

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2032

Title: 16 Choats Road, Dagenham (Former Closed Loop).

Executive Summary:

GLA Land & Property Ltd (GLAP) inherited this property, which provided a large part of the UK's capacity for the recycling of plastic milk bottles. Successive operating companies have gone into liquidation and as a result, GLAP faced a significant financial liability on the property and London could have lost a major component of its recycling capability.

Following negotiations with the head leaseholder (M&G), the Administrator and Veolia ES (UK) Ltd a solution has been found that will mitigate GLAP's financial exposure and allow the recycling facility to recommence operations.

Decision:

That the Director approves GLA Land & Property Ltd becoming a party to a new lease between M&G UK Property Nominee 1 Ltd, M&G UK Property Nominee 2 Ltd and Veolia ES (UK) Ltd

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

Position: Executive Director – Housing & Land

Signature:



Date:

29/09/16

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 GLAP inherited the freehold of this property in 2012 from the LDA. While it physically forms part of the London Sustainable Industries Park (LSIP), the rest of LSIP was inherited from London Thames Gateway Development Corporation and this particular property was the first unit to be developed and came with onerous legal obligations.
- 1.2 GLAP's freehold interest is subject to a 250 year lease to M&G UK Property Nominee 1 & 2 Ltd and the rent is a peppercorn. The LDA received a capital receipt on the granting of the lease.
- 1.3 There was a 15 year sub-lease from M&G to Closed Loop (subsequently Euro Closed Loop) which was distrained in January 2016 by the Administrator of Euro Closed Loop.
- 1.4 The LDA wanted to ensure that the use of this building would remain compatible with the aims of LSIP in the event that Closed Loop failed and agreed to step in should failure occur. As a result, the LDA agreed to onerous conditions, the consequences of which were that GLAP would be responsible for the sub-lease until December 2022. There was a legal dispute around the commencement date of GLAP's liability.
- 1.5 What was not in dispute was that M&G had to obtain vacant possession and refurbish the property prior to GLAP taking on the sub-lease. In this case, obtaining vacant possession meant the removal of all of the specialist plant and equipment that made this such an important recycling facility.
- 1.6 M&G had taken possession of the property from the Administrator, who had until the 12th August to remove the plant and equipment. Anything left after that date would be removed by M&G. The Administrator was attempting to sell the plant and equipment and there were two parties in the frame. One was an existing company seeking to relocate the equipment to another part of the country and the other was a new company (Newco), being set up to attempt a rescue of the recycling operation.
- 1.7 The Administrator was seeking to sell the assets quickly and had indicated it was a straight contest between the two parties and the sale would be to the first party to commit contractually. Contracts had been issued to both parties.
- 1.8 Given this has been going on for over a year, M&G were seeking to crystallise their liability and were proceeding on the basis that they would obtain vacant possession, refurbish the property and then have GLAP as a tenant until 2022.
- 1.9 M&G had been prepared to enter into a direct lease with the Newco but on terms that were unacceptable to them.
- 1.10 GLAP had been exploring options to both mitigate its exposure on this property and see if it was possible to retain the core recycling capability in London.
- 1.11 To this end, terms had been proposed whereby GLAP would take a lease from M&G and then grant a sub-lease to Newco. There were a number of outstanding issues around the structure of Newco and the risk to GLAP should the deal have proceeded and Newco subsequently failed was extensive.
- 1.12 A key issue was the plant and machinery. The acquisition of this was crucial if the recycling facility was to be retained. However, the assets were of no value to Newco or GLAP without a satisfactory leasing situation also being in place. Therefore, any transaction had to be conditional on a series of contractual commitments being entered into simultaneously. That was proving difficult in relation to Newco and there was a very real risk of the assets being sold before a deal could be concluded.
- 1.13 A substantial risk of the Newco business case was the ability to guarantee a steady supply of good quality raw material, i.e. plastic bottles for recycling.

- 1.14 At the last minute, Veolia ES (UK) Ltd entered negotiations to acquire the assets and a lease of the property. They are part of the Veolia Group, a French transnational company with a turnover of c£20 billion, employing over 170,000 people.
- 1.15 Veolia have a large facility within close proximity of Choats Road and it includes a modern plastics recovery plant. This will enable them to provide their own raw material to the Choats Road operation.
- 1.16 Over a very short period of time, agreement was reached between M&G, Veolia, the Administrator and GLAP, which resulted in Veolia simultaneously entering into a lease of the premises and acquiring the assets from the Administrator. Approval for GLAP entering into the new lease was covered under the Routine Property Transaction process to enable Veolia to complete the acquisition of the assets from the Administrator.
- 1.17 As part of the deal, GLAP have entered into similar obligations as contained in the original lease to Closed Loop.
- 1.18 Once Veolia recommence operations, they will be employing c30 people and have the capability of producing 10,000 tonnes of high quality food grade plastic per annum.

2. Objectives and expected outcomes

- 2.1 The proposal will mitigate GLAP's financial exposure following the liquidation of Closed Loop Recycling Ltd and subsequently, Euro Closed Loop Recycling Ltd.
- 2.2 As a result of this project, a major element of the UK's plastics recycling capability will be preserved within London.
- 2.3 The project will generate 30 jobs initially, which may rise over time.
- 2.4 The proposal will assist in meeting the Mayor's objectives in relation to recycling and waste strategy in general.

