

REQUEST FOR MAYORAL DECISION – MD1444

Title: Delivery of the Newington Butts development

Executive Summary:

A previous Mayoral Decision (MD1240) approved selection of a successful tenderer for development of the Newington Butts site. This is a request for approval of changes to the legal agreements concerning the disposal and development of that site.

Decision:

The Mayor approves in relation to the development of the Newington Butts site in South East London, the recommended changes to the legal agreements, including revisions to the terms of the building lease which necessitate a minor reduction in the disposal price (details are in the confidential part 2 of this MD).

Mayor of London

I confirm that I do not have any Disclosable Pecuniary Interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature

Date

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 An OJEU procurement competition was held in 2012/13 for development of GLAP's Newington Butts site. On 11/07/2013, Mayoral Decision (MD) 1240 confirmed selection of Newington Butts Developments Limited (NBDL) as successful tenderer.
- 1.2 GLAP and NBDL exchanged contracts on an agreement for lease on 12/03/2014. That gives NBDL a limited right of access to the site. There are now several conditions for NBDL to meet before completing the building lease and starting on site.
- 1.3 NBDL intends at least 198 of the homes produced to be private rented sector (PRS). New PRS developments of high quality are a priority for the Mayor. NBDL has identified a funder, Realstar Capital, who will support PRS but will do so only on the basis of making an equity investment in the scheme via Dylan (Jersey) Limited (a wholly owned subsidiary), necessitating minor changes to certain provisions in the legal agreements.
- 1.4 GLAP has identified minor unforeseen issues which also necessitate revisions to the terms of the building lease. The developer has agreed to improve the specification for the theatre space (which means increased costs) and provide a subsidy for the theatre operator. In return, GLAP has agreed a modest reduction in the disposal price (details are in the confidential part 2 of this MD).

2 Objectives & Expected Outcomes

- 2.1 The objectives and outcomes remain those listed below, which featured in MD1240.
- The delivery of the consented scheme in accordance with the Agreement for Lease and Building Lease
 - A land payment for the site at the earliest opportunity representing best value for the GLA but on a partial deferred payment basis
 - The provision of affordable housing on a nil grant basis
 - The optional provision of Private Rented Sector accommodation if it is financially beneficial to do so and/or accelerates the delivery of the scheme
 - The delivery of a Code for Sustainable Homes 4 development
 - High standards of design, innovation, sustainability and build quality
 - A long term management solution for all elements of the scheme
 - Strong stakeholder management and engagement with the local community.

3 Key Risks and Issues

- 3.1 Most of the risks remain the same as those listed in the MD 1240. Below is an updated version of the risk table that featured in that MD.

Key Risks	Mitigation Strategy
The development partner fails to satisfy the funding conditions in the Agreement for Lease.	Several of the conditions have been satisfied already.
Delays in agreeing the S106 Deed of Variation to redefine the tenure unit mix which delay the delivery of the project	The Housing and Land team have achieved in principle agreement from LB Southwark and will continue regular dialogue with LB Southwark to ensure a timely resolution. Approval of a S73

	planning amendment on 02/09/2014 represents significant progress, and the deed of variation is unlikely to cause delay.
Failure to agree legal terms with the successful tenderer	This MD would permit minor changes to legal agreements which would facilitate the developer's chosen funder who supports PRS homes (a mayoral priority) to sign up to the Project.

4 Planning changes

- 4.1 Several planning changes have been approved or submitted since the previous 11/07/2013 Mayoral Decision (MD1240). Increased height for the building was approved to accommodate a sprinkler system and thus comply with updated building regulations. 36 'volumetric' homes are no longer required to meet the lifetime homes standard (on the basis that the approved design was never capable of meeting that standard). Approval is pending for a change in the mix: MD 1240 mentioned expected outputs of 470 homes, including 29 affordable rent, 159 shared ownership and 282 for the open market; the revised total is 457 homes, which includes 79 affordable or social rent, 36 intermediate rent, 64 shared ownership and 278 for the open market (of which at least 198 would be privately rented).

5 Equality comments

- 5.1 The needs of those with protected characteristics, who are more likely to be in housing need, will be helped through this scheme. The scheme is expected to produce 457 new homes, including 179 affordable homes. The completed development should have a positive impact on people with disabilities since the planning consent requires that at least 10% of the flats are capable of being converted to wheelchair standard.

6 Financial comments of the Executive Director Resources

- 6.1 Finance comments are provided in the confidential part 2 section of this paper.

7 Legal Comments

- 7.1 NBDL have identified a funder, Realstar Capital who will support PRS but will only do so on the basis of making an equity investment in the scheme rather than taking security in the form of a first legal charge. Maintaining equivalent rights for an equity investor to those that would have been enjoyed by the holder of a first legal charge necessitates minor changes to the agreement.
- 7.2 Realstar's equity investment in the scheme will take the form of a forward purchase of NBDL's entire share capital, which will be acquired from Mace by Dylan (Jersey) Limited, a Realstar subsidiary. The price paid for the shares is the full open market value (taking account of the restrictions on the use of the units) for the PRS and private sale units. The price received by Mace is below the trigger price which would result in the payment of overage agreed between the parties. GLAP has agreed with NBDL that the disposal of its share capital at an open market value should be treated as being equivalent to the disposal of all of the PRS and private sale units, and that no further overage should be payable on any future disposal of the PRS and private sale units by NBDL.
- 7.3 In addition to the above, it has become apparent since the Agreement for Lease was signed in March 2014 that certain other minor changes to the terms of the agreement should be made. These are necessary to address issues concerning the accommodation of the Southwark Playhouse including an allowance for the cafe income at the site to be paid to Southwark Playhouse and to clarify the definition of "shell and core".

- 7.4 GLAP have taken the necessary legal advice in relation to the changes to the agreement set out above and have concluded that the approach is appropriate, having regard to the obligations set out in the Public Contracts Regulations. GLAP have also taken external valuation advice in relation to the price paid for NBDL's share capital.

8 Investment & Performance Board

- 8.1 The changes to the legal agreements concerning the disposal and development of that site were discussed and approved in principle by the Housing Investment Group on 2 October 2014.

9 Planned delivery approach and next steps

Activity	Timeline
Changes to legal agreements	February 2015
Delivery Start Date (start on site)	February 2015
Delivery End Date (practical completion of units)	March 2018

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOI Act) and other legislation. Part 1 of this form will be made available on the GLA website within 1 working day of approval. Any facts and advice that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of this approval to be deferred? No

If yes, for what reason:

Until what date:

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

	Tick to indicate approval (✓)
Drafting officer: Mick Breheny has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.	✓
Assistant Director/Head of Service: Lucy Owen has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.	✓
Sponsoring Director: <u>David Lunts</u> has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.	✓
Mayoral Adviser: <u>Richard Blakeway</u> has been consulted about the proposal and agrees the recommendations.	✓
Advice: The Finance and Legal teams have commented on this proposal.	✓

OFFICER APPROVAL**Executive Director, Resources**

I have been consulted about the proposal and confirm that financial and legal advice have been taken into account in the preparation of this report.

Signature

Date

Chief of Staff

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

Date