areas for redevelopment/growth and supporting the wider regeneration objectives for the borough. There are no material considerations that suggest the Scheme is not appropriate.

## Environmental

- 6.7 NPPF: Meeting the challenge of climate change and flooding - the site is not within a high-risk flood zone in relation to fluvial or surface water and the supporting Drainage Strategy is considered to be satisfactory. The replacement building would be highly sustainable and would be achieved through sustainable design principles as outlined in the submitted Sustainable Design Statement.
- 6.8 NPPF: Conserving and enhancing the historic environment - the design of the Scheme seeks to maximise the beneficial impact of the key gateway site to support the conservation and enhancement of local character and distinctiveness, with high architectural standards that complement the areas of public space and create links to Castle Street and future areas of regeneration. The planning application was supported by Historic England and the Council's Conservation Officer.
- 6.9 Black Country Core Strategy (2011) Policy CSP4: Place Making - Policy CSP4 sets out the requirement for all development to demonstrate a clear understanding of the historic character and local distinctiveness and show how the proposals make a positive contribution to place-making and environmental improvement. The Scheme will be a high-quality building occupying a gateway site that will improve the visual quality and built character of the Castle Hill area of the town centre. It will open up views to the Castle and its environs (World Heritage Site) from approaches to and up Castle Hill as well as from the Birmingham Road and Tipton Road.
- 6.10 Dudley Borough Development Strategy (2017) Policy S8: Conservation and Enhancement of Local Character and Distinctiveness - The Scheme is located within the Dudley Town Centre Conservation Area and is adjacent to the Castle Hill Conservation Area. There are a number of Listed and notable buildings nearby. The Scheme will support the conservation and enhancement of local character and distinctiveness, with high architectural standards that complement the areas of public space and create links to Castle Street and future areas of regeneration.
- 6.11 Dudley Borough Development Strategy (2017) Policy S9: Conservation Areas - the Scheme falls within the Dudley Town Centre Conservation Area and is adjacent to the Castle Hill Conservation Area. The development will not adversely affect any of the assets that give rise to the distinctive local character that led to the designation of these areas as conservation areas. The Scheme will substantially improve the local visual appearance of the site and be of benefit to the conservation areas.
- 6.12 Dudley Area Action Plan Policy 1: Sustainable Development - The proposed development will comprise a high-quality building with an aspiration that it will achieve zero net carbon, incorporating many fundamental features essential to low carbon buildings such as natural ventilation, high levels of natural lighting, abandoning use of fossil fuels, and high levels of insulation and air tightness in the building.
- 6.13 Dudley Area Action Plan (AAP) (2017) Policy 28: Walking and Cycling – The Scheme is located in a highly accessible location within walking and cycling distance of key services and facilities in Dudley Town Centre and adjacent to the proposed metro route – thus ensuring it is connected by public transport, maximising opportunities for sustainable travel. The proposals therefore comply Dudley Borough Development Strategy (2017)

Policies S17: Access and Impact of Development on the Transport Network and Policy L11: Parking in Town Centres.

## **Social**

- 6.14 NPPF: Promoting healthy and safe communities – The proposed scheme will be a central part to the ongoing transformation of the Castle Hill area of the town. It will provide the first dedicated higher education institution building in the borough providing training opportunities for local people to access higher skilled employment opportunities. The project will also provide vital skills resources to the local NHS providers and raise awareness of health and wellbeing issues and opportunities to local people.
- 6.15 Black Country Core Strategy (2011) Policy HOU5: Education and Healthcare Facilities - The development of a higher education facility has significant policy support in line with Black Country Core Strategy Policy HOU5. Education facilities are fundamental to achieving the vision for sustainable communities and economic prosperity and is key to delivering key spatial objectives. Policy HOU5 states that, ‘new higher education facilities should be: well designed and well related to neighbourhood services and amenities, well related to public transport infrastructure and directed to a centre appropriate in role and scale to the proposed development and its intended catchment’. The design and layout of the proposals are considered to be appropriate and clearly accord with local design policy and guidance for new development.
- 6.16 Black Country Core Strategy (2011) Policy TRAN2: Managing Transport Impacts of New Development: - The Scheme is located in a highly accessible location within walking and cycling distance of key services and facilities in Dudley Town Centre as well as being adjacent to the proposed metro route – thus ensuring it is connected by public transport and maximising opportunities for sustainable modes of travel.
- 6.17 Dudley Borough Development Strategy (2017) Policy S2: Planning for a Healthy Borough - The importance of education facilities to the health and well-being of Dudley is recognised in the Dudley Borough Development Strategy by Policy S2, this seeks to protect existing education facilities, as well as ensuring that the new facilities are sited well to ensure accessibility and choice.
- 6.18 Dudley Area Action Plan (AAP) (2017) Policy 19: Education: The Scheme meets the requirements of Policy 19 which specifically supports further extensions to learning provision within the Town Centre, provided that the proposals are integrated with surrounding land uses.
- 6.19 Dudley Supplemental Planning Guidance Parking Standards SPD (2012) - The Scheme will have a high degree of accessibility for non-motorised users, bus users, and Metro users.

## **7 Justification for Use of Compulsory Purchase Powers**

- 7.1 As set out above, the Council originally approved the making of the CPO on 24<sup>th</sup> March 2022 for a larger four storey building. As the Scheme costs have increased since with construction cost inflation, exceeding the £25m Towns Deal funding available (see paragraph 12.7 of section 12 (Implementation and Funding of the Scheme), it would no

longer have been possible for the Council to demonstrate that it had a deliverable scheme with all resources in place to justify use of its CPO powers.

