

## Appendix 2

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### Further Supporting Information

The proposed improvements known as the 'Torquay Gateway' includes a series of road, junction and cycle improvements in the areas of Torquay which have been identified for improvements to access into the town from the northern boundary to the Shiphay junction and also at Gallows Gate.

Funding of £2.49m was agreed in principle by the LTB on behalf of the Heart of the South West Local Enterprise Partnership Growth Deal secured from Central Government (DfT).

The Torquay Gateway Improvements comprises of 4 separate schemes:-

1. Shiphay Lane Cycle Path
2. Gallows Gate widening
3. Scotts Bridge Junction Improvements
4. Shiphay lane to Lowes Bridge widening.

Schemes 1, 2 and 3 have now been fully implemented and the relevant funding has been claimed. Scheme 4, as detailed in this report, has yet to be commenced due to a longer than anticipated negotiation process with Network Rail to acquire the land for Highway widening.

Torbay Council's Spatial Planning Department has confirmed that Planning consent is not required, as the proposed highways widening scheme would qualify as a permitted development under Part 13 – Development by Local Highways Authorities, Class A of the General Permitted Development Order.

The section of scheme in question is currently planned to be commenced in the Autumn 2019, however in order to ensure that the acquisition of land does not present a risk to the successful completion of the scheme authority will need to be granted to officers to progress a CPO at this stage due to the likely timescales that may be involved with the CPO process.

Torbay Council have progressed the detailed design of the highway widening scheme and this has confirmed that there is insufficient land within either Torbay Council ownership or within existing public highway to accommodate the required scheme.

Torbay Council is currently entering into negotiations with Network Rail where land acquisition is required with a view to securing the purchase of land required for highway widening.

If negotiations with Network Rail are not successful in acquiring the required land or are significantly delayed, then the only remaining option is compulsory purchase. Due to the lengthy process involved in making a Compulsory Purchase Order it is necessary to instigate procedures at this stage as failure to acquire land within a reasonable timescale would result in failure to deliver to scheme in its entirety.

The Council as the highway authority has powers under the Highways Act 1980 to acquire compulsorily or by agreement, land required for the improvement of a highway and to acquire compulsorily rights over land for highway purposes.

The proposal raises implications under the Human Rights Act 1998, the First Protocol Article 1 and (where the properties to be included in the proposed Order are residential dwellings) Article 8 of the Convention.

The First Protocol, Article 1 protects a person's peaceful enjoyment of his possessions (including property). The Article states that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. However, the provisions do not impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The making of a Compulsory Purchase Order (CPO) will interfere with the peaceful enjoyment of property of the present owner if confirmed by the Secretary of State, however, such interference is permitted by law, under the Highways Act 1980 and the Acquisition of Land Act 1981 (which sets out the procedure for making and confirming a CPO). It is considered that the making of the proposed CPO, for the reasons set out in the report, will not be a violation of those rights as the Acquiring Authority is content that the steps taken are in the public interest and that the interference with the peaceful enjoyment of property is proportionate having regard to the legitimate aims pursued by the Council in making the proposed CPO and that the owner directly affected by the CPO will be entitled to compensation as provided by law, such compensation to be settled in the absence of agreement by the Upper Tribunal of the Lands Tribunal.

The Acquiring Authority has also given regard to Article 8 of the First Protocol which states that everyone has the right to respect for his private and family life, his home and his correspondence. The Acquiring Authority is authorised to acquire land compulsorily in the circumstances set out in article

8(2) of the First Protocol. This property is not a residential dwelling or used for operation purposes as part of Network Rail operations. The Acquiring Authority considers that the many benefits that the redevelopment of the CPO land will bring to the area provide a compelling case in the public interest for the use of compulsory purchase powers and outweigh the impact on existing owners and occupiers. In these circumstances, the compulsory acquisition of the CPO land will not conflict with Article 8 of the First Protocol.

A CPO may be made by the Council, but must be confirmed by the Secretary of State if there are objections. If objections are made to the Order and not withdrawn, the Secretary of State is likely to hold a public inquiry before determining whether or not to confirm the Order, in full or in part. That could incur the Council in presently unquantifiable costs. These might be significant, but may be considered small compared with the overall cost of the scheme.

If the Council acquires land under compulsory purchase powers, statutory provisions as to compensation will apply. The Council will be required to pay market value, payment for any injurious affection and in certain circumstances additional costs such as Home Loss payments and disturbance.

A resolution of the Council to make a CPO may enable qualifying persons to serve a blight notice on the Council requiring it to acquire blighted land.

In some cases where the Council proposes to acquire part only of a property, it may be required to purchase the whole of the property interest unless it can show that part can be taken without material detriment to the whole or without significantly affecting the remaining property's amenity, value, or convenience, however this is unlikely to apply in this instance, as this is not land used for residential or operation purposes. In the case of a dispute the issue will be determined by reference to the Lands Tribunal.