

# **OPDC**

## **Local Planning Authority and Delivery Agent Protocol for OPDC Staff**

### **OPDC FUNCTIONS AND DECISION MAKING**

1. This Protocol is intended to provide OPDC staff with general guidance only as to how best to maintain appropriate separation between OPDC's statutory planning and delivery functions.
2. The objective is to ensure OPDC can manage any potential conflicts of interest between these functions as well as avoiding perceptions of bias and any associated risk of challenge. The integrity of the planning process needs to be protected and OPDC as Local Planning Authority (LPA) must not fetter its ability to take independent, transparent planning decisions based on planning policy and material planning considerations.
3. There are three main categories of decision with which this Protocol is concerned:
  - i) decisions taken by OPDC as a regeneration and delivery agency concerning regeneration, development and infrastructure delivery which it intends to undertake or directly facilitate;
  - ii) decisions taken by OPDC as LPA on planning policy and guidance documents; and
  - iii) decisions taken by OPDC as LPA on planning applications submitted by OPDC as regeneration and delivery agency, where OPDC has a land or commercial interest, or where third party planning applications might impact on proposals being promoted by OPDC as delivery agency.
4. The first category involves decision-making by OPDC acting in a commercial development/regeneration capacity e.g. delivering and/or facilitating development or infrastructure on land which it owns or in which it has a commercial or other interest.
5. The second category involves OPDC as LPA in relation to setting planning policy and guidance for OPDC's area. Planning policy will be set out in OPDC's Local Plan and associated guidance, against which all applications for planning permission must be determined.
6. The third category involves decision-making by OPDC, again in its capacity as LPA, in respect of planning applications made by OPDC or in respect of which OPDC has a commercial or other pecuniary interest, including securing mitigation through the imposition and enforcement of Section 106 obligations and planning conditions. It also includes decision-making by OPDC in circumstances where planning applications by third parties might impact on proposals being advanced by OPDC as delivery agency.
7. If not appropriately managed, conflicts of interest and perceptions of pre-disposition or bias could occur when OPDC takes an active role in the delivery of development and/or pieces of infrastructure, on which OPDC as LPA will need to take a planning decision.

## FUNCTIONAL SEPARATION

8. OPDC is a relatively small organisation with two core functions:

- OPDC as LPA whereby it produces planning policy and guidance and determines planning applications, and;
- OPDC as a delivery/regeneration agency, which includes activities across development delivery, commercial, land assembly, infrastructure delivery and financing.

9. Where OPDC is promoting the delivery of development or infrastructure it is important that there is transparent separation of functions between LPA and delivery/regeneration agency.

10. Examples of how the planning team will interact with other functions include:

| Area of work                                                                                                            | Role of OPDC as LPA                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Funding and Financing (e.g. infrastructure funding applications, business cases for government funding, business rates) | Officers from the LPA side will support these areas of work where necessary. This work is not directly about land assembly and/or securing planning permissions. Input from OPDC as LPA will support OPDC in achieving its overarching objectives of securing comprehensive regeneration, provided that any views expressed by officers will not prejudice or fetter the exercise of its statutory planning functions. |
| Masterplanning and co-design                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Infrastructure strategy and planning                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Land Assembly                                                                                                           | Officers from the LPA side will only input into this work in the same way as it would engage with any other third-party developer/applicant e.g. through initial conversations prior to pre-application and through the formal pre-application and planning application process. This is important to ensure OPDC as LPA does not fetter its ability to take an open, transparent and unbiased planning decision.      |
| Development - Planning Application and Delivery                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Infrastructure - Planning Application and Delivery                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Planning policy and guidance formulation                                                                                | Officers from the Delivery side can provide technical input and make representations to OPDC as LPA, but OPDC as LPA will consider such input and representations in the same manner in which they would treat the same from third party landowners and developers.                                                                                                                                                    |

11. Where OPDC as LPA is engaging with OPDC as Regeneration/Delivery Agency it will do so in the same way as it would any other third-party developer/applicant. The following section sets out practical arrangements to manage potential conflicts. All contact will be properly documented.

## PRACTICAL ARRANGEMENTS

12. OPDC has put in place the following practical arrangements to manage any potential conflicts between OPDC's two key roles as LPA and Delivery Agent.
13. OPDC as LPA:
  - a. Will determine any planning application submitted by OPDC in line with the Development Plan and all relevant material considerations and these applications will be determined by Planning Committee;
  - b. Where OPDC owns land in relevant locations it will consult Delivery colleagues internally on emerging planning policy as it would consult other stakeholders and Delivery colleagues may make representations through that process in the usual way;
  - c. Will not share pre-application information submitted by other applicants with OPDC as Delivery Agency, unless their nature is such that the Planning Team officers would properly expect to share them with any other third-party developer in the normal course of the planning process; and
  - d. Will not be party to the decision making around OPDC's Land Assembly work. Significant decisions as to the terms of the acquisition or disposal of OPDC's land interests will be the subject of a full report to OPDC's Investment Committee and/or its Board. When these matters are being considered outside of the public domain, no members of the Planning Team will be present. OPDC as Delivery Agency may seek input or the views of OPDC as LPA on planning matters in connection with any Land Assembly proposals (including requesting an officer to give evidence at a public inquiry) – in such circumstances the officer will consider whether it is appropriate to provide such input or views, and (if so) shall provide their input or views in accordance with their responsibilities and duties as LPA officers and in accordance with the duties of expert witnesses.
  - e. OPDC as LPA will engage with OPDC as Delivery Agency in discussions in relation to 'no scheme' scenarios and alternative development scenarios in the same way as it would with other landowners.
14. OPDC as Delivery Agency
  - a. Will not seek to influence OPDC as LPA;
  - b. Will not look to access confidential information submitted to OPDC as LPA by other applicants in the area; and
  - c. Will not share information (such as commercial agreements and other confidential bidder/developer information) with the LPA unless it is of a nature that they would normally expect to share with a local planning authority and it is clear that any necessary third party agreement to share the information that has been obtained.
  - d. Will not engage in planning policy formulation discussions on sites which it owns or has a pecuniary interest in other than in the same manner as any other landowner or developer would have the opportunity to provide information and representations.
15. OPDC as LPA and as Delivery Agency will
  - a. Be clear at the outset of all meetings as to individual officers' roles in the meeting (i.e. as LPA or as Delivery Agency). Declaration of any conflicts

of interest should be a standing item for all such meetings. Officers should leave a meeting if discussions move on to matters that should not be shared between those in the Planning Team and those in the Delivery Team;

- b. Document and produce appropriate notes or minutes of all meetings and telephone attendances involving OPDC as LPA and OPDC as Delivery Agency.
  - c. Maintain records of all written contact between OPDC as LPA and OPDC as Delivery Agency.
  - d. Store all documentation in separate filing systems (clearly marked) and regard it as confidential. Restricted access will apply to ensure that only members of the relevant team can access such documentation. Documentation will only be disclosed in the usual course of business between the respective teams;
  - e. Generally LPA and Delivery Agency will use separate consultant teams to advise them on their work. There may be some instances where it is appropriate to appoint joint teams and this decision will be clearly set out and justified; and
16. Should an individual or organisation have any concerns regarding an actual or potential conflict relating to the separation of OPDC's functions, they should raise it immediately to OPDC's Chief Operating Officer. Any questions or further clarification regarding this Protocol should be directed to TfL Legal.