7.2 At the Council Cabinet meeting of 14<sup>th</sup> December 2022, the Council resolved to use its compulsory purchase powers for the acquisition of the land necessary to deliver the revised Scheme on the Order Land, as shown on the CPO Map.

7.3 In reaching its resolution, the Council had regard to the advice contained in the CPO Guidance on compulsory purchase process, the paragraphs of particular relevance include the following:

7.4 Paragraph 12 states that a compulsory purchase power should only be made where there is a compelling case in the public interest.

7.4.1 The site is currently under-utilised comprising old, partially derelict and underused buildings occupying a prominent gateway location leading into the town centre and adjacent to both the Midland Metro Scheme (currently under construction) and the main entrance to Dudley Zoo and Castle (Grade I listed Scheduled Monument). The Council considers that the economic, social and environmental wellbeing benefits, as summarised in section 5.9 of this Statement (the Scheme), to be derived from implementation of the Scheme are so significant that the case for making the Order in the public interest is compelling,

7.5 Paragraph 13 explains that the minister confirming the CPO 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. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be. Paragraph 13 also advises that the acquiring authority must have a clear idea of how it intends to use the land which it is proposing to acquire and must be able to demonstrate that there are sufficiently compelling reasons for the power to be sought at the relevant time. If the acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable timescale, then it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.

7.5.1 The Council considers that implementation of the Scheme in the public interest outweighs any interference to the human rights of any of the freehold/ leasehold owners and business occupiers. This is explained in more detail in section 13 of this Statement.

7.6 Paragraph 14 advises that the acquiring authority should provide information about the sources of funding for acquiring the land and implementing the scheme, and the timing of that funding.

7.6.1 The Scheme costs are estimated to be £25m, including land assembly costs. The Council has secured the £25m funding required to complete the assembly of the land and delivery of the Scheme.



- 7.6.2 The Council secured approval from DLUHC for the Town Deal funding in July 2021, subject to full business case approval. A heads of terms letter and grant offer letter was received from DLUHC on 15<sup>th</sup> July 2021 and 3<sup>rd</sup> December 2021 respectively, subject to full business case approval. The business case was submitted to DLUHC in April 2022 and approved on 9<sup>th</sup> August 2022. Information about the implementation and funding for the Scheme is explained in more detail in section 12 of this Statement (Implementation and Funding).
- 7.7 Paragraph 15 advises that the acquiring authority must be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation such as the need for planning permission or infrastructure.
- 7.7.1 There are no physical impediments to implementation of the Order Scheme. In respect to legal impediments, full planning permission for a four storey building was granted on 16<sup>th</sup> December 2021 (subject to conditions). However, due to construction cost inflation it is necessary to reduce the size of the building from four to three stories. The Council will submit a section 73 application under the 1990 Act to the Council, as the Local Planning Authority, to vary the approved plans to secure planning approval for the smaller building. More detail of this is included in paragraph 12.8 of this Statement but the Council, as the Local Planning Authority, advises that it would have no in principle objection to the reduction in scale of the Scheme building (approved planning application ref. P21/1505) from four to three floors.
- 7.7.2 It is proposed to grant a headlease of the property to Dudley College on the terms outlined in paragraph 12.9 of section 12 (Implementation and Funding of the Scheme) of this Statement). The lease will be granted for a period of seven years (less four days) at a peppercorn rent taking into account the inability of Dudley College to pay a full market rent for the property. By granting the lease on such terms, the Council would be doing so within the General Disposal Consent (England) 2003 as part of its land disposal powers contained within s.123 of the Local Government Act 1972. Whilst the seven year lease satisfies the requirements s.123, an application for disposal at undervalue under s.123 is being submitted to DLUHC to allow the Council to grant a thirty year lease to the College. If the application is successful, the proposed seven year lease will be superseded by a new thirty year lease which will provide both the College and the Council with far greater certainty for the occupation and use of the building as well as continuity of Scheme benefits.
- 7.7.3 There are no ancient monuments or statutorily listed buildings within the Order Land. Section 8 (Special Considerations Affecting the Order Land) of this Statement states that no part of the Order Land comprises Green Belt nor common land or open space within the meaning of Section 19 of the 1981 Act, and section 9 (Other Requisite Orders Needed) of this Statement confirms that no other statutory Orders will be needed in order to implement the Scheme.
- 7.7.4 There are no other known legal impediments to delivery of the Scheme.

7.8 Paragraph 17 advises that an acquiring authority is expected to be able to show that meaningful attempts have been made to negotiate purchases.

7.8.1 The Council and their agent have been engaging with the various freehold, leasehold and business occupiers since the Autumn of 2021 to acquire their interests but without success, as set out in section 11 of this Statement. Use of the Council's CPO powers is therefore necessary to ensure delivery of the Scheme within the timescales necessary to take advantage of the Town Deal funding, without which the Scheme could not reasonably be delivered.

