Appendix 3.

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For attention of: Deborah Cluett
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23 May 2014

Report to Court of Common Council on compulsory purchase order relating to 120 Fenchurch Street

1. INTRODUCTION

1.1 We welcome the opportunity provided by the City to comment on its report ("**Report**") to the Court of Common Council ("**Court**"), in a consolidated fashion, in advance of the 12 June 2014 Court session.

1.2 We note the Report now clarifies a number of issues which have been raised by Jones Day (representing Linville Limited ("**Linville**")) throughout the compulsory purchase order for 120 Fenchurch Street ("**CPO**") process to date; these remain the focus of this response.

1.3 We do not consider any matters raised throughout the CPO process to date affect the integrity of that process as undertaken by the City nor should prevent Court from resolving to make the CPO.

2. CPO AS LAST RESORT

2.1 Jones Day has sought to argue the CPO process underway is premature and cannot be considered a "last resort", as required by the relevant Government Circular 06/2004. The Circular states that "*The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail.*"

2.2 There is no question that CPO should be a last resort. However we are now at this point.

2.3 Initial discussions with Linville were had in 2009. Formal engagement commenced in 2011 with a meeting between our client's agents and Linville. An offer was made to Linville in April 2012 following the grant of planning permission in March that year. Despite numerous meetings, correspondence and offers made from that point to the commencement of the CPO process (including increased offers made in September, October and November 2013) our client was unable to reach agreement.

2.4 Immediately prior to the CPO process (and to seek to avoid it) our client made increased offers in January and February 2014. In parallel, our client offered to enter into an alternative dispute resolution process in February 2014 but this was not taken up. While Linville subsequently indicated to the City on 2 April 2014 that it would agree to a form of ADR, that was on the basis that such process would not be binding upon Linville. For obvious reasons, that is not satisfactory for our client.

2.5 Immediately after the Planning and Transport Committee meeting, our client wrote again to Linville seeking a further meeting and offering to discuss pursuing an alternative dispute resolution. Our client's agent then met with Linville to discuss settlement.

2.6 No agreement has been reached and the timing of the development is now critical. The CPO is a last resort.

3. ADEQUACY OF NEGOTIATIONS

3.1 Jones Day has sought to claim that our client has not adequately negotiated with Linville as they have underestimated the value of Linville's interest such that its offers and efforts to settle are not realistic or serious. This claim is not supportable.

Independent valuation

3.2 Our client commissioned an independent valuation from BNP Paribas regarding the value of the Linville interest. It provided the full valuation report, which explains in detail the valuer's approach and methodology, to both the City and Linville on 9 September 2013. While its early offers were based on that valuation, and without prejudice to its position that the BNP Paribas valuation is correct, our client has subsequently sought to reach agreement with Linville by increasing its offer to more than double that valuation.

3.3 Before proceeding with the CPO the City independently sought a valuation from Gerald Eve as to the value of Linville's interest. This valuation was sought solely to provide independent confirmation to the City that our client's offers were reasonable. That independent valuation came out in the same region as our client's offers over the past 6 months; Linville continues to seek considerably more than this.

3.4 While we understand Linville's position on value is premised on an independent valuation undertaken by Montague Evans ("ME"), Linville has refused to provide the details of the ME approach and methodology to our client or the City to date. It would be manifestly unfair if the CPO were held to be premature on the basis of Linville alleging that the negotiations are not valid as his value has been underestimated, whilst at the same time refusing to provide sufficient information on which that assertion is based.

Relevance of Heron Quays West CPO

3.5 Jones Day has sought to make a case that an Inspector's decision on a CPO case relating to land at Heron Quays West (in Canary Wharf) supports its case that adequate negations have not occurred. It does not.

3.6 In that case the Inspector's decision (to recommend a CPO should not confirmed) related to the uncertainty of delivery of the scheme and that proper consideration of alternative sites had not been considered. Mention was also made of the lack of serious effort at negotiation by either side but this was in respect of negotiations after the council had resolved to use its CPO powers. None of those factors are relevant or present in this CPO: there is certain consented scheme, a tenant, and open and adequate negotiations have and will continue to occur in parallel with the CPO.

