

REQUEST FOR ASSISTANT DIRECTOR DECISION – ADD2556

Title: Standard Section 106 Agreement Templates

Executive Summary:

Section 106 (S106) Agreements secure planning obligations with which developers must comply when building out planning permissions. This document seeks approval for expenditure of up to £45,000 to commission external expert legal advice through an existing procurement framework to:

- update the GLA's existing standard S106 Agreement templates for affordable housing and viability review mechanisms
- produce new templates, including in relation to specialised forms of development such as student and co-living housing.

The templates referred to above will be provided to local planning authorities, property developers and planning agents. They will promote the implementation of the affordable housing and development viability-related policies set out in the London Plan 2021; promote consistency in S106 Agreement drafting; and speed up the agreement negotiating process.

Decision:

That the Assistant Director of Planning & Regeneration approves the expenditure of up to £45,000 to commission:

1. updates to the GLA's existing standard Section 106 Agreement templates for affordable housing and viability review mechanisms
2. the provision of new templates, including in relation to student housing, co-living and mixed-use development schemes.

AUTHORISING ASSISTANT 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: Lucinda Turner

Position: Assistant Director of Planning & Regeneration

Signature:



Date:

14/2/2022

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 Obligations relating to planning permissions are secured in Section 106 (S106) Agreements. These agreements ensure that developments mitigate their impact and comply with policies in the London Plan 2021 and local development plans.
- 1.2 The GLA's Planning teams take an active role in agreeing the terms of S106 Agreements for planning applications referred to the Mayor, and in particular the terms relating to affordable housing and viability review mechanisms. These provisions in S106 Agreements ensure affordable housing is genuinely affordable and that improvement in financial viability through the course of a development can result in additional contributions to affordable housing.
- 1.3 In order to promote the implementation of the affordable housing and development viability-related policies set out in what was at the time the draft London Plan, and to speed up the process for negotiating S106 Agreements, a number of standard S106 templates were commissioned and produced in 2018. The templates relate to residential-led planning applications; there are separate versions for proposals that comply with the Mayor's Fast-Track Route to viability. These templates are provided to local planning authorities, planning agents and applicants and have successfully achieved their aims.
- 1.4 The existing templates need updating to reflect the adoption of the London Plan 2021 and new approaches in matters relating to affordable housing and development viability. New templates that relate to mixed-use schemes and more specialised forms of development, including student and co-living housing, are also required to ensure planning obligations that apply to these schemes are effectively secured.
- 1.5 It is likely that the updating of the existing templates, and formation of the new ones, will be carried out in two stages. The initial stage is intended to be carried out in the first part of 2022 and will cover issues identified by the Planning teams that require detailed legal drafting. The second stage will likely take place following a consultation on the draft London Plan Guidance on affordable housing and development viability.
- 1.6 The templates to which this commission relates will: promote the implementation of the affordable housing and development viability-related policies set out in the London Plan 2021; promote consistency in S106 Agreement drafting; and speed up the agreement negotiating process.
- 1.7 This Decision seeks approval of expenditure for external legal support through an existing procurement framework of legal services in accordance with the GLA Contracts and Funding Code.

2. Objectives and Outcomes

- 2.1 The Objectives relating to this approval are:
 - Objective 1: Update the following existing S106 templates:

- Build for Sale Residential, Fast-Track Route Schemes
 - Build for Sale Residential, Viability-Tested Route Schemes
 - Build to Rent Residential, Fast-Track Route Schemes
 - Build to Rent Residential, Viability-Tested Route Schemes
- Objective 2: Form new S106 templates, including for:
 - Co-living Schemes
 - Student Housing, Fast-Track Route Schemes
 - Student Housing, Viability-Tested Route Schemes
 - Mixed-Use Schemes
 - Objective 3: Use the updated/new S106 templates to ensure planning permissions accord with the relevant policies of the London Plan 2021, and to expedite negotiations of S106 Agreements.

3. Equality comments

- 3.1. Under section 149 of the Equality Act 2010, as public authorities, the Mayor and the GLA are subject to a public-sector equality duty and must have 'due regard' to the need to (i) eliminate unlawful discrimination, harassment and victimisation; (ii) advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and (iii) foster good relations between people who share a relevant protected characteristic and those who do not. Protected characteristics under section 149 of the Equality Act are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership status.
- 3.2. No adverse equality impacts are identified in relation to this procurement. This work will support the implementation of the London Plan 2021 and the delivery of additional affordable housing through the planning system. It is anticipated that this will have a positive impact on protected characteristic groups through facilitating the provision of affordable housing. It will help to meet the housing needs of Londoners; and address a range of socioeconomic issues such as homelessness and overcrowding.
- 3.3. Consequently, there are no negative equality impacts in carrying out this work.