7.9 Paragraph 106 of the CPO Guidance states that, where an Order is made under s.226(1)(a) of the Act, the following factors will be considered by the Secretary of State in deciding whether to confirm a compulsory purchase order:

7.9.1 whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework;

7.9.1.1 This is dealt with in Section 6 of this Statement. In summary, the Scheme sits within the regeneration corridor 11a (Dudley – Brierley Hill – Stourbridge), Dudley Borough Development Strategy (2017) and is in compliance with Policy S1: Presumption in favour of Sustainable Development, which are areas served by an extensive transport system providing the most sustainable areas for redevelopment/growth. It is also in compliance with the NPPF, Black Country Core Strategy 2011, and Dudley Area Action Plan 2017. As stated in paragraph 7.7.1 above, the Council as Local Planning Authority has stated that having already granted planning consent for a four storey building in December 2021, the principle of redevelopment of the site for an educational facility is accepted and an application under s73 of the 1990 Act could be used to secure approval to the smaller three storey building to be provided by the Scheme.

7.9.2 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;

7.9.2.1 The economic, social and environmental wellbeing benefits the Scheme will deliver for the area are listed in section 5.9 of this Statement. They are significant and demonstrate why use of the Council's CPO powers is justified.

7.9.3 whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired;

7.9.3.1 Alternative means (options) of achieving the intended purpose of the Scheme were considered fully as part of the Economic Case and assessment of benefits in compliance with the Treasury Green Book (2020) and relevant departmental guidance published by DLUHC appraisal;

7.9.3.2 The assessment referred to above is set out in the Dudley Town Investment Plan prepared in **December 2021** and in it a long list of options were assessed based on a list of agreed objectives. The options considered ranged from Option 1: Do nothing to Option 5: Alternative location. This generated a short list of three options and a qualitative and quantitative assessment of these options was undertaken to arrive at the preferred option on the former Hippodrome theatre site.

7.9.3.3 Even though a smaller Scheme is now proposed from the preferred option assessed in the Dudley Town Investment Plan, regeneration of the Order Land is still a strategic priority for the Council because:

- It is situated in a prominent location between Dudley Castle (World Heritage Site) and the Midland Metro Scheme;
- The Scheme will contribute towards the ongoing development of the University Park within the town where a number of higher education institutions such as the University of Warwick (who are a key partner in the Very Light Railway Innovation Centre) and University of Wolverhampton (who are a delivery partner in the Institute of Transformative Technology with Dudley College), are located nearby.
- The ongoing collaboration amongst the University Park partners will assist in driving excellence and deliver learning opportunities in the most cost efficient manner.

7.9.3.4 The existing landowners have not proposed an alternative scheme that might deliver similar or alternative benefits, neither is there any evidence to suggest they will deliver a scheme to achieve the same purpose. Development of the site for a higher education facility is unlikely to be commercially viable, hence the need for public sector funding, and so there is no realistic prospect of the Scheme being delivered by the private sector. The landowners will not therefore come together to assemble the land for the Scheme (they have not in the past and there is no incentive for them to do so in the future). The only option therefore is the proposal under which the powers are being sought.

7.9.4 the potential financial viability of the scheme for which the land is being required. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the Scheme will proceed;

7.9.4.1 The Scheme cost is estimated to be £25m. Towns Deal funding of £25m has been secured from DLUHC. Details of this are set out in paragraph 7.5.1 above and section 12 (Implementation and Funding of the Scheme) below.

7.10 Single ownership and control of the Order Land is required to enable the Scheme to proceed. A significant level of investment is required to demolish and clear buildings and structures, reclaim land and deliver the Scheme, including public highways etc. The Council can only commit to proceeding with the Scheme if it has certainty that the full extent of the Scheme can be delivered. It is only through complete control of the Order Land that the Council can ensure that that these works proceed, that comprehensive re-development is achieved and that the public benefits of the Scheme are realised.

- 7.11 The Council has carefully considered the need to include each parcel of land in the Order Land and is satisfied that these interests are required for the delivery of the Scheme. It is further satisfied that the need for the Order Land overall to be put to a purpose in the public interest outweighs the impact on those that will be affected by compulsory acquisition.

## **8 Special Considerations Affecting the Order Land**

- 8.1 The Order Land lies within the Dudley Town Centre Conservation Area and within the setting of the Castel Hill Conservation Area. There are no ancient monuments or statutorily listed buildings within the Order Land but there are a number of listed buildings in the vicinity with views to or from the site. In preparing updated designs for the proposed Scheme, the avoidance of any adverse impact on designated assets or their setting will continue to be a key priority.
- 8.2 The former Hippodrome Theatre, together with the near-by Zoo entrance and the Station Hotel opposite provides a strong 1930's architectural character of large buildings at the north-eastern gateway into the Town Centre Conservation Area. The theatre building is considered to be of limited intrinsic architectural significance and is neither statutorily nor locally listed. It is considered that the building detracts from the character and appearance of the conservation area and negatively impacts the setting of the Castle Hill area and the long range views towards Dudley's medieval Castle, a Scheduled Monument and grade 1 listed building.
- 8.3 Redevelopment of the Order Land provides a major opportunity to restore the setting of Dudley Castle (Grade I listed Scheduled Monument) as the dominant focus on the main approaches into the town centre, as well as enhance the overall appearance and experience of the conservation area. The proposal is therefore designed to fit comfortably, and be successfully set, within the backdrop of Dudley Castle.
- 8.4 No part of the Order Land comprises Green Belt nor common land or open space within the meaning of Section 19 of the 1981 Act.

## **9 Other Requisite Orders Needed**

- 9.1 No other statutory Orders will be needed in order to implement the Scheme.