4. CONCURRENT PROCESSES

4.1 The Court should be aware that the resolution to use CPO powers is the first stage in a long process which affords the parties numerous opportunities to negotiate and seek agreement without the use of CPO powers, and to present their case on valuation. We have appended a flowchart to this letter demonstrating these subsequent procedures which would still need to be followed (see Annex 1). This confirms the appropriate point at which valuation matters should be properly assessed as the compensation stage, where the expertise of the Upper Tribunal (Lands Chamber) can be utilised.

4.2 In any event, disagreement over valuation should not prevent the CPO proceeding. It is appropriate for CPO processes and negotiations to run in parallel. The Circular states: "*Given the amount of time which needs to be allowed to complete the*

compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations."

5. CORRECTION REGARDING BREAK RIGHTS

5.1 Jones Day has alleged the Planning and Transportation Committee was misled in making its resolution on the CPO in that, in addition to Linville, there is a further occupational sub-tenant interest (Alumina Limited) in the site which was not identified in that report and which does not have a 3 month break period. A recent office copy search revealed this lease was granted by Linville to Alumina Limited on 31 January 2014; the lease is due to expire in 2022 and has no break right.[1]

5.2 We disagree the members were misled. The main interests have been set out in Report but there are a number of derivative interests in the site which were not specifically identified and the stage for ensuring full identification of all affected interests is done at the referencing stage of the CPO process (refer Annex1).

6. SECTION 73 AMENDMENTS TO PLANNING PERMISSION

6.1 Jones Day has stated that the CPO is premature as a s73 minor material amendment is proceeding. This does not constitute a reason to defer the CPO. The changes sought do not affect the principle and benefits of the development permitted which underpin the CPO case; they are minor amendments only.[2]

7. CITY PROCEDURE

7.1 Jones Day has criticised the City's handling of a number of letters it wrote regarding raising a series of valuation and other matters and provided to the City (and to the members directly) the evening before each of the committees.

7.2 The City made its own assessment as to the appropriate manner in dealing with correspondence which Linville took the unusual step of providing directly to members on a last minute basis (but not to our client). We were present at both Committee meetings and note the City Solicitor summarised the letter and gave an assessment of relevance before the Planning and Transportation Committee. We consider the City

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[1] Linville had confirmed to our client's agent in a tenancy schedule provided on 27 February that Linville had the ability to secure vacant possession in respect of Alumina on 6 months' notice. The report to the Planning and Transportation Committee reflected that confirmation.

[2] Being for a second entrance lobby, security scanning for visitors to the roof garden, a small part of the retail use becoming office use, and reduction in the size of the basements.

took an appropriate approach in so acting and that the members were happy to proceed on that basis as evidenced by the voting in favour of making the resolution.