4. Other considerations

- 4.1. The risks relating to this commission are limited, and are set out in the table below:

Risk description	Inherent score	Mitigation	Target score
The work is not carried out in time.	Likelihood: 2 Impact: 3 Total: 6	The contract for services will provide assurance that work will be carried out in time. Regular project updates will be sought through the duration of the project.	Likelihood: 1 Impact: 2 Total: 2

The budget for the work is exceeded.	Likelihood: 2 Impact: 2 Total: 4	The scope of the work and fees will be agreed in writing and crystallised in the contract for services.	Likelihood: 1 Impact: 2 Total: 2
The work is not of sufficient quality.	Likelihood: 2 Impact: 3 Total: 6	The scope of the work will be agreed and will be crystallised in the contract for services The templates produced will be reviewed internally in detail before final sign-off is provided.	Likelihood: 1 Impact: 2 Total: 2

- 4.2. The Mayor is committed to increasing the level of affordable housing delivered through the planning process. To achieve this, the Mayor's London Plan sets out a strategic target that half of new homes should be affordable (Policy H4 of the London Plan 2021). This commission will contribute to achieving this.
- 4.3. There are no conflicts of interest to note for the officers involved in the drafting or clearance of this decision form.
- 4.4. No issues relating to data protection, health or safeguarding arise from the initiative set out in this form.

5. Financial comments

- 5.1. Approval is sought for the expenditure of up to £ 45,000 to procure the necessary advice to devise and update S106 templates and forms for a range of Planning applications.
- 5.2. The cost will be funded from within Planning budgets in 2021-22.

6. Legal comments

- 6.1. Part II Greater London Authority Act 1999 (as amended) (GLAA) sets out the general functions and procedure of the GLA, starting with the general power in section 30, which provides as follows: -
1. The Authority shall have power to do anything which it considers will further any one or more of its principal purposes.
 2. Any reference in this Act to the principal purposes of the Authority is a reference to the purposes of –
 - a) promoting economic development and wealth creation in Greater London;
 - b) promoting social development in Greater London; and
 - c) promoting the improvement of the environment in Greater London.
- 6.2. In addition, section 34 of the GLA Act contains a general power to do that which "is calculated to facilitate, or is conducive or incidental, to the exercise of any functions of the Authority.
- 6.3. The foregoing sections of this report indicate that:

- i. the decisions requested of the Assistant Director (in accordance with the GLA's Contracts and Funding Code) concern the exercise of the GLA's general powers, falling within the GLA's statutory powers to do such things considered to further or which are facilitative of, conducive or incidental to the promotion of economic development and wealth creation, social development or the promotion of the improvement of the environment in Greater London and;
- ii. in formulating the proposals in respect of which a decision is sought, officers confirm that 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, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom;
 - consider consulting with appropriate bodies.

- 6.4. In taking the decisions requested, the Assistant Director must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic (race, disability, sex, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (section 149 of the Equality Act 2010). To this end, the Assistant Director should have particular regard to section 3 (above) of this report.
- 6.5. Officers must ensure that the framework under which it is proposed the legal services required are to be called off was procured in accordance with the GLA's Contracts and Funding Code and the services required will be procured in accordance with the requirements of that framework. Officers have indicated in section 1.7 that the legal services will be appointed in discussion with TfL Legal.

7. Planned delivery approach and next steps

7.1 Indicative delivery table set out below:

Activity	Timeline
Finalise appointment of supplier	18 February 2022
Contract commences	18 February 2022
Provision of draft S106 clauses (Stage 1)	9 April 2022
Provision of final S106 clauses (Stage 1)	21 May 2022
Provision of draft S106 clauses (Stage 2)	October 2022
Provision of final S106 clauses (Stage 2)	November 2022

Appendices and supporting papers:

None

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved or on the defer date.

Part 1 - Deferral

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

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included 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:

Joseph Ward has drafted this report in accordance with GLA procedures and confirms the following:

✓

Corporate Investment Board

A summary of this decision was reviewed by the Corporate Investment Board on
14 February 2022

✓

ASSISTANT DIRECTOR OF FINANCE AND GOVERNANCE:

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

Signature

Date

14/2/22