## **10 Community Engagement and Consultation**

- 10.1 The Health Innovation Dudley project arose as a priority project of the Dudley Town Deal Board following significant stakeholder and community engagement during 2020. The Town Deal Board, which was convened in January 2020, is responsible for owning the strategic vision for Dudley
- 10.2 Consultation originally took place during November and December 2020 and involved, amongst other things, the distribution of questionnaires to all properties within a ¼ mile of Dudley Town Centre, and virtual engagement sessions organised with community groups, businesses, wards members, etc. Respondents were asked whether they supported the proposals for regenerating the town centre, including a new University Centre. A total of 957 responses were received and 85% confirmed that if a new facility is to be built it should be used for training and education purposes. 76% of respondents

also stated that they strongly agreed or agreed that the towns Dudley Learning Quarter should be expanded.

10.3 Whilst most people were very supportive of the Health Innovation Centre being located on the proposed site, there remains a small minority – largely associated with the Friends of the Hippodrome Theatre group – who believe that the theatre should be saved and have been petitioning against the Scheme proposals. The Council offered the ‘Friends’ group a five year lease in June 2016 to take over the management and operation of the Theatre. The Group was unable to make the arrangement work and so the arrangement came to an end in December 2018.

10.4 The Town Deal Board, which comprises the Council as a full member, retain oversight of all engagement work and ensure all plans are shaped and informed by residents and businesses.

## **11 Attempts to acquire the Order Land by private agreement**

11.1 Paragraph 2 of the CPO Guidance states that *"the confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the CPO by agreement "*.

11.2 Single ownership of the Order Land is required to implement the Scheme. Significant efforts have been made by the Council to acquire interests in the Order Land since the Autumn of 2021 by agreement to secure vacant possession of the land required, including those interests in the Order Land that are set out in the Schedule.

11.3 The Council is the majority landowner with its freehold ownership of the former Hippodrome theatre and storage land but there are private freehold and leasehold interests that need to be acquired.

11.4 Owners will be compensated in line with the compulsory purchase compensation code and offered assistance with relocation. The Council, as acquiring authority, is committed to working with those affected, and will continue to work with freeholders, leaseholders, and occupiers as the CPO progresses.

11.5 The Council appointed consultants, Gateley Hamer Limited, in the Autumn of 2021 to provide advice on land assembly and compulsory purchase of third party properties within the Order Land, including the valuation and negotiation of the acquisition of properties. Gateley Hamer are chartered surveyors and specialist valuers and advisors on land assembly and compulsory purchase. Gateley Hamer immediately engaged with the various third party interests in the Autumn of 2021 to share details of the Scheme proposals, timescales for delivery of the Scheme, and confirmation that the properties were identified for redevelopment within the Scheme.

11.6 Section 3 of this Statement sets out the diligent enquiries that have been made to identify all owners and occupiers of land within the Order Land. There are fifteen remaining interests to be acquired and these can be summarised as follows:

## **Freehold acquisitions**

### **11.7 13 Castle Hill (Plot 6)**

11.7.1 Mr and Mrs Wolohan own the freehold interest in 13 Castle Hill, which covers plot 6 of the Order. The landowners have permitted the Council and its agent access to the premises in order to inspect and carry out a valuation of the property, which comprises a building of about 2,400 sq. ft without designated car parking. Subsequent to the inspection, an offer to purchase was made by the Council in September 2021, which was rejected, and a revised offer was made in January 2022, which was also rejected. To assist the landowners a professional fee undertaking has been offered to ensure they have appropriate representation by a suitably qualified adviser. The landowner has since appointed Bruce Fowler, a self employed compulsory purchase surveyor.

11.7.2 In addition to offers made, the Council's representatives have held discussions with the landowners about relocating their occupational business. The first relocation property identified by the landowner, which is situated in close proximity to the town centre high street, extends to about 5,000 sq. ft. (i.e., 110% more space than the current property) and benefits from off-street car parking has now been disregarded as despite the clear value for money benefits the landowner was unwilling to fund pricing differential between their existing interest and the proposed relocation property. The second relocation property, this time identified by the Council's representative, comprised a building of about 3,400 sq. ft. in a similar edge of town centre location only  $\frac{3}{4}$  of a mile from the subject property. Unfortunately, this was rejected as not suitable for their needs despite offering off-street car parking, superior occupational flexibility and providing about 40% more space than the current property.

11.7.3 It is now understood that the landowner has identified another relocation property adjacent to a building they already own and we understand that subject to completing the acquisition the intention is to amalgamate the newly acquired property with their existing building and then operate their existing business from the enlarged premises. Whilst the landowner attends to relocation matters, negotiations to acquire 13 Castle Hill have continued but as yet the parties have failed to arrive at an amicable agreement.

### **11.8 15 Castle Hill (Plot 7)**

11.8.1 Castle Hill Suite Limited own the freehold interest in 15 Castle Hill, which is covered by Plot 7 of the Order. The Council first began discussing the proposals for the site at the beginning of 2021. The landowner has permitted the Council and its agent access to the premises in order to inspect and carry out a valuation, subsequent to which the Council made an offer to purchase in October 2021, which was rejected. To assist the landowner a professional fee undertaking has been offered to ensure they are appropriate representation by a suitably qualified adviser.

11.8.2 The Council and its representatives have proactively engaged with the landowner over an extended period, but no meaningful progress has been made towards reaching a negotiated acquisition of the property. Consequently, the Council is left with no alternative but to continue to pursue the acquisition of this interest by compulsion.