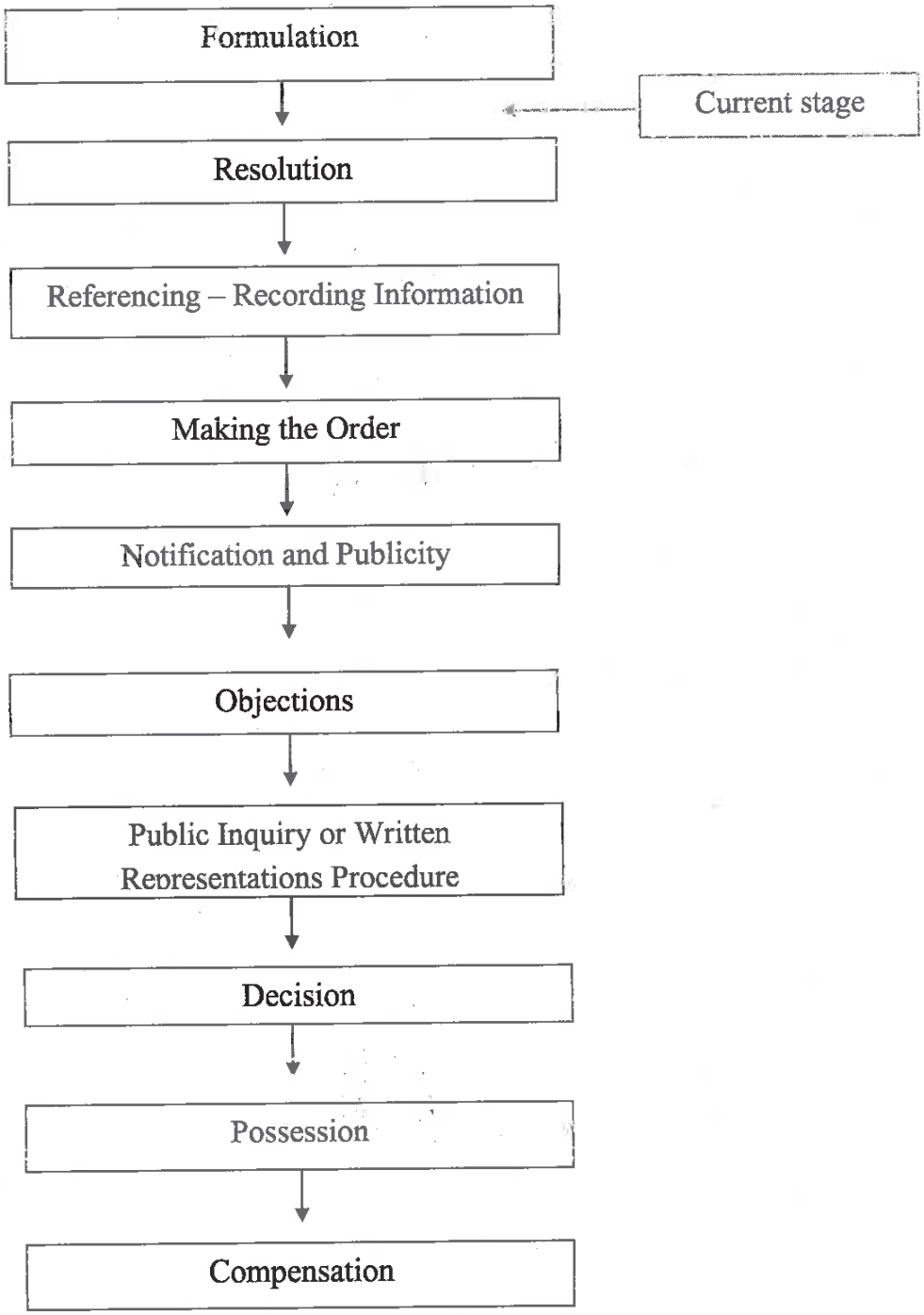
7.3 In any event the City has now provided an open opportunity for both parties to comment on the Report.

Yours faithfully

Clifford Chance LLP

Clifford Chance

Annex 1 : Compulsory Purchase Process[3]



[3] Adapted from DCLG Guidance *Compulsory Purchase and Compensation*, October 2004.

JONES DAY

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The Comptroller & City Solicitor
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BY E-MAIL AND BY POST

Dear Sirs,

118/119 Fenchurch Street
Potential Compulsory Purchase Order
Court of Common Council meeting 12 June 2014

We refer to our letter to you of 9 May 2014 and our e-mail exchange of 15/16 May.

That e-mail exchange shows, once again, the remarkable lengths to which the City's legal department is going to avoid sharing our letters with members.

Rather than do so, the City's legal department now suggests that we write a further letter, setting out Linville's position as "*this will be far better for all parties than seeking to pass to Members a series of letters and responses*".

We do not consider it is "*far better*" for Linville that the letters we have written are not shared with members, or indeed the public at large. On the contrary, we believe the City's legal department's persistent obstinacy in this respect is designed to ensure that the full flavour of the highly pertinent points we have raised, including the role of officers, is diluted by the time it reaches members.

Nevertheless, for the benefit of members we set out here some of the key points arising from that correspondence, plus other points.

