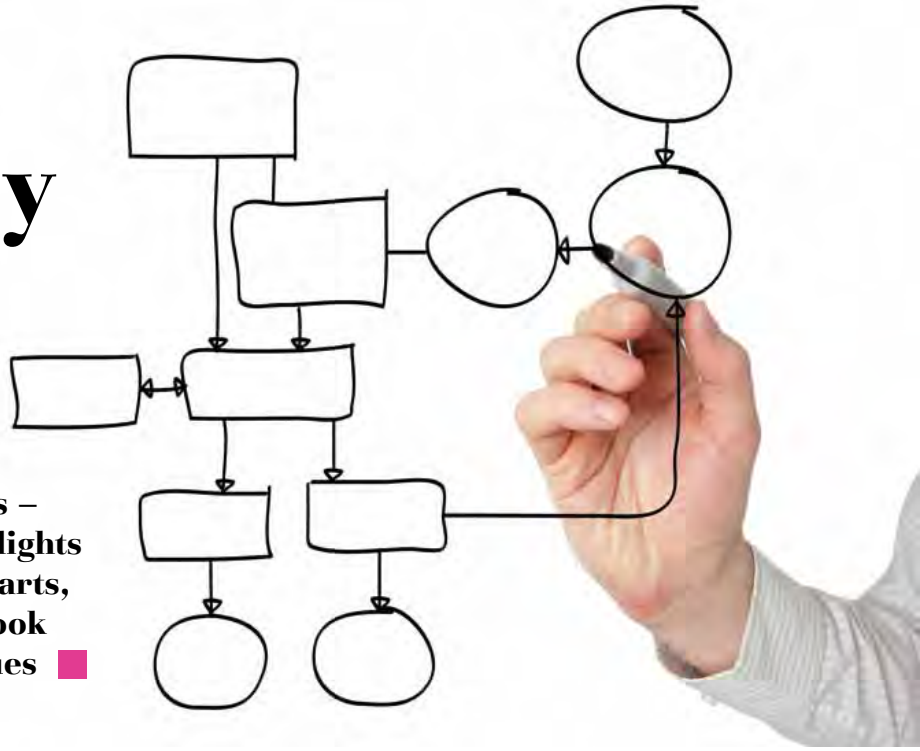
Compulsory purchase



Regeneration CPOs – Stan Edwards highlights some basic flow charts, and takes a brief look at CPO reform issues

"If you can't describe what you are doing as a process, you don't know what you are doing."
W. Edwards Deming

The greatest advantage of a confirmed CPO is that it brings timescale certainty to developers/investors and makes significant but unattractively complex development opportunities much more attainable. In the previous two articles, the CPO process was viewed from a project concept through to making the Order, focusing for simplicity on a T&CPA regeneration CPO power. Of course CPOs are found taking other routes generated by other purposes and powers. Consider as principles:

- local authorities' non-ministerial CPOs – e.g. regeneration, development, redevelopment, improvement, housing, listed buildings, highways (non-trunk)
- central government ministerial CPOs – e.g. highways (major routes), heritage, Government of Wales Act
- utilities
- Transport and Works Act 1992 Orders
- national infrastructure – via Development Order route
- special Parliamentary Bill.

These and more are well covered in other literature.

This paper reviews the process in a very basic form, to give some idea of events and time frames not meaning to be a treatise on statutory CPO procedures, which is adequately covered in Circular 06/04 and other relevant literature. However, staying with the basic regeneration CPO, **one of the things missing in the previous articles was some form of route map,** particularly for the stages beyond making the Order. I still maintain that the important part of the process is pre-Order – getting it right and rehearsing Lord Nicholls' statement, "*normally the scope of the intended works and their purpose will appear from the formal resolutions or documents of the acquiring authority*"[1].

A standard sequence can be considered as:

A – Concept to Order (covered in previous issues)

- pre-CPO
- justifying the project (case) – in the public interest
- making a "compelling case in the public interest" – justifying a CPO
- authority decides to promote a CPO and obtains a resolution for **Approval in Principle (AIP)**
- set and fulfil requirement (in the AIP) as preconditions to make and seal a CPO
- build-in community engagement
- technical approval of draft
- obtain authorisation to make and seal the CPO (conditions fulfilled).

B – notices and submission to possession

- notices and submission
- objections
- public inquiry
- inspector's report
- confirmation (or not) by the appropriate minister
- challenge period (six weeks)
- possession (general vesting declaration/notice to treat) and title.