## **Leasehold Acquisitions**

### **11.9 Land between 13 and 15 Castle Hill and other pedestrianised, landscaped, private road and car parking area (Plots 1, 4, 5, 9, 10, 11, 12, 13, 14)**

11.9.1 Dudley and West Midlands Zoological Society Limited hold a long leasehold interest from the Council of ninety nine years from 25<sup>th</sup> August 1981 and a supplemental lease of 60 years from 18<sup>th</sup> February 2020 which are covered by Plots 1, 4, 5, 9, 10, 11, 12, 13, 14. The Council and Gateley Hamer representatives met representatives of Dudley Zoo and Castle on 15<sup>th</sup> July and agreement in principle was reached with the Zoo to surrender its existing two leases in favour of a new 99 year lease of whole on the same terms as existing subject to updating any rights or easements which are no longer relevant or required and the recording of any sub-lease arrangements which the Zoo currently has in place. Terms are under negotiation between the parties and the Zoo has agreed to surrender its leasehold interests in the plots cited within the CPO at nil cost subject to a Section 119 Charities Act 2011 valuation. Upon finalisation of the negotiations, the new lease terms will be presented to Cabinet for formal approval/ratification.

11.9.2 Part of Zoological Drive (Plots 11, 12, 13, and 14) that forms part of a lease held by Dudley and West Midlands Zoological Society Limited is included in the CPO because new rights of access and construction are required to provide vehicular access from the adopted highway at the most northerly point in Zoological Drive to the Order Land. No vehicular access exists or is to be created from Castle Hill to serve the Scheme.

### **Other interests**

### **11.10 Unused storage land previously occupied by the Plaza Cinema (Plot 2), the former Dudley Hippodrome building (Plot 3), half width of highway known as Station Drive (Plot 8) and part of Zoological Drive (Plot 15)**

These plots are included in the CPO because there are known third party rights that exist on the respective registered titles of the four plots.

## **12 Implementation and Funding of the Scheme**

### **Implementation**

12.1 The Scheme will be delivered by the Council and its contractor. The Council will do this using an integrated project insurance model (IPI), a relatively new procurement practice with an insurance backed alliance contract that aims to achieve savings in project costs through efficiency gains and minimising the possibility of cost overruns.

12.2 Using the IPI model, the Council will secure an alliance team through use of an OJEU compliant competitive dialogue tender procedure in two distinct phases of the development. As part of phase one, the Council has appointed Integrated Project Initiatives Limited (IPI Ltd) to provide the contract documentation, facilitation and advisory services required to prepare and execute an insurance backed alliancing construction contract. Initially, IPI Ltd will oversee the selection of the alliance members, including the

lead contractor, design consultants and specialist contractors to join the alliance, agreeing detailed specifications and commencing the insurance agreement with the alliance.

- 12.3 During phase two of the process, IPI Ltd will form a crucial part of the alliance by providing independent facilitation and support services to the alliance throughout the construction period and initial defects period of the project. It will include risk reduction workshops, the facilitation of joint decision making and issue resolution, and the ongoing management of the insurance product and regular reports to the insurance provider.
- 12.4 The Dudley Town Investment Board has responsibility for the overall strategic oversight for the management and delivery of the Scheme, while the Council, as the accountable body for the Towns Deal funding, will ensure that the Towns Fund expenditure is compliant with DLUHC guidelines. Beneath this political level of responsibility within the Scheme governance before the alliance team is established, there is a Health Innovation Dudley Steering Group, chaired by the Council's Director of Regeneration and Enterprise, which has a further strategic level of responsibility for overseeing the management and delivery of the Scheme, and a Towns Fund Project Team that is responsible for the management and delivery of various workstreams, which include the Land Assembly Group activities.
- 12.5 The Council will provide day to day management responsibilities for the consultant team. The Scheme will be delivered in partnership with Dudley College and the University of Worcester, and these two partner organisations will also be responsible for providing direction to the consultant team throughout the project.
- 12.6 The form of construction contract was used by Dudley College, with IPI Ltd providing the same support and facilitation service, to successfully deliver the Advance II building in the Dudley Learning Quarter in 2017. It was the first building in the UK to be delivered under the IPI model. Since then, IPI Ltd and Dudley College have successfully delivered the new Black Country and Marches Institute of Technology building using the same construction procurement methodology. This building opened in 2021 in the Dudley Learning Quarter.
- 12.7 The main construction period of the Scheme has moved from 2024/25 to 2025/26 and in the current macro-economic environment of high inflation, there has been cost implications of this for the Scheme costs. Cost modelling undertaken by external consultants showed that costs had increased significantly such that a £5m shortfall in funding was left for the consented four storey (4,250 m<sup>2</sup>) building. To ensure that the costs came within the funding available, it has been necessary to reduce the size of the building from four storeys to three (3,618 m<sup>2</sup>), omitting plans for a community facility within the building. It is recognised in these current inflationary times that construction costs may continue to rise but to counter this the most recent cost plans prepared for the Scheme has an allowance to cover inflation of 13% which is in line with current industry predictors.
- 12.8 Planning consent (reference P21/1505) was granted in December 2021 for a four storey educational facility on the site. However, now that it is necessary to reduce the size of the building to three stories, a further approval of the Council, as the Local Planning Authority (LPA) will be required to reflect this. The LPA has confirmed that it would have no, in principle, objection to the reduction in scale of the Scheme (approved planning application



ref. P21/1505) from four to three floors and it has indicated that the most appropriate course of action would be a s.73 Application of the 1990 Act to vary the approved scheme. Necessary revisions to the Scheme design will be prepared once the Alliance design team are onboard which at this time is expected to be January 2023.