1. **The resolution of the Planning & Transportation Committee on 29 April was unlawful as officers failed to provide relevant facts to members (our letter of 30 April).**

These included:

1.1 Our letter of 25 April, sent to the Assistant City Solicitor ("**ACS**") with the clear intention that it was to be shared with members, and which formed a key part of Linville's representations to that Committee. Amongst the points covered by the 25 April letter, we explained:

1.1.1 in detail why, even on the express analysis of the City's valuation by Gerald Eve, the value of Linville's interest must significantly exceed the upper range given by Gerald Eve of £7.725 million and why, therefore, the offers made have not been adequate nor reasonable;

1.1.2 why the references to "*protracted negotiations*" and Linville having refused numerous offers were skewed, suggesting to members that Linville had been unreasonable. As stated at the time:

> *They have only been protracted because of the absurd starting point adopted by Saxon Land and their unwillingness to enter into meaningful (i.e. realistic) negotiations. As recently as September 2013 they produced a valuation which stated the amount that would be payable to Linville on a CPO basis was a mere £1.4m, but they offered £3.25m.*

1.1.3 the sudden volte face of the City's officers on 8 April, which has never been explained to members:

> *The Committee Report (paragraph 28) states that "the City has urged Linville to settle the consideration for its interest through alternative dispute resolution. This has not been taken up as Linville relies on its own valuation".*
>
> *Firstly, the Committee Report omits to mention the fact the £15m valuation procured by Linville was itself an independent market valuation by Montagu Evans (Savills being Linville's agents in the negotiations). We have pointed this out several times before to the City's officers.*
>
> *Secondly, we would draw members' attention to the fact that as recently as 21 March 2014, the City suggested that, as an alternative to ADR, the City could act as an intermediary by appointing an independent valuer. On 2 April we wrote back to the City, pointing out that, notwithstanding that there was already a fair, independent valuation of £15m, we could see the*

merit of obtaining a further independent valuation and that Linville would participate in such a process, provided that it was fair and transparent to all concerned. We gave constructive suggestions as to how the independent expert should be instructed and how the process could work. We asked officers to give us a shortlist of 3 valuers to choose from. We confirmed that Linville would pay one third of the professional fees for the valuer for such an exercise. We also confirmed that, although Linville was not prepared to be bound by such an exercise (why would it, when there was already an independent valuation of £15m?), "Linville accepts that if the further independent valuation is conducted fairly as envisaged above and with no errors or complaint, that will be a material fact in any future proceedings connected with a CPO".

However, on 8 April the City's officers suddenly changed tack. The purpose of the independent valuation that the City was seeking had changed - it was no longer on the basis set out on 21 March. It was with the aim of assessing whether the City should proceed with the CPO. The City in effect abandoned its desire to assist the parties to meet on price in preference for a rapid application to Committee to sanction a CPO. This action has prematurely deprived the parties from an opportunity to reach agreement on price, which could have avoided the need for any consideration of a CPO.

1.1.4 that Linville does not oppose the principle of development – provided that a fair and realistic price is offered.

If no such offer is forthcoming there are other substantive points about the merits of the CPO that Linville will contest, as we set out for officers on 26 February 2014.

1.2 The complete and material omission of any consideration in the Committee report, or at the Committee meeting, of the 8 year sub-lease held by Alumina Limited, and of which Saxon Land and the City's officers were previously aware.

Instead members were told (paragraph 47) that all of the occupational sub-leases had 3 month break notices and "*accordingly it is not considered that the making of a CPO is likely to lead to any, or any significant, interference with property rights ....*".

When this clear error was pointed out to the ACS, rather than admit the error, we had the unedifying spectacle of the ACS claiming, on 2 May, that "*paragraph 47 of the Committee report refers only to those interests terminable on 3 months' notice and is not intended to refer to Alumina*"!

As we pointed out in our letter of 7 May:

> *If that is so, why did officers not take the opportunity to set out elsewhere within the Committee Report the analysis as to Alumina that is now seen in the 2 May letter? We invite the City to provide us with any documentary evidence that the City can produce to show that the analysis by the City's officers, that the City now relies on in its letter of 2 May, pre-dates the Committee Report.*

We have received no such evidence.

1.3 The existence of a planning application to materially amend the Saxon Land scheme, which was only submitted by Saxon Land in mid-March 2014.

