

REQUEST FOR DIRECTOR DECISION – DD883

Title: Peruvian Wharf – Option Agreement.

Executive Summary:

The purpose of this decision is to request approval for the assignment of an option agreement by the GLA to the Port of London Authority (PLA). If the option is exercised the PLA would be able to acquire the freehold of the safeguarded wharf at Peruvian Wharf from the current landowner.

In addition, approval is required for the GLA to commence negotiations with the PLA to enter into a co-operation arrangement (or similar arrangement such as a memorandum of understanding) whereby both parties agree to work together on reactivating and relocating wharves within the Thameside West area in accordance with the London Plan which will in turn release GLA land for future development and regeneration.

The precise terms of this arrangement will be agreed by both parties as soon as possible and be approved by the Executive Director of Housing and Land or by the Executive Director of Development and Environment as appropriate.

Decision:

That the Executive Director of Housing and Land

- **APPROVES** the assignment of the Option Agreement dated 13th March 2009 made between (1) Colpy Limited and Haworth Limited and (2) the LDA from the GLA to the Port of London Authority.
- **AGREES** that the GLA shall commence negotiations with the Port of London Authority to agree a Co-operation Arrangement (or similar arrangement such as a memorandum of understanding) with the Port of London Authority, whereby both parties agree to work together within the Thameside West area to seek the relocation, reactivation and consolidation of wharves as described within the London Plan which will assist the GLA in the development and regeneration of its land interests in the area.

AUTHORISING DIRECTOR/HEAD OF UNIT

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name David Lunts

Position Executive Director of Housing and Land

Signature

Date 29/08/12

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1. **Peruvian Wharf** (the Site) is 7.7 hectares of cleared land, formerly owned by Tate and Lyle, located within the Thameside West area adjacent to the Royal Docks. The riverside part of the Site totalling 3.62 hectares has been safeguarded for wharf use within the London Plan (the Wharf). The Site was acquired by Colpy Limited and Haworth Limited (C&H) over 10 years ago. C&H were seeking to redevelop the Site for mixed use development notwithstanding the Site is located in a strategic industrial area. C&H failed on a planning appeal in 2007 to obtain planning consent for a mislabeled use scheme. The GLA submitted representations opposing the mixed use scheme for reasons including development on a safeguarded wharf. Appendix 1 shows the Site including the Wharf.
- 1.2. C&H acquired the Site using Irish Nationwide Building Society funding which is now with the Irish Debt vehicle the National Asset Management Agency (NAMA) and may be sold as a package of debt. It is understood that C&H have limited resource to put towards the reactivation of the Wharf.
- 1.3. **CPO/Option Agreement** Owing to C&H's reluctance to bring forward an occupier to reactivate the Wharf, the LDA, working jointly with the PLA (who agreed to fund LDA's costs) pursued a CPO for the Wharf. This was in accordance with the London Plan which encourages the reactivation of London's wharves.
- 1.4. The PLA secured potential operators for the Wharf and paid for their planning applications for a wharf use to support the CPO. However, by late 2008 C&H confirmed that they were prepared to agree a land deal with the aggregate business Robert Brett & Sons Limited (Bretts) to bring forward a wharf operation on the Wharf. This was secured through an option for Bretts to take an occupational lease of the Wharf (the "Bretts Option" set out in more detail below) and whilst this was welcomed by the LDA and PLA, there was no certainty that the deal would secure the preferred use on the Wharf so the LDA, in collaboration with the PLA, continued with the CPO.
- 1.5. Shortly before the CPO inquiry, due in April 2009, C&H, sought a solution to avoid the CPO inquiry and resulting costs. At the request and cost of the PLA and with the support of the GLA, the LDA agreed to enter into an Option Agreement with C&H on 13 March 2009 (the LDA Option), which gave C&H over 3 years to reactivate the Wharf in line with agreed targets. Subsequently, planning permission was obtained by Bretts and, due to a small amount of work being undertaken by them, confirmation that the planning consent had been implemented at the Wharf was given by LTGDC as planning authority. However the Wharf remained vacant on the trigger date under the LDA Option, 2nd June 2012. As a result, under the terms of the LDA Option, the GLA has the ability to serve notice on C&H requiring them to transfer the freehold of the Wharf to the GLA.
- 1.6. **PLA's Position.** The PLA have been seeking the re-use of wharves identified in the London Plan for some time. However, a number of safeguarded sites have remained vacant owing to landowners seeking more valuable planning uses. The PLA have continued to show their commitment to re-activation of wharves in London and have recently submitted their own CPO on Orchard Wharf in Tower Hamlets and are reviewing their position around the recent application on Hurlingham Wharf in Hammersmith and Fulham.
- 1.7. The PLA provided the LDA with an indemnity to cover costs for the acquisition of the Wharf. The PLA estimate that its costs, which cover planning, CPO and the work undertaken to agree the LDA Option, are approximately £1m to date. The PLA has therefore paid the GLA's costs for agreeing and entering into the LDA Option.

