

## REQUEST FOR DIRECTOR DECISION – DD1443

**Title: GLA Land and Property Indemnity to Royal Borough Greenwich – Greenwich Peninsula**

### Executive Summary:

The Royal Borough of Greenwich (RBG) require that the GLA assume a contingent liability related to abortive professional costs associated with the delivery of an All Through School on GLA Land and Property's (GLAP) Land at Greenwich Peninsula.

GLA Land and Property is currently unable to provide title to the land required for the All Through School. Part of the land is held by Southern Gas Networks (SGN) and is due to transfer to GLAP under the terms of a sale agreement. SGN refuse to honour the agreement and so a legal process is underway to assume title to the land. The indemnity provided to RBG offers protection against costs incurred in progressing the school site in the event that GLA is unable to recover the land from SGN and the school has to be relocated.

This decision relates to the decision to build a school in DD1408.

### Decision:

That the Executive Director of Housing and Land and the Executive Director of Resources:

- **Approve** GLAP giving an indemnity to RBG to cover abortive costs associated with delivery of an All Through School on Greenwich Peninsula up to a cap of £1,000,000.
- **Note** that sums only become payable if GLAP is unable to provide title to the land on which the school is proposed to be delivered.

### AUTHORISING DIRECTOR

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

**Signature:** 

**Name:** Martin Clarke

**Signature:** 

**Position:** Executive Director Housing and Land

**Date:** 04/12/15

**Position:** Executive Director - Resources

**Date:** 4 / 12 / 15

## **PART I - NON-CONFIDENTIAL FACTS AND ADVICE**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. GLAP requires title to two parcels of land on Greenwich Peninsula, currently held by Southern Gas Networks (SGN). These parcels are located to the south of GLAP's land holding, broadly within plots M0302, M0318 and M0320. These parcels are required to facilitate the delivery of a new Peninsula school: the land will be drawn down by GLAP's development partner Knight Dragon and passed to RBG on a long lease. RBG require a legal interest in the land so that the development of the school can be progressed – construction is due to begin in early 2016.
- 1.2. The school site is to be provided by GLAP's development partner Knight Dragon on a long lease to RBG at a peppercorn rent, as specified in the original s106 document for the Peninsula, signed in 2004. The school site will not be subject to a Minimum Land Value payment in the benefit of GLAP. Having considered the available information relating to the agreement to transfer the school land to RBG within the context of the overall commercial deal entered into by English Partnerships (EP) in 2002, GLA officers are of the view that EP complied with its statutory duty to obtain best consideration for its landholdings at Greenwich Peninsula and that binding contractual commitments to dispose of those landholdings were made accordingly.
- 1.3. On 7 February 1997 the Urban Regeneration Agency ('URA') entered into an agreement for the sale and purchase of land at Greenwich Peninsula with Port Greenwich Limited and British Gas plc. Pursuant to the 1997 Agreement, URA paid PGL £20,000,000.
- 1.4. The two parcels have been occupied by GLAP or its statutory predecessors for over 15 years. The land is fenced by the GLAP as part of its wider land holdings.
- 1.5. Currently, SGN refuse to transfer title to the land, suggesting that GLAP has no right to the land and that they consider the 1997 Agreement unenforceable. They do not recognise GLAP as statutory successor to URA, refuse to admit that the land was transferred to them in error and consider the 1997 Agreement unenforceable.
- 1.6. GLAP has instructed litigators to seek an expedited trial in the High Court and a consequent judgment that directs the Land Registry to change the name of the registered proprietor for the parcels of land in question. The opinion of Counsel on the proposed action has been sought and Counsel's advice is that GLAP has a strong claim to ownership of the land.

#### **2. Objectives and expected outcomes**

- 2.1. The land in question forms part of the Greenwich Peninsula masterplan, recently approved by the Mayor. The masterplan provides for an All Through School site on the land in question and adjacent GLAP land.
- 2.2. RBG have submitted a planning application for a 1,800 pupil school on the site, including the parcels currently under an SGN title. The application is expected to go to committee for determination in January 2016 and building is scheduled to start in the spring.
- 2.3. RBG have incurred design and statutory costs associated with bringing forward proposals and preparing the planning application, on the understanding that the whole school site was owned by

GLAP and could be delivered. In order to protect RBG against incurring abortive costs associated with progressing the school on the site in question, RBG have requested that GLAP give an indemnity that covers costs expended up to a cap of £1m in the event that the school is not able to be located on the proposed site (i.e. as a result of GLAP not being the registered proprietor of that site).