Members of the Planning & Transportation Committee were not told about this material point, despite the City's planning department knowledge of it. As explained in our letters of 30 April and 7 May:

> *Linville's case includes the point that it is premature for members to proceed with the making of a CPO. This was therefore an important point of debate.*
>
> *The request from Saxon Land for the City to use its CPO powers was made on 17 January 2014. The Committee Report requests that members give power to make a CPO in respect of the development authorised by permission 11/00854/FULEIA of March 2012 (or a substantially similar scheme of development) (our emphasis). No explanation was given to members for the wording we have underlined*
>
> *Given the issue of prematurity, it was directly relevant to members' decision for them to be informed that Saxon Land and their intended occupier, M&G, do not propose to utilise the March 2012 permission to which members referred. Instead, they plan to utilise a varied scheme by way of a further planning application (ref. 14/00237/FULMAJ), which was only submitted to the City on 14 March 2014, some two months after the request to use CPO powers, and which as at today, is still pending consideration.*
>
> *In the context of the issue of prematurity, members should at least have been told by officers that such a recent planning application, which will necessitate a varied Section 106 agreement, had been received and is still outstanding and, in the words of the covering letter submitted with that planning application, has been submitted "in order to meet the requirements of the proposed occupier".*

> *... As stated in our letter of 30 April, the fact that members were not told about the current, undetermined planning application for a redesign of the scheme is directly relevant to the issue of prematurity of a CPO.*
>
> *The City's response on 2 May is that the ACS and the Head of Planning have discussed the point, now, and concluded that there is no obvious reason why the new planning application will not be granted, so the existence of the application is not material to the making of the CPO.*
>
> *Once again, this smacks of after the event justification, with officers usurping the role of the Planning & Transportation Committee.*
>
> *The City's stance can be summarised as: it was material to tell members about the existence of the 2012 planning permission, which the developer's own planning agents admitted to the City's officers, in writing, in mid-March 2014 does not "meet the requirements of the proposed occupier", M&G; but it was not material to tell members of the existence of the undetermined planning application, submitted only in mid-March, to redesign the scheme "to meet the requirements of the proposed occupier", M&G.*
>
> *The existence of this recent and undetermined planning application sits very uneasily with the notion of urgency that was being impressed on members at the 29 April meeting. The City's planning department knew about that planning application prior to the preparation of the Committee Report and the Planning & Transportation Committee meeting, but no mention was made of it to members.*

That planning application is still outstanding today.

For these reasons, the decision of the Planning & Transportation Committee to resolve to recommend to the Court of Common Council that a CPO be made was unlawful and cannot be relied upon by the Court. For that reason, the Court cannot lawfully resolve to "*concur with the resolution and recommendation*" of the Planning & Transportation Committee, as now recommended by officers, as there is nothing lawful with which to concur.

Given that the CPO is based on planning powers and the Planning & Transportation Committee is the designated committee for such matters, whose conclusions would clearly have a great influence on the Court of Common Council, we pointed out to the ACS that the only fair process is to remit the

matter back to the Planning & Transportation Committee so that it could re-assess in the light of the full facts. Officers have chosen not to do so.

2. **The role of officers**

As well as the points above, on 9 May, after the Policy & Resources Committee meeting of 8 May, we wrote to the ACS again:

> *We refer to our e-mail exchanges of yesterday (attached) and yesterday's Policy & Resources Committee ("P&R") meeting.*
>
> *The Assistant City Solicitor ("ACS") refused in those e-mail exchanges to put a copy of our letter of 7 May before members of the P&R and the Court of Common Council, insisting instead that the City's legal department would seek only to summarise the letter for members of the Court, in so far as the City's legal department considers it to be material.*
>
> *The ACS did, though, ask the committee clerk to put before members of both the P&R and the Court the City's letter of 2 May, which purports to deal with our letter of 30 April.*
>
> *Cutting the correspondence off at that point for members may have given members the impression that the City had satisfactorily dealt with the points in our letter of 30 April. As set out in our letter of 7 May, that is simply not the case.*
>
> ...
>
> *We find the refusal of the City's officers to put our letter before members deeply troubling. We have not experienced a local planning authority refusing to put a letter before members when requested to do so in the context of a planning application, let alone in circumstances where the authority is proposing to acquire property against the will of the owner.*
>
> *We are left with the distinct impression that officers do not want our letter to be put before members due to concern that members might agree with it.*
>
> *If officers are confident of the case for a compulsory purchase, they should have no qualms in putting our letters before members in full and then explaining to members why they disagree with the points made in those letters.*

The P&R meeting

At the P&R meeting, some members had received our letter of 7 May via Mr Rooney (of Linville's) e-mail earlier that morning. Other members had not read the letter. The Chairman of the P&R stated that no greater attention should be given to matters set out in direct correspondence to members than if matters had been raised via officers.