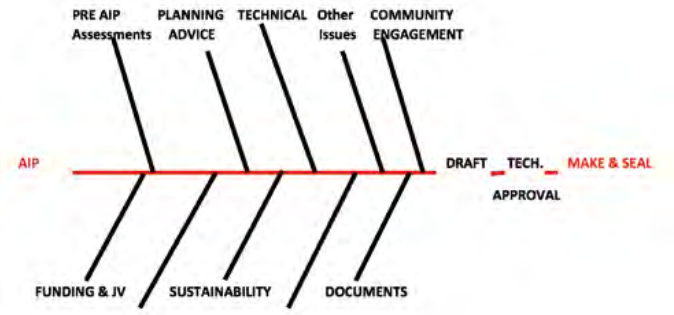
A commencement

The sequence **A** comprises the raison d'être of a necessary initial report to the cabinet or committee of the acquiring authority for formal AIP to promote a CPO. The AIP is the first important "event threshold" in the whole process. It brings together all the factors and facts already considered and the pre-conditions required to obtain authority to make and seal the CPO. In process terms, other

elements will have taken place, such as negotiations with vendors (potential claimants) and documented community/stakeholder engagement, plus required funding and relationships with partners. The next event threshold is making the Order following a resolution by the acquiring authority (AA).

A regeneration CPO is no exception to most CPOs, in that there are statutory timings for **B** but not for **A**. In an attempt to demonstrate these elements an adaptation of a fishbone diagram (Fig. 1) may assist:

Fig.1 Fishbone (Ishakawa) of authorisation process



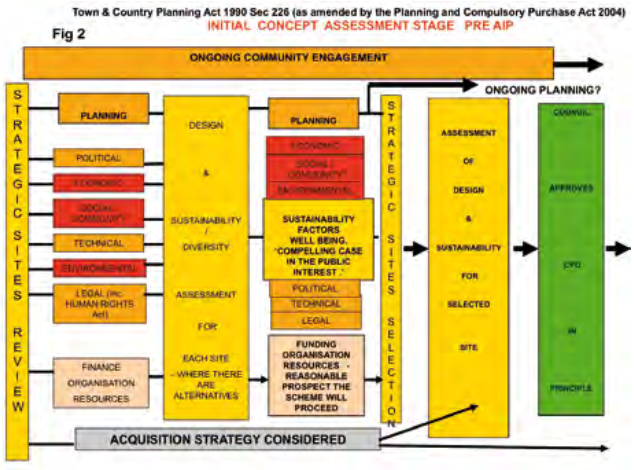
The constituents and sequence shown in the following figures, 2 and 3, are identified as:

a) concept to AIP, and

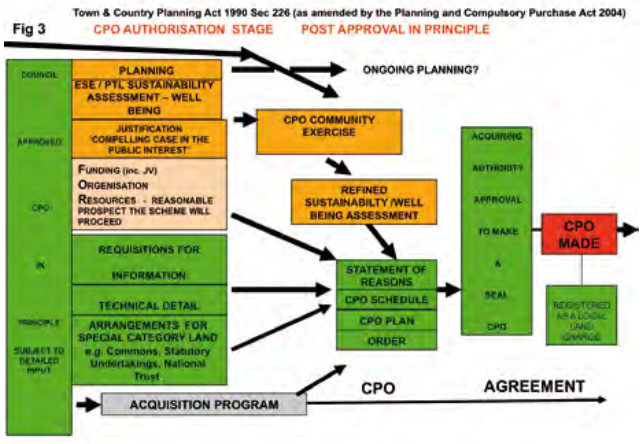
b) AIP to making and sealing the CPO.

The timing for a) and b) have no statutory limits and many authorities attempt to make this as short as possible (worryingly the case in many **"fire from the hip"** Housing Act CPOs). However the AA must demonstrate that it has adequately assessed all the requirements in terms of a compelling case in the public interest for a CPO to be promoted. Certainly a hurried CPO cannot reasonably demonstrate that human rights factors have been considered.

An amplification of that stage is shown below attempting to illustrate in diagrammatic form the components of the CPO described previously. Figure 2 shows a collection of requirements to culminate in an AIP and Figure 3 shows from AIP to resolution. Many subsidiary processes run alongside the **core CPO process** including the acquisition strategy/process, planning and community engagement.



"Certainly a hurried CPO cannot reasonably demonstrate that human rights factors have been considered."



The above practices are not cast in tablets of stone because they have to remain flexible, but core procedures have to be followed, progressing in line with Statutory Instruments and government circulars.

The project can then be implemented, with perhaps a developer taking possession under the terms of the JV and compensation paid either by agreement or by reference to the **Upper Chamber** (old Lands Tribunal).

Even though the Upper Chamber route may take years to resolve levels of compensation, this should not impede the development.