- 1.8. In negotiating the LDA Option with C&H, provision was made in the agreement for the LDA to assign the LDA Option to another public body in anticipation of an eventual assignment to the PLA.
- 1.9. The PLA have confirmed that they wish to take an assignment of the LDA Option from the GLA. Subsequent to this, the PLA are intending to trigger the LDA Option to buy the freehold of the Wharf prior to 2 October 2012, the end date for the Option. Crucially, the PLA have confirmed that they have PLA Board approval to pursue the acquisition of the Wharf, including the required financial approvals..
- 1.10. The estimated range in value for the Wharf is £3.56m-£4.56m based on current information. The LDA Option seeks to value the Wharf based on CPO principles which present a variety of ways of assessing value. The LDA Option requires the joint appointment, by the GLA and C&H, through agreement (or by RICS if disputed), of an expert to determine the land value. This could result in a valuation outside of the currently estimated range. This is a risk as the agreed figure will be binding on both the beneficiary of the Option, currently the GLA, and C&H.
- 1.11. **Brett Aggregates lease option** - Bretts exchanged an option agreement with C&H in December 2008 (the Brett Option) which required (on service of various notices) the grant of an occupational lease of the whole of the Wharf for aggregates use. The agreement envisages that the Wharf be developed in 3 stages but allows C&H to potentially market stages two and three should Bretts fail to request occupation of those areas within certain timescales. Bretts served notice in May 2012 triggering a requirement to grant a lease of stage one for a term of 21 years from completion of the lease which occurs following completion of the reactivation works (detailed below).
- 1.12. Bretts secured planning consent for the Wharf and implemented it towards the end of 2011 by carrying out a small package of work. Following service of the notice for the Brett Option, discussions were to take place with C&H about the required reactivation works (detailed below) and the costs of those works. It is believed that due to funding constraints on C&H these have not progressed substantially. Bretts have indicated their costs to date on undertaking works to the Wharf are in the region of £750,000.
- 1.13. Following service of the notice under the Bretts Option, there are obligations placed on C&H as around constructing a road, dealing with remediation (C&H responsible for the first £200,000 of cost) and carrying out works to the jetty (C&H responsible for first £120,000) and the river wall (C&H responsible for first £100,000). Should the LDA Option be exercised (by the GLA or upon an assignment to the PLA_ these obligations will continue. The Bretts Option contains provisions which allow Bretts to walk away from their request for a lease should costs exceed certain levels around the remediation/jetty and river wall works. Bretts can carry out access road works, the costs of which (estimated to be circa £200-£300,000) and will be offset from the lease rental. Upon completion of the agreed works, the rent under the lease is £190,000pa and is subject to a 6 months rent free period. Despite the rights for Bretts to walk away from the lease arrangement, commercially they are incentivised to continue. Currently progress is delayed due to C&H's current financial circumstances.

2. Issues for Consideration

- 2.1. Whilst it may be possible for the GLA to exercise the Option and acquire the Wharf, currently the estimated £3.56-£4.56m required to fund the acquisition would have to come from the PLA as the GLA does not have the budget to fund the purchase. The PLA has funding available and have asked for the assignment of the LDA Option. In addition, they have spent over £1m to date on the planning, CPO and the LDA Option. Therefore, on the basis that the PLA both effectively initiated and funded the CPO and LDA Option for the Wharf, it would be reasonable to assign to the LDA

Option without further cost to the PLA as they are in a position to seek the re-activation of the Wharf in line with the London Plan.

