

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD1654

Title: Silvertown Quays s.106, s.156 & Call Option Agreements

Executive Summary:

The GLA Land and Property Limited ("GLAP") entered into a master development agreement (MDA) with The Silvertown Partnership (TSP) and BREPS LLP (BREPS) as guarantor in 2013 for the development of the Silvertown Quays (SQ) site. As per the terms of the MDA, TSP submitted a planning application to the London Borough of Newham (LBN) and on the 21st April 2015 received resolution to grant permission, subject to the s106 agreement being agreed.

As Freeholder of the site, GLAP are required by LBN to enter into an agreement made in accordance with section 106 of the Town and Country Planning Act 1990 (s.106). In addition, for the reasons explained in this paper, GLAP are also required to enter into a side agreement, made in accordance with section 156 of GLA Act 1999, with LBN, TSP and Transport for London ("TFL") and a Call Option Agreement with TSP and Bouygues Development-Leadbitter Limited and Bouygues UK Limited Bouygues (Bouygues). Furthermore GLAP requires TSP and BREPS to enter into a Deed of Indemnity with GLAP.

Decision:

That the Mayor:

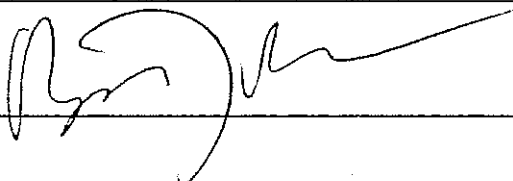
- Approves GLA Land & Property Ltd entering into the section106 Agreement, pursuant to section 106 of the Town and Country Planning Act 1990 upon the terms set out within this paper; and
- Approves GLA Land & Property Ltd entering into a side agreement, pursuant to section 156 of the Greater London Authority Act 1999 upon the terms set out within this paper; and.
- Approves GLA Land & Property Ltd entering into the Deed of Indemnity upon the terms set out within this paper.
- Approves GLA Land & Property Ltd entering into a Call Option Agreement upon the terms set out within this paper.

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: 4.5.2016

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

Decision required – supporting report

1. Introduction and background

- 1.1 GLAP entered into a MDA with TSP on 7th June 2013. As per the terms of the MDA, TSP submitted a planning application to LBN and on the 21st April 2015 received resolution to grant the permission, subject to the terms of the s.106 agreement being agreed. The s.106 and associated side agreement and call option agreement have now been agreed with the relevant parties.
- 1.2 As is standard practice for s.106 agreements, GLAP as freeholder of the land is a party to this agreement. GLAP requested that the financial and non-financial obligations due under the s.106 be made personal to TSP but LBN have requested that the obligations in the agreement are enforceable against GLAP, TSP (and their successors in title) on a joint and several basis.
- 1.3 To mitigate the risk of the s.106 obligations being enforceable against GLAP and ensure that GLAP's financial exposure to the s.106 liabilities are 'covered off', GLAP has sought a separate side deed which includes an indemnity from TSP and its guarantor under the MDA, BREPS. In broad terms the deed allows GLAP to terminate the MDA if TSP and BREPS as guarantor do not meet their material obligations under the s.106 and also provides a mechanism for GLAP to seek suitable security for sums that are due under the s.106 until they are paid, in advance of drawing down a phase under the MDA.

1.4 Section 156 Side Agreement & Call Option Agreement

- 1.5 GLAP, TSP and TfL will enter into a further agreement entered into in accordance with s.156 of the GLA Act 1999, in order to secure transport works required to satisfy conditions attached to the planning permission, namely Pontoon Dock station upgrade works required to ensure the anticipated increase in demand of use of the Pontoon Dock station.
- 1.6 As distinct from the s.106 agreement, the liabilities within this agreement lie solely with each separate party to it. For GLAP the main obligation is to facilitate the transfer of three small pieces of land at Pontoon Dock to enable the works to be carried out.
- 1.7 GLAP committed one of the small pieces of land required for the Pontoon Dock works to Bouygues UK Limited (Bouygues) under a development agreement for the redevelopment of land to the south and under the existing Pontoon Dock Station (the Pontoon Dock DA). The red line boundary for the scheme included land under the station which is now required for the Pontoon Dock Station upgrades works. Bouygues have agreed to enter into a Call Option with GLAP and DLR (who will be carrying out the works on behalf of TfL), under which the land will be made available to DLR within agreed periods so that the planning condition is satisfied in time to ensure the SQ development can progress.
- 1.8 Two further small pieces of land, which are not within the red line boundary but are owned by GLAP will also need to be disposed of to DLR under the Call Option agreement.
- 1.9 An independent red book valuation has been carried out by GL Hearn on the land which will be surrendered by Bouygues and the 2 small pieces of land owned by GLAP. As mentioned above, TSP will meet the costs of the land disposals to DLR.
- 1.10 A summary of the key terms under the s.106 & side agreement are set out in part 2 of this paper.

1.11 Side Deed/ Indemnity

- 1.12 At the same time that the s.106 & s.156 are entered into, GLAP will enter into a side deed to the MDA which includes an indemnity from TSP and BREPS to GLAP. The deed provides that TSP and BREPS will indemnify GLAP against all liabilities and carry out all obligations falling under the s.106 & s.156 (as outlined at 1.3 above). The key terms of the indemnity are set out in Part 2.

2. Objectives and expected outcomes

- 2.1 Entering into these agreements will facilitate the delivery of around 7.2m sqft of brand focused employment led development, including up to 3000 new residential units.

3. Equality comments

- 3.1 It is not anticipated that the recommendations in this paper will have any unequal impact on equality groups.

4. Other considerations

- 4.1 The risks associated with entering into the s.106 have been mitigated by putting in place the deed of indemnity from TSP and its guarantor BREPS. The key risks & liabilities to GLAP are set out in Part 2.

5. Financial comments

See Part 2 for finance comments.

6. Legal comments

- 6.1 GLAP is being advised by Herbert Smith Freehills throughout this project including in relation to the s.106, side agreements and deed of indemnity.
- 6.2 Section 30 of the Greater London Authority Act 1999 (as amended) (GLA Act) gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA as set out in section 30(2) which are:
- i. Promoting economic development and wealth creation in Greater London;
 - ii. Promoting social development in Greater London; and
 - iii. Promoting the improvement of the environment in Greater London

and, in formulating the proposals in respect of which a decision is sought, officers confirm they have complied with the GLA's related statutory duties to:

- pay due regard to the principle that there should be equality of opportunity for all people;
- consider how the proposals will promote the improvement of health of persons in Greater London, promote the reduction of health inequalities between persons living in Greater London, contribute towards the achievement of sustainable development in the United Kingdom and contribute towards the mitigation of or adaptation to climate change in the United Kingdom; and
- Consult with appropriate bodies.

- 6.3 Sections 1 and 2 of this report indicate that the Mayor has the power to proceed to make the decisions as requested within this report.

7. Investment & Performance Board

- 7.1 This Mayoral Decision was not taken to HIG or IPB as the obligation to enter into the s106 is a contractual obligation on GLAP as per the terms of the MDA.

8. Planned delivery approach and next steps

Activity	Timeline
Enter into s.106, s.156 Call Option Agreement & indemnity	April 2016

Appendices and supporting papers: None

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Paul Guest 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:

Simon Powell has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

David Lunts has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Ed Lister has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. J. Bell

Date

4.5.16

CHIEF OF STAFF:

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

Signature

Edmund Hill

Date

04.05.2016