- 12.9 The Council and Dudley College have met on a number of occasions and heads of terms for the new lease are in circulation between the parties. The proposed terms reflect a new full repairing and insuring headlease of the building (save for inherent and latent defects which will be covered under the building contract) to Dudley College for a period of seven years (less four days) at a peppercorn rent. By granting the lease on such terms, the Council would be doing so within the General Disposal Consent (England) 2003 as part of its land disposal powers contained within s.123 of the Local Government Act 1972. The lease will include a provision for a top up rent from Dudley College in the event that annual income from the building exceeds the operational and management costs of running the building. This is a protection clause for the Council in the event that Dudley College receives income from the University which places it in a position to be able to afford to pay a rent for the building. The building will be entirely sub-let (for the whole term of the Headlease) by Dudley College to the University whose students will occupy the building in line with the educational purposes set out in this report.
- 12.10 Subject to a favourable decision from DLUHC under s.123 on the ability of the Council to dispose at a peppercorn (undervalue), it is proposed that the seven year lease will be superseded by a new thirty year full repairing and insuring lease on similar terms save for lease length. This will provide both Dudley College and the Council with longer term security of use and occupation of the building and certainty on the continuity of Scheme benefits. Before applying to DLUHC, the Council will instruct an external registered valuer to confirm the extent of the undervalue and subject to an internal delegated approval, submit an application to DLUHC for consent to dispose the building on a thirty year lease at a peppercorn rent.
- 12.11 The detailed design process is due to progress through 2023 by the alliance team. Demolition of the former Hippodrome Theatre will begin in January 2023 and will take twelve weeks to complete, with the demolition of the remaining buildings to take place once ownership and control has been secured. Full Scheme completion, including University fit out is forecast for September 2025 when the building will be in full operational use.

- 12.12 *How the Scheme will operate in order to deliver the economic and social benefits...*

#### Funding

- 12.13 Dudley Town Centre was one of one hundred centres invited by the Government to bid for £3.6 billion Towns Fund in 2019. The funding is aimed at driving investment and to seek long term economic and productivity growth through investment in connectivity, land use, skills and enterprise infrastructure investment.
- 12.14 Dudley Town Deal Board submitted their Town Investment Plan to the DLUHC on 21st January 2021, securing approval of £25m of Towns Deal funding on receipt of a heads of terms letter and grant offer letter on 15<sup>th</sup> July 2021 and 3<sup>rd</sup> December 2021 respectively, subject to full business case approval. The full business case was submitted to DLUHC in April 2022 and approved on the 9<sup>th</sup> August 2022.

- 12.15 The funding will facilitate the demolition and site clearance, assembly of land and delivery of the Scheme, including works in Castle Hill to connect Scheme to the town centre. The Scheme costs are estimated to be £25m.
- 12.16 It is recognised that there will be continued increases to the costs of the Scheme through construction cost inflation but the Council (and the soon to be appointed Alliance Team) has in place the necessary finance, management and governance arrangements to ensure the Scheme will be delivered in accordance with the requirements of the Towns Deal Funding.
- 12.17 The Council are the Accountable Body responsible for ensuring the funding is used appropriately to deliver and implement the Scheme.
- 12.18 There is no known financial impediment or reason why the Council would not be able to acquire all the interests in the Order Land or successfully deliver the Scheme if the CPO is confirmed.

### **13 Human Rights Act 1998**

- 13.1 The 1998 Act requires (amongst other things) that every public authority must act in a manner which is compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The Courts have held that the compulsory purchase of land is consistent with the 1998 Act provided that it is in the public interest and is proportionate to the ends being pursued.
- 13.2 It is acknowledged that the compulsory acquisition of the Order Land will potentially amount to an interference with the human rights of those with interests in the Order Land. Under Article 1 of the first protocol of the Convention (which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions and no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law). The Council considers that the public interest and the public benefits of the Scheme (as described in paragraph 5.9 of this Statement) in implementing the Scheme outweighs any interference with these rights which may be caused.
- 13.3 Persons with interests in the Order Land have had the opportunity to make representations on the proposals as set out in section 10 (above). They have also had the opportunity to engage in negotiations for voluntary acquisitions prior to the CPO process being initiated. Objections can also be made to the CPO, which would be considered by an Inspector at a Public Inquiry. If the CPO were to be confirmed, an aggrieved person could also apply to the High Court seeking to quash a CPO if sufficient grounds could be demonstrated. Compensation will be payable based upon the principle of equivalence to those persons whose interests are acquired compulsorily.
- 13.4 The Council considers that there is a compelling case in the public interest to make the CPO which will facilitate the redevelopment of the Order Land as set out in the Scheme. The importance of implementing the Scheme is considered sufficient to justify interfering with the human rights of those with interests in the Order Land and that it would be appropriate and proportionate to make and confirm the CPO. Without the use of compulsory purchase powers, the much needed regeneration of the Order Land is very unlikely to be achievable.

