

## PART 2 – CONFIDENTIAL FACTS AND ADVICE

**DD2087**

**Title: Silvertown Way Budget & s106 Approval**

*Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.*

### **The information below is not for publication until the stated date, because:**

The information contained in this section and its appendix is commercially sensitive information that if disclosed may prejudice GLAP's commercial position. This part 2 also contains legally privileged advice

**Date** at which Part 2 will cease to be confidential or when confidentiality should be reviewed:  
01/12/2021

### **Legal recommendation on the grounds of keeping the information confidential:**

The contents of this Part 2 include sensitive information which relate to GLAP's commercial interests and included legally privileged advice, the disclosure of which could prejudice those interests. For those reasons it is considered that the information contained in this report and appendices is exempt from publication in reliance upon the exclusions contained in section 43 (2) (Commercial Interests) and s.42.(1) of the FOI Act 2000 and because the public interest in withholding the information outweighs the public interest in releasing it.

If this information is considered for release pursuant to the provisions of the Environmental Information Regulations 2004, this information should be considered exempt information under regulation 12(5)(e) – where disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

**Legal Adviser** - I make the above recommendations that this information should be considered confidential at this time

**Name** Claire Mason

**Date:** 28 August 2017

*Once this form is fully authorised, this should be circulated with the Part 1 form.*

**Confidential decision and/or advice:**

## **Procurement risk**

The level of affordable housing has been agreed with London Borough of Newham at 35%. This level is also set out within the development agreement (dated 26/06/15) so is compliant.

The split of tenures of the affordable homes within the site, as set out in the s106 represents a departure from the levels set out within the development agreement and reflects the local policy position – a split of 50% social rent / 50% intermediate tenure.

This represents a variation to the level set out with the development agreement which provides for a split of 60% affordable or social rent / 40% shared ownership. The financial offer from the Registered Provider L&Q shows that this does not place Galliford in a better financial position. The offer for the affordable units has decreased from £83.4m to £80.3m. Despite this there is no change to the guaranteed land value committed by Galliford Try to the GLA for the land.

By agreeing to the split within the s106, the level set out in the DA will be changed, despite being required at procurement stages and included in the Development Agreement as a minimum delivery output. The development agreement will therefore need to be regularised by documenting this change as acceptable to GLAP either by a side letter or deed of variation to the development agreement.

Given that GLAP will have agreed further changes to the development agreement outputs as set out above, in addition to those agreed under MD 1660 (dated 28/04/16), there is a risk that these further changes could be challenged by a third party on the basis that the changes are a 'substantial modification' to the original development agreement, as determined by the Public Contracts Regulations 2015 (Regulations). However, after assessment of the overall impact of the agreed changes to GLAP and Galliford Try it is considered that the likelihood of any challenge being successful on the basis that the changes are substantial is low.

## **S106 Heads of terms**

1. Provision of Affordable Housing (343 units on a 50%/50% split between social rent and intermediate). A review mechanism will be included that will be triggered if the affordable housing has not been implemented within 2 years. This will test to see if the scheme can provide any additional affordable units. If triggered and found to be able to provide additional units, these will have to be delivered on site or potential offsite via a capital contribution.
2. Workplace payment (£2,275,000.00)
3. Commitment to Council's Local Labour Clause.
4. Commitment to Council's Local Goods and Services Clause.
5. Council's reasonable fees in monitoring and implementing the S106.
6. Car club 3 years' membership and £50 driving credits
7. CPZ permit restriction and the requirement to tell residents that it is permit free in all advertising and marketing material
8. Travel plan monitoring (£15k)
9. Connection to the district heating network (reasonable endeavours and maintain passive provision should a network connection become available in the future)
10. Council's reasonable legal fees in relation to preparing (whether or not the matter proceeds to completion) the S106.