- 2.2. The PLA is aware of the Bretts agreement (see below) and is familiar with the company in relation to other river related matters. The PLA are prepared to buy the Wharf subject to the Bretts Option
- 2.3. If the LDA Option is exercised the freehold will be acquired subject to the Bretts Option . This has potential landowner liabilities around the jetty works, remediation, works to the river wall and provision of an access road to the Wharf. These costs could total up to approximately £600,000 for the landowner, however there are no details available from the current landowner, C&H (or Bretts) on how the discussions relating to these costs are progressing.

Wharf Strategy

- 2.4. The GLA is a land owner in the Thameside West area, with its land holding to the west of the Site. In order to assist with the potential redevelopment of its land it is proposed that the GLA enter into an arrangement with the PLA to co-operate in relation to the relocation and rejuvenation of wharves within the Thameside West area in accordance with the London Plan. The GLA has already been working with the PLA around rationalising the location of 4 wharves (including Peruvian Wharf) to a single location in the Thameside West Strategic Industrial Location as identified in the London plan.

a) Links to strategies and Mayoral and corporate priorities

The work around re-activating the wharf relates to the London Plan Safeguarded Wharves Policy (the Policy). Whilst the Policy is being reviewed, the latest consultation exercise seeks to retain the safeguarding for the Wharf.

b)

Impact assessments and Consultation

The LDA Option was entered into by C&H and the LDA to ensure that if the Wharf was not re-activated the LDA (now GLA) has the means to acquire the Wharf in order to re-activate it. The LDA Option can be assigned to a third party public body. Whilst the Policy is being reviewed, the latest consultation exercise seeks to retain the safeguarding for the Wharf.

c) Risk

- Following assignment of the Option the PLA does not trigger the Option. **Mitigation.** The PLA have confirmed it has a Board resolution to acquire the Wharf and whilst there may be a risk the LDA Option may not be triggered, due to their Board approval (including provision of a budget) this is considered highly unlikely
- GLA costs in exercising the Option. **Mitigation.** Seek payment of GLA costs from PLA on completing the assignment to PLA.
- Wharf re-activation takes further time to complete with potential reputational issues for the GLA. **Mitigation.** Seek regular updates from PLA on re-activation. Also Bretts are heavily incentivised to continue with the re-activation work because of the costs they have incurred to date on the project.

- GLA policy position around safeguarded wharves being questioned if the Option is not pursued. **Mitigation.** Liaison with the PLA who, if the assignment is approved, are likely to trigger the Option after assignment..

3. Financial Comments

- 3.1. The recommended way forward, if pursued, would be limited to costs associated with the assignment. Capital costs will be avoided but potential future income streams may be lost.
- 3.2. Consideration should be given as to whether the GLA could have step-in rights if the PLA failed to re-instate the Wharf within an agreed timescale, noting that there are potential liabilities in stepping into the Bretts agreement as landowner.
- 3.3. The proposals minimise the future financial liabilities for the GLA.

4. Legal Comments

GLA Authority.

The GLA can assign the Option pursuant to Section 34 of the GLA Act 1999 as the PLA's proposed rejuvenation of the Wharf will promote economic and social development and the improvement to the environment in Greater London in accordance with Section 30 of the GLA Act 1999.

5. Housing Investment Group.

The HIG meeting on 13 July 2012 endorsed the following:

- The assignment of the Option the from GLA to the PLA.
- That it be agreed that the GLA or GLA Land & Property Ltd (as appropriate) enters into a Co-operation Arrangement (or similar arrangement) with the PLA working within the Thameside West area to seek relocation of wharves, consolidation of wharves and the regeneration ambitions as described within the London Plan.

These recommendations now form the basis for the recommendations in this paper.

6. Background/supporting papers

None

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOI Act) and other legislation. Information on this decision will be included in the Mayor's report and decision list. The form will be available publically from then. 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? YES

If yes, for what reason:

The paper contains commercially sensitive information both around negotiations with third parties and land values. If that information were released before the land values had been agreed with the landowner of the Wharf (C&H) it may have an adverse effect on the public purse. On the basis that an assignment of the LDA Option to the PLA is agreed, it is considered appropriate not to release this report until the land values under the Option have been agreed, which is currently estimated to be by mid December 2012. The release of this paper should first be discussed with the Housing & Land Directorate.

Until what date: 15th December 2012, subject to review with Housing & Land Directorate.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Tick indicates
approval (✓)

Drafting officer:

Michael Payton 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:

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

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

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