

## REQUEST FOR MAYORAL DECISION –MD2548

**Title: Viability Assessment Fees**

### **Executive Summary**

This Mayoral Decision form seeks approval for the implementation of new fees for the GLA's viability scrutiny of referable schemes. Two fees are proposed, one for the scrutiny of schemes that follow the Viability Tested Route and the other for schemes seeking to demonstrate extraordinary costs in relation to the redevelopment of utility sites. The changes align with the Mayor's priority to secure more affordable housing through the planning process.

### **Decision**

That the Mayor approves:

1. The introduction of a charge of £10,000 for the scrutiny of schemes that follow the Viability Tested Route;
2. The introduction of a charge of £5,000 for the scrutiny of the financial evidence need to demonstrate extraordinary costs in relation to the