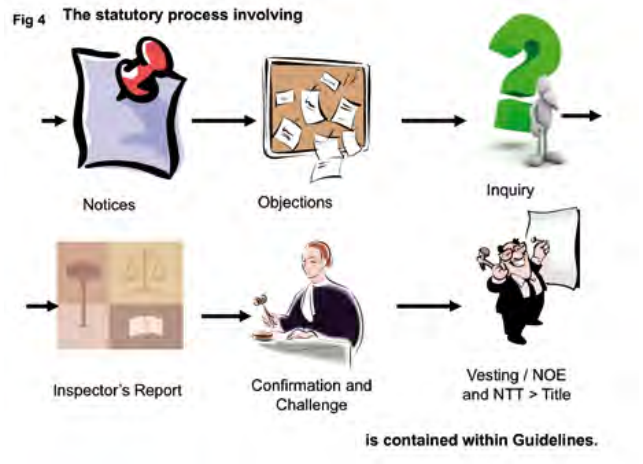


Figure 4 is merely a simplified illustration of the statutory process from making a CPO – from resolution through notices to eventually (hopefully) obtaining title.

Making a CPO to submission to title

As soon as the CPO is made and sealed, the statutory clock starts ticking. Figure 5 shows a flow diagram from the point of making followed by submission through to inquiry.

It will be noted that the various elements of the course of the statutory process, noting the ongoing planning which if not resolved prior to the CPO, may require to be considered at a joint planning/CPO inquiry. Planning will obviously have to be resolved to the confirming minister, so that it is not seen as an impediment to the CPO. **This is why it is essential to resolve outstanding planning issues as part of the justification for promoting the CPO.**

Paragraphs 35–63 of Circular 06/04 provide sufficient basic detail for the process from submission to obtaining title. The relevant timescales from resolution to inquiry are set out as follows:

Timescales – make CPO to inquiry

c) resolution to make and seal CPO
d) notices and submission to the minister
e) receipt of objections
f) relevant notice (of inquiry)
g) inquiry.

c–d) seven days maximum
d–e) 21 days minimum
e–f) 21 days minimum. The AA has up to five weeks to give written notice of the inquiry, from the end of the objection period/submission of the order for confirmation
f-g) 22 weeks maximum.

CPO public inquiry stage

Most of this period involves a great flurry of activity – conferences with counsel, serving notices, contacting expert witnesses, preparing and serving evidence/rebuttals, including pre-inquiry procedures, all within statutory time limits culminating in the inquiry itself. This is shown in Figure 6.

Fig 5 CPO SUBMISSION STAGE Non Ministerial

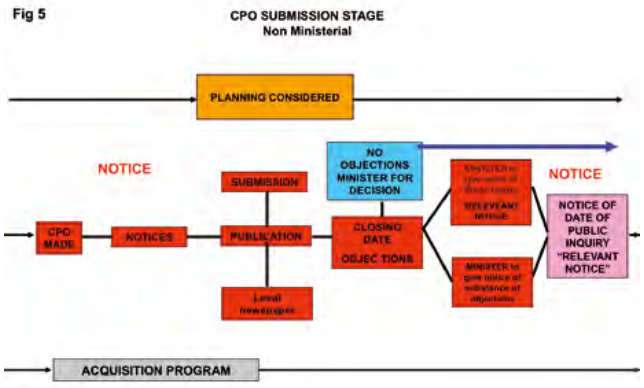


Fig 6 CPO PUBLIC INQUIRY STAGE Non Ministerial

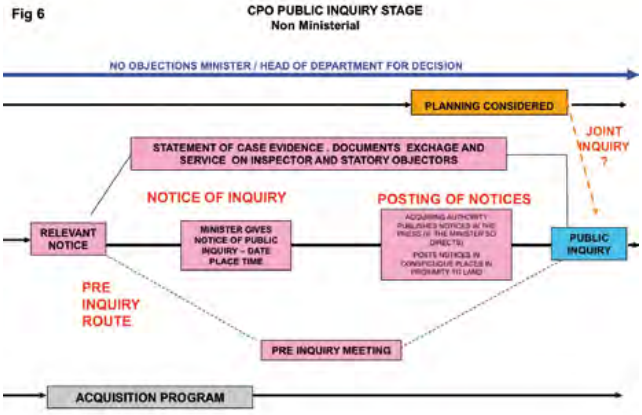


Fig 7 CPO CONFIRMATION VESTING & POSSESSION STAGE Non Ministerial

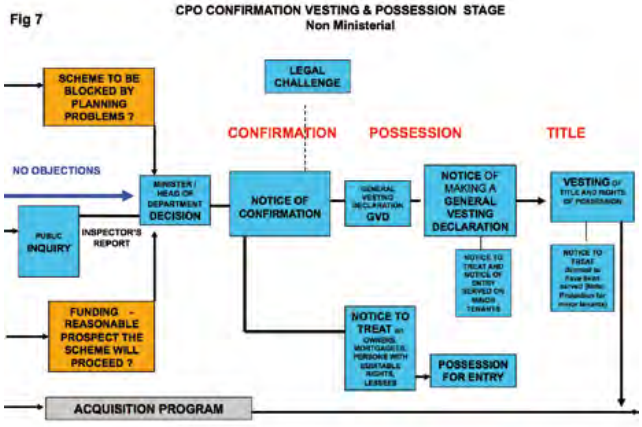


Figure 7 shows the process from inquiry to title.
To give some idea of timescales, the following applies:

Inquiry to possession

g) inquiry
h) inspector's report
i) decision by minister/department
j) confirmation by minister
k) challenge period
l) possession
m) title.

g-h) target seven weeks, but this may be considered an underestimate – varies*
h-l) target two-three months* (depends on workload) – can be up to 13 weeks
i-j) 14 days
j-k) six weeks maximum (Section 23 ALA 1981)
j-l) two months
j-m) three years maximum
a-m) 13 months "rule of thumb". *

Once a CPO is confirmed, there is no statutory timescale for it to be published.

*** Note these are internal targets only,** which PINS and the Welsh Assembly use for their own administrative purposes and are given as indicators only. Their length is not determined within statute, circulars and guidelines.

Decision, confirmation, possession, title

After the inquiry is the waiting period whilst the minister receives and considers the inspector's report. Should the CPO be confirmed then, if there is not a **legal challenge**, the notice to treat/general vesting procedure takes place. If there are no special circumstances and if no inquiry has taken place, the confirmation may be delegated to the acquiring authority (Sec.14A Acquisition of Land Act 1981).

The article may be criticised for not providing sufficient detail, but this is deliberate, to focus on the core process to provide a taster for gaining basic understanding and resisting a temptation to concentrate on any area. More detail and amplification is readily found in ODPM Circular 06/04. It will demonstrate much of the **Acquisition of Land Act 1981**, which is of prime importance.

The above timings are the best I could obtain from DCLG at the time of writing – they have been very helpful. Timings should be monitored and professional guidance should always be sought in respect of any scheme.

The above CPO process is a well-trodden and known path and the above hopefully illustrates that.

Compulsory purchase and reform

Throughout this recent trilogy of articles and with those before, I have increasingly become more aware of pressing factors for reform and change. The above processes are well used and accepted, particularly where straightforward regeneration CPOs are promoted. If they follow the rules and apply a robust approach to compensation and the impact of the scheme on affected parties, few problems should be encountered. However, even here there are those fellow professionals who make a living engineering conflict! The impact has become highlighted with the current round of infrastructure CPO projects, including **HS2 and Crossrail 2**. The spotlight shines on time/compensation/process issues.

Compulsory purchase and compensation, although working reasonably well in non-major schemes, is ripe for reform, particularly providing robust compensation, realistic timescales to take possession, advance payment and statutory interest[2]. There seems, however, no appetite in government, whatever shade, for comprehensive overarching reform, particularly in these areas.

There are those who would have the High Court have the ability to send an adjusted technically failed CPO back to the minister rather than go through the whole process again. Whereas this has merit, to my mind it is similar to insurance taken out on washing machines – it fixes a problem but does nothing to improve or encourage the quality of the machines produced.

There is an opportunity to consider these issues and more in respect of the newly published Housing and Planning Bill. This article may be a taster for providing the reader with the appetite for making detailed comment on the transiting of the Bill.

"Former organisations such as the Land Authority for Wales and WDA had the reputation for a robust approach to compensation, possession and timing, recognising the possible debilitating impact of CPOs on peoples' homes and livelihoods."

Basic CPOs

Having said that, many of the existing CPOs work well with some exemplars. Former organisations such as **the Land Authority for Wales and WDA** had the reputation for a robust approach to compensation, possession and timing, recognising the possible debilitating impact of CPOs on peoples' homes and livelihoods. Certainly national infrastructure projects (including HS2 and Crossrail 2) have highlighted the need, recognising long lead-in times and alternatives which cause uncertainty and blight over a wide area. In attempting to demonstrate fairness in the decision making, everyone has to suffer. It is like blind guides who strain at a gnat and swallow a camel![3] Actually, the approach in many such schemes appear to be the blind leading the dumb. Guidance and advice has to be sifted because experienced advisors are difficult to find and a system of accreditation is difficult to implement. On the point of guidance, hot off the press, a revised Circular 06/04 has just been published. This and my previous two articles should be considered in that context.

The future for reform may seem like *"never never land" – "second star to the right, and straight on til morning"* **J M Barrie and Capt. James T Kirk.**

Wide CPO reform seems like not yet arriving at the final frontier to an undiscovered country!

FOOTNOTE:

1 *Waters v Welsh Development Agency [2004]* 2 EGLR 103, Lord Nichols 63 (5).
2 Extract – Philip Maude – Squire Patton Boggs.
3 Matthew 23 v24.

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