3. Equality comments

- 3.1 This project will provide approximately 30 jobs for Londoners. While this is less than the number previously employed, it is expected that a number of former employees will apply for the new jobs created by Veolia.

4. Other considerations

4.1 The rationale – strategic facility for London

- 4.1.1 The ECLR facility is the only plastics recycling facility of its kind in London - turning HDPE plastics including milk bottles, household cleaning and shampoo bottles into flakes and pellets for recycling. It is one of only 2 HDPE processing facilities in the UK. Up until its closure last year it provided 80% of the UK's plastic milk bottle recycling capacity (30,000 tonnes per annum).
- 4.1.2 Recycling HDPE plastic achieves significant CO₂ savings due to its high fossil carbon constitution. The ECLR facility operating at full capacity saves around 33,000 tonnes of CO₂ - equivalent to taking 15,000 London cars off the road per year. This is achieved by avoiding CO₂ emissions associated with manufacturing virgin plastic. HDPE plastic is also a lucrative product, fetching £300 - £400 per tonne on the reprocessing market. London households consume around 50,000 tonnes of HDPE plastic each year, yet only around half of this is actually recycled. Capturing more plastics for recycling in London can provide an income stream to boroughs and considerably reduce their transport and disposal costs, with incineration and landfill charges at around £100 - £140 per tonne. All these factors combined make the ECLR facility an important strategic asset to retain in London to help boost recycling performance, reduce costs, provide green jobs and cut London's CO₂ footprint.

4.2 Policy context and current performance

- 4.2.1 The Mayor's municipal waste strategy and London Plan sets challenging targets for London to send no waste to landfill by 2025, and to recycle 50% municipal waste by 2020 and 60% by 2031. London's municipal waste recycling performance has increased three-fold from 8% in 2002 to 28% in 2010. Despite these improvements London's recycling performance has plateaued at 30% since 2010 – well below the national average of 43%. Significant and sustained improvement in local recycling services is needed to get anywhere near the Mayor's targets, supported by investment in local affordable reprocessing facilities.
- 4.2.2 Recycling more plastic given its high carbon intensity is key to meeting the Mayor's lifecycle CO₂ emissions targets set out in his waste strategy. Reuse and recycling of carbon rich high value materials including plastic, metals and textiles will deliver extensive climate change mitigation, income stream and job creation benefits.
- 4.2.3 The London Plan sets incremental targets for London to ultimately manage the equivalent of all its municipal and commercial waste produced by 2036 (100% net self-sufficiency). To achieve this London boroughs are required to identify and safeguard local sites to manage apportioned amounts of waste projected to be produced. The Sustainable Industry Park, of which the ECLR facility is located, is an ideal site for recycling activities supporting a clean tech cluster of similar facilities including an anaerobic digestion facility, waste gasification facility, and some food and other manufacturing.

5. Financial comments

- 5.1 This decision seeks approval for GLA Land & Property Ltd (GLAP) being a party to a new lease between M&G UK Property Nominee 1 Ltd, M&G UK Property Nominee 2 Ltd and Veolia ES (UK) Ltd.
- 5.2 Prior to Veolia expressing an interest in this plant, there was a provision of £1.3m included in GLAP's accounts to cover GLAP's costs. However, subsequently, as Veolia entered the negotiations and was able to secure the sub-lease and acquire the assets, this provision has been removed from the accounts, due to a very low risk of Veolia defaulting.
- 5.3 Although the new lease, in comparison with the old agreement between GLAP and M&G, contains potentially more onerous conditions affecting GLAP, there is a very low risk of Veolia defaulting and M&G enforcing the lease conditions upon GLAP. However, in an unlikely situation of Veolia defaulting on the lease agreement GLAP will be responsible for the sub-lease from the point of default. Whereas, under the old agreement GLAP would only become responsible to pick up a sub-lease once M&G obtained vacant possession and refurbished the property. However, the additional liability is unlikely to exceed the £1.3m cost to GLAP that would almost certainly have arisen had the Veolia deal not completed.
- 5.4 Due diligence has been carried out on Veolia ES (UK) Ltd, which did not reveal any major concerns for this company.

6. Legal comments

- 6.1 GLAP has been advised by Gowling WLG in relation to this new lease between M&G UK Property Nominee 1 Limited, M&G UK Property Nominee 2 Limited, Veolia ES (UK) Limited and GLAP.
- 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

- 6.3 It should be noted that as GLAP will be a party to the legal documentation, GLAP will also need to approve the proposed lease in accordance with its constitution.
- 6.4 As noted above, GLAP will enter into similar obligations in the new lease as contained in the original lease (now surrendered) to Closed Loop. The key difference between the new lease and the original lease is that the new lease's term will not expire until 26 June 2031, whereas the original lease's term would have expired on 19 December 2022. However in the event that GLAP is required to take an assignment of the new lease (or in the event of forfeiture take a replacement lease), it will take the lease as varied so that GLAP has the ability to terminate the lease as at either the later of 19 December 2022 or the first anniversary of the date of the assignment/commencement of the replacement lease. This has the effect of ensuring that GLAP need not be subject to these leasehold obligations for any significantly longer time period under the new lease than it would have been under the original lease.

7. Planned delivery approach and next steps

- 7.1 The acquisition has been concluded and Veolia will recommence operations later this year.

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

If YES, for what reason:

Until what date: (a date is required if deferring)

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:

Malcolm Beadle 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

M. J. Beadle

Date

28.9.16