To be clear, Linville is reluctant to contact members directly. It has only done so because it has no confidence that the City's officers will provide correspondence, and thus Linville's case, fully and fairly to members. The e-mail exchanges of yesterday suggest that Linville judged that correctly.

Councillor Alexander Deane stated that he had read our letter of 7 May and he felt it raised matters of concern that ought to be debated. The Chairman made it clear that the P&R was not to debate the matter - the correct forum for debate would be the Court.

The City Solicitor stated (at odds with yesterday's e-mail exchanges) that officers had distributed the letter of 7 May to members of the P&R for reasons of transparency. He was immediately, and fairly, corrected by Councillor Deane, who stated he had not received the letter from officers, he had received it from Linville.

3. **The changes to the Committee Report for the Court of Common Council meeting**

On 16 May the ACS stated by e-mail that the changes to the Committee Report would not be material. On 21 May, Ms McHugh described the changes as "*minor*".

We disagree.

Some of the changes that are now made to the report are clearly material because they purport to deal with some of the points made above. In short, officers are seeking to put the wobbly train back on its track.

The point about Alumina's 8 year sub-lease is belatedly referred to in paragraph 15. However, it is portrayed as insignificant.

In addition, we have the admission, only now, that Draft Policy DM1.3 of the City's proposed local plan seeks to protect the very sort of office accommodation (i.e. small and medium sized business units) that the proposed CPO would remove! This was not, of course, mentioned to members of the Planning & Transportation Committee.

Members will note the complete omission by officers, once again, to mention to members the undetermined planning application, so recently submitted, and which dispels the notion of urgency being put to members of the Planning Committee.

4. **Compensation is purely a matter for the Lands Tribunal**

As explained in our letters of 25 and 30 April, this notion (stated by the Chairman of the Planning & Transportation Committee on 29 April and 8 May) was expressly rejected by the Inspector who refused to confirm the Heron Quays CPO. Members need to be satisfied that reasonable and adequate negotiations have been undertaken in line with Circular 06/2004.

5. **In any event, the CPO is a futile exercise**

Members are told in paragraph 41 of the committee report that completion of the development must be procured for M&G by September 2017. To achieve this, paragraph 38 makes it clear that the Site must be assembled in time to allow for construction to commence in early-mid 2015.

On 8 May, the City Solicitor advised members of the Policy & Resources Committee that the CPO process would "*take around 18 to 24 months*" to come to fruition.

On the basis of the City Solicitor's own advice to members, the pursuit of the CPO will therefore not deliver the development by M&G's required occupation date. It is therefore pointless to proceed with it, as it will not bring about the benefits referred to by the City's officers.

In reality, the only way Saxon Land can now meet the required construction and occupation dates, and bring about the benefits to the City of London referred to in the Committee Report, is to negotiate fairly and reasonably as to the market price with Linville at the soonest opportunity.

As we have tried to point out in our letters, if Saxon Land had done that from the outset, rather than advancing the totally misconceived claim (via CBRE) that "*on a CPO basis*" Linville's interest is worth just £1.4 million, members would never have been troubled with this matter.

As we said in our letter of 25 April:

> *If the actions of Saxon Land to date are indicative of the level of negotiation that is required from a developer before the City will jump in with a CPO, then CPOs in the City of London will no longer be a matter of last resort - they will be commonplace.*

Conclusion

It is common ground that a CPO must be a matter of last resort, and that members must be satisfied that there is a compelling case in the public interest before making a CPO.

For the reasons set out above, we submit there is no compelling case here.

We respectfully ask that members resolve not to make a CPO.

Yours faithfully,

Jones Day

Enclosure

cc: (by e-mail)
Mr Giles Rooney - Linville
Mr Habib Rehman - Linville
Mr David Herring - Linville