## **14 Equalities**

- 14.1 In making the CPO the Council has also had regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. An Equalities Impact Assessment (EqIA) has been carried out in respect to the decisions to acquire land by agreement and where this is unsuccessful, to acquire land by compulsion. The EqIA demonstrates that throughout all stages of the decision making process to promote and implement a CPO, the Council has had regard to (i) the need to eliminate unlawful discrimination, harassment, victimisations, (ii) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and (iii) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 14.2 In terms of its process, procedures and general behaviour towards affected parties to ensure there is no discrimination, the Council and its agents have sought to comply with government guidance on compulsory purchase and sought to reduce the anxiety that can be brought about by the threat of compulsory purchase, by ensuring that the affected parties are provided with as much information about what the CPO process involves and the indicative timetable of events; this included 'claimant information' documents. The council has offered to alleviate any concerns about future entitlement to compensation by explaining to parties their entitlement to compensation, and the Council has done what it can to offer advice and assistance in respect to the relocation of businesses. Also, to ensure the affected party can have access to appropriate professional advice, the Council continues to offer and has paid for the reasonable professional fees of affected parties in respect to the disposal of their property to the Council so that they have access to good professional advice.
- 14.3 Whilst the PSED was a relevant factor when the Council made its decision to make and implement a CPO, it is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The Council also took into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such counterbalancing factors may justify decisions which have an adverse impact on protected groups.
- 14.4 The Council has given consideration to all the protected characteristics in the Equality Act 2010 to ensure that any potential impacts of the proposed CPO on the affected groups of people have been considered and where possible mitigated.

## **15 Other Matters**

- 15.1 The following is the Council's Statement as to the extent of the Scheme to be disregarded for the purposes of assessing compensation.
- 15.2 The Scheme comprises redevelopment and regeneration of the Order Land in Castle Hill, including the now derelict former Hippodrome Theatre within Dudley Town Centre in order to deliver a new higher education facility. The Scheme as it is to be delivered represents the extent of the Scheme to be disregarded for the purposes of assessing compensation in the 'no-scheme world'.

## **16 Further information**

16.1 Individuals seeking advice regarding the CPO should in the first instance contact one or other of the persons listed below, depending on the nature of the query:

16.2 For general queries about the CPO process including compensation, the first point of contact at the Council is;

Paul Mountford  
Head of Economic Growth and Skills  
Dudley MBC  
4 Ednam Road  
Dudley  
DY1 1HZ

01384 814186 / [paul.mountford@dudley.gov.uk](mailto:paul.mountford@dudley.gov.uk)

16.3 For queries about planning issues, please contact;

Carl Mellor  
Head of Planning  
Regeneration and Enterprise  
Dudley Council  
Council House  
1 Priory Road  
Dudley  
DY1 1HZ

01384 814157 / [carl.mellor@dudley.gov.uk](mailto:carl.mellor@dudley.gov.uk)

16.4 For any legal issues, please contact:

Tom Senior – Principal Solicitor  
Legal Services  
Dudley Council  
Council House  
1 Priory Road  
Dudley  
DY1 1HZ

01384 81 6543/ [tom.senior@dudley.gov.uk](mailto:tom.senior@dudley.gov.uk)

16.5 For general queries regarding the inspection of documentation listed below the first point of contact at the Council is Paul Mountford (see above).

## **17 Relevant documents**

17.1 The Council intends to refer to, or to put in evidence, the documents (or relevant extracts from those documents) which are listed below, and which are referred to in this Statement of Reasons:

1. Dudley Metropolitan Borough Council Cabinet report and Appendices 14<sup>th</sup> December 2022
2. CPO and CPO Schedule
3. CPO Map
4. Extract from Town and Country Planning Act 1990
5. Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion (published by the Department of Communities and Local Government in July 2019)
6. Equality Impact Assessment
7. Health Innovation Dudley Planning Permission (reference P21/1505) granted 16<sup>th</sup> December 2021
8. Dudley Borough Development Strategy March 2017
9. Dudley Area Action Plan 2017

17.2 The above documents are available to view on the Council's website <https://www.dudley.gov.uk/residents/planning/compulsory-purchase-orders-cpos/> and have been placed on deposit and may be inspected at the Council's Dudley Council Plus offices at 259 Castle Street, Dudley DY1 1LQ on Mondays to Friday during normal office hours.

## **18 Conclusion**

18.1 The use of the Council's CPO powers is necessary and justified for the following reasons:

- 18.1.1 The purpose of the CPO is to deliver regeneration of a landmark town centre site. This will be achieved by the redevelopment of the Order Land for a new higher education facility that will contribute to the promotion and improvement of the economic, social, and environmental wellbeing of the acquiring authority's area. It is therefore in the public interest to proceed with redevelopment of the Order Land;
- 18.1.2 This Statement demonstrates that the fundamental principles of compulsory purchase, set out in Paragraphs 12, 13, 14, 15 and 17 of the Guidance, and the specific factors to be considered when a CPO is to be made under the 1990 Act, have been considered and addressed to demonstrate that a compelling case is made for use of the CPO powers in the public interest;
- 18.1.3 Whilst planning consent for the Scheme is still to be secured, planning consent for a four storey building on the same site was secured on 16<sup>th</sup> December 2021 (subject to conditions). The Council, as Local Planning Authority, has subsequently advised that a proposal for a similar or lesser scale building would continue to receive the support, in principle, of the LPA. £25m of Towns Deal funding is secured for the Scheme demonstrating that there are no known legal or financial impediments to deliver the Scheme;
- 18.1.4 The Council has been engaging with third party landowners and attempting to negotiate the acquisition of their interests to secure vacant possession of the Order Land since the autumn of 2021 when funding became available. These efforts have been significant and over a reasonable period of time and so now as a necessary measure of last resort, the use of CPO powers is therefore

required to secure single ownership of the Order Land to meet the strict delivery timescales of the Scheme;

- 18.1.5 Private treaty negotiations with the holders of the third party interests will continue to acquire as many interests as possible by negotiation throughout the CPO process;
- 18.1.6 The Council has applied all aspects of the Guidance in its behaviour and processes to promote and make a CPO for the Order Land.
- 18.1.7 Having considered relevant nation planning policy, the Guidance and the Local Plan the Council is satisfied that there is a compelling need in the public interest for compulsory purchase powers to be sought in order to secure the development, redevelopment or improvement of the Order Land by way of the delivery of the Scheme for the economic, social and environmental improvement of the City of Carlisle and the area. The Council has therefore made the Order and will in due course ask the Secretary of State to confirm the Order.

