

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION - MD1471

Title: Royal Albert Dock Section 106 & Section 156 Agreements

Executive Summary:

GLA Land and Property ("GLAP") entered into a development agreement (the "DA") with ABP London (Investments) Limited ("ABP") in 2013 for the development of the Royal Albert Dock site. As per the terms of the DA, ABP submitted a planning application to the London Borough of Newham ("LBN") and on the 23rd July 2014 received resolution to grant permission, subject to the s106 agreement being agreed.

As Freeholder of the site, GLAP is 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, GLAP is also required to enter into a side agreement, made in accordance with section 156 of GLA Act 1999, with LBN, ABP and Transport for London ("TFL"). Furthermore GLAP requires ABP and Dauphin Holdings Group Limited to enter into a Deed of Indemnity with GLAP.

Decision:

That the Mayor:

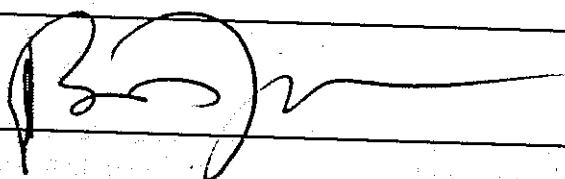
- Approves GLA Land & Property Ltd entering into the section 106 agreement, pursuant to section 106 of the Town and Country Planning Act 1990; and
- Approves GLA Land & Property Ltd entering into a side agreement, pursuant to section 156 of the Greater London Authority Act 1999; and
- Approves GLA Land & Property Ltd entering into the Deed of Indemnity 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: 16.12.15

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

Decision required – supporting report

1. Introduction and background

Section 106 Agreement

- 1.1 GLAP entered into a DA with ABP in June 2013. As per the terms of the DA, ABP submitted a planning application to LBN and on the 23rd July 2014 received resolution to grant the permission, subject to the terms of the s.106 agreement being agreed. The s.106 and associated side agreement have now been agreed.
- 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 liabilities due under the s.106 be made personal to ABP but LBN have requested that the obligations in the agreement are enforceable against GLAP, ABP and their successors in title. The extents of the obligations are set out in Part 2 of this paper.
- 1.3 To mitigate this risk and ensure that GLAP's financial exposure to the s.106 liabilities are minimised, GLAP has sought a separate deed of indemnity from ABP and its guarantor under the DA, Dauphin Holdings Group Limited. In broad terms the deed allows GLAP to claim against ABP and Dauphin for any claim made against GLAP under the s.106 and also provides a mechanism for GLAP to retain suitable security for such sums due under the s.106 until they are paid. Further details of the provisions within the deed of indemnity can be found in Part 2 of this paper.

Section 156 Side Agreement

- 1.4 GLAP, ABP and TfL will enter a further agreement in accordance with s.156 of the GLA Act 1999 in order to secure a range of transport works.
- 1.5 As distinct from the s.106 agreement, the liabilities within this agreement lie solely with ABP, save for the provision of a long lease to TFL to allow suitable access rights for buses through the site. To ensure that a bus service can be run through the site ABP (and GLAP in their absence) has agreed to grant TFL a long lease for a bus stop. This is to ensure that TFL can secure appropriate access rights over what will be a private road. TFL are to register a restriction on GLAP's title with this benefit.
- 1.6 In the side agreement GLAP covenants with TFL that in the event of default on the part of ABP in granting the lease that it will grant the lease contemplated by the 'Minimum Requirements' and observe and perform the Minimum Requirements in order for TFL to continue to run the Bus Services on the site.
- 1.7 There is also an obligation on GLAP to transfer the land required for a platform extension at Royal Albert Dock DLR station to TFL or DLR under this side agreement. GLAP agrees to transfer the land, which is within the red line of land committed to and to be paid for by ABP under the DA, to DLR at ABP's request.
- 1.8 A summary of the principal liabilities under the s.106 & side agreement are set out in Part 2 of this paper.

Deed of Indemnity

- 1.9 At the same time that the s.106 & s.156 are entered into, GLAP will enter into an indemnity from ABP & Dauphin. The deed provides that ABP and Dauphin Holdings Group Limited will indemnify

GLAP against all liabilities falling under the s.106 & s.156 (as outlined at 1.3 above). The terms of the indemnity are set out within Part 2.

2. Objectives and expected outcomes

- 2.1 Entering these agreements will facilitate the delivery around 4.5m sqft of employment led development, including up to 845 new residential units.

3. Equality comments

- 3.1 It is not anticipated that the recommendations in this paper will have any 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 ABP and its guarantor Dauphin Holdings Group Limited. The key risks and liabilities to the GLA are set out in Part 2.

5. Financial comments

- 5.1 Royal Albert Dock is a development property that is part of a Development Agreement with ABP (London) Investment Ltd and its guarantor. A number of s106 and s156 obligations have been imposed on ABP over the life of the development project. The obligations are to be delivered on a phased basis, therefore each phase must be delivered before the next phase can commence, which restricts the amount of any liabilities to which GLAP may be exposed. As land owner and party to the Agreement GLAP is jointly liable to meet the costs within the s106 and s156 Agreements, should ABP fail to deliver on their obligations. However, in order to manage the exposure within the agreements GLAP has secured a Deed of Indemnity with its development partners, which should indemnify GLAP for all costs and liabilities arising from the planning agreements (s106 and s156.)

6. Legal comments

- 6.1 GLAP are being advised by Burges Salmon throughout this project including in relation to the s.106, side agreement 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 the GLA as per the terms of the Development Agreement. However, HIG received a verbal update on the key terms of the agreements in early December 2015 and no concerns were raised.

8. Planned delivery approach and next steps

Activity	Timeline
Enter into s.106 & s.156 & deed of indemnity	Late December 2015

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:

Lauren Noble 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:

Richard Blakeway 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. d. bll

Date

16.12.15

CHIEF OF STAFF:

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

Signature

Edward M

Date

16.12.2015