- 2.4. This indemnity is to be written in to the Section 106 agreement that sits alongside the approved masterplan permission. RBG indicates that it is unable to progress the s106, and therefore issue full consent for the masterplan, until the indemnity is agreed.

GLAP is able to enter into the indemnity because:

- Discussions between GLAP, KD and the Council to date have been on the basis that the School would be constructed on plots M0302, M0318 and M0320 and RBG has incurred design fees on the basis of these discussions. If GLAP does not give this indemnity, the new s.106 agreement will not be progressed and there is a risk that development on the Mayor's land at Greenwich Peninsula will stall.
- The costs incurred by RBG are only abortive (and therefore refundable by GLAP under the indemnity) if RBG are unable to proceed with an alternative site. Under the triggers proposed in the s106, there is a significant period of time (5/6 years) before GLAP become liable for such abortive costs. GLAP intends to use this time to secure the land currently under an SGN title.
- Any costs incurred by RBG after 1<sup>st</sup> March 2016 are solely at GLAP's discretion, so a cap on the liability at £1m can be imposed. This is the date before which RBG must start construction in order for the new school to be able to accommodate a pupil cohort for the 2018/2019 school year.

### **3. Equality comments**

It is not envisaged that equality considerations are impacted as a result of seeking this approval.

### **4. Other considerations**

- 4.1. Should GLAP be unsuccessful in securing the land to which SGN has title through the courts, there are alternative measures that could be implemented to recover the land that would still enable RBG to progress a school on the site and therefore limit the risk of the indemnity being called upon. These could include a claim of adverse possession, the use of Compulsory Purchase powers (either by the GLA or RBG), or GLAP could elect to negotiate a commercial deal with SGN.

### **5. Financial comments**

- 5.1. This decision seeks approval for GLAP to grant an indemnity to RBG to cover abortive costs associated with delivery of an All Through School on Greenwich Peninsula up to a cap of £1,000,000. This sum is only payable by GLAP if it is unable to provide title to the land on which the school is proposed to be delivered.
- 5.2. The s106 agreement associated with the wider Peninsula masterplan will not be progressed by RBG unless GLAP offers an indemnity against costs associated with the proposed school. If GLAP fails to recover the land needed for the school and consequently the school has to relocate and costs

become payable, GLAP will fund these costs through receipts paid to GLAP for its land on the Peninsula.

## **6. Legal comments**

- 6.1. The original s.106 agreement dated 23 February 2004 imposes obligations on GLAP in relation to the location and size of the secondary school site and how these are to be agreed. These obligations specify the broad location of the site and the maximum possible size of the school to be constructed at that location, although the exact location and size of the secondary site are not specified. However, the s.106 agreement obliges GLAP to agree these details with the Council. Discussions between GLAP, KD and the Council to date have been on the basis that the School would be constructed on plots M0302, M0318 and M0320 and RBG has incurred design fees on this basis.
- 6.2. The foregoing sections of this report indicate that the decision requested falls within the statutory powers of the Authority exercisable by the Executive Director of Housing and Land and the Executive Director of Resources (pursuant to their delegated authority granted under MD1111), to do such things as are considered facilitative of or conducive to the promotion of economic development, social development and the improvement of the environment in Greater London and, in considering the proposal described in this Director Decision, officers confirm they have complied with the GLA's related statutory duties to:
- 6.2.1. pay due regard to the principle that there should be equality of opportunity for all people;
- 6.2.2. consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and
- 6.2.3. consider consulting with appropriate bodies.
- 6.3. Therefore the Executive Director of Housing and Land and the Executive Director of Resources (having delegated authority via MD1111 pursuant to section 38 of the Greater London Authority Act 1999) may approve the giving of the indemnity referred to in this report if they are satisfied with the content of this report.
- 6.4. As GLAP will be the party to the legal documentation GLAP will also need to approve the proposed documentation in accordance with its constitution.

## **7. Planned delivery approach and next steps**

<b>Activity</b>	<b>Timeline</b>
Section 106 engrossed	27th November 2015
MD signed	w/c 30th November
Section 106 completed	w/c 7th December
Potential High Court trial	Feb/Mar 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? YES**

If YES, for what reason:

Information contained within this paper could have a bearing on ongoing litigation proceedings and therefore must remain confidential until the legal process has run its course.

Until what date: 30 Jan 2017

**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 -NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to  
confirm the  
following (✓)

**Drafting officer:**

William Stewart has drafted this report in accordance with GLA procedures and confirms that:

✓

**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.

✓

**Financial and Legal advice:**

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

✓

**EXECUTIVE DIRECTOR, RESOURCES:**

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

**Signature**

*D. Gane*

**Date** 2/12/15