Dated \_\_\_\_\_

## APPENDIX 1

Plot No	Description and purpose for which land is required
1	<p>All interests, other than those of the acquiring authority, in 828 square metres or thereabouts, of car park and accessway, situated north of highway known as Castle Hill (A459), Dudley</p> <p>Land is required for the purpose of resurfacing a staff car park used by Dudley Zoo and carrying out improvements to boundary treatment fronting Castle Hill and boundary of proposed public plaza</p>
2	<p>All interests, other than those of the acquiring authority, in 891 square metres or thereabouts, of storage yard situated north of highway known as Castle Hill (A459), Dudley</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
3	<p>All interests, other than those of the acquiring authority, in 1700 square metres or thereabouts, of commercial premises and forecourt known as The Hippodrome, Castle Hill, Dudley</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
4	<p>All interests, other than those of the acquiring authority, in 1,277 square metres or thereabouts, of accessway, situated north of highway known as Castle Hill (A459), Dudley and part width of highway known as Castle Hill (A459), Dudley</p> <p>Land is required for the purpose of construction and rights to access the Order Land from the public highway in Zoological Drive</p>
5	<p>All interests, other than those of the acquiring authority, in 1,008 square metres or thereabouts, of private access road, car park, and landscaped area, situated north of highway known as Castle Hill (A459), Dudley and part width of highway known as Castle Hill (A459), Dudley</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
6	<p>All interests, other than those of the acquiring authority, in 257 square metres or thereabouts, of commercial premises known as 13 Castle Hill, Dudley, DY1 4QF and part width of highway known as Castle Hill (A459), Dudley</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
7	<p>All interests in 1,074 square metres or thereabouts of car park and commercial premises known as Castle Hill Banqueting &amp; Conference Suite, 15 - 21 Castle Hill Dudley, DY1 4QF Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
8	<p>All interests, other than those of the acquiring authority, in 330 square metres or thereabouts, of half width of highway known as Station Drive, situated north of Castle Hill (A459) Dudley</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>

9	<p>All interests, other than those of the acquiring authority, in 26 square metres or thereabouts, of commercial premises known as Castle Hill Banqueting &amp; Conference Suite, 15 - 21 Castle Hill Dudley, DY1 4QF</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
10	<p>All interests, other than those of the acquiring authority, in 47 square metres or thereabouts, of access way and Public Right of Way (Cycle Path Ref: DCY0585), situated north east of Castle Hill Banqueting &amp; Conference Suite, 15 - 21 Castle Hill Dudley, DY1 4QF.</p> <p>Land is required for the purpose of constructing a new higher education facility and public realm (hard and soft landscaping).</p>
11	<p>All interests, other than those of the acquiring authority, in 1586 square metres or thereabouts, of private road, known as Zoological Drive, Dudley, and Public Right of Way (Cycle Path Ref: DCY0585), situated north of 15 - 21 Castle Hill Dudley</p> <p>Land is required for the purpose of acquiring rights to access the Order Land from the public highway in Zoological Drive</p>
12	<p>All interests, other than those of the acquiring authority, in 142 square metres or thereabouts, of private road, known as Zoological Drive, Dudley, situated north of 15 - 21 Castle Hill Dudley, DY1 4QF</p> <p>Land is required for the purpose of acquiring rights to access the Order Land from the public highway in Zoological Drive</p>
13	<p>All interests, other than those of the acquiring authority, in 265 square metres or thereabouts, of private road, known as Zoological Drive, Dudley, situated north of 15 - 21 Castle Hill Dudley, DY1 4QF</p> <p>Land is required for the purpose of acquiring rights to access the Order Land from the public highway in Zoological Drive</p>
14	<p>All interests, other than those of the acquiring authority, in 654 square metres or thereabouts, of private road, known as Zoological Drive, Dudley, situated north of 15 - 21 Castle Hill Dudley, DY1 4QF</p> <p>Land is required for the purpose of acquiring rights to access the Order Land from the public highway in Zoological Drive</p>
15	<p>All interests, other than those of the acquiring authority, in 2917 square metres or thereabouts, of construction zone and private road known as Zoological Drive, Dudley, situated west of Tipton Road, DY1</p> <p>Land is required for the purpose of acquiring rights to access the Order Land from the public highway in Zoological Drive</p>



## APPENDIX 2 Order Land

### APPENDIX 3 Schedule of third party interests

<b>Plot No(s)</b>	<b>Owner/occupier</b>	<b>Property</b>	<b>Tenure</b>	<b>Description of property</b>
1, 4, 5, 9, 10, 11, 12, 13, 14	Dudley and West Midlands Zoological Society Limited	Dudley Zoo and Castle	Long leasehold	Zoo and Castle
6	Michael and Victoria Wolohan	13 Castle Hill, Dudley	Freehold	Commercial premises
7, 9	Castle Hill Suite Limited	15 Castle Hill, Dudley	Freehold	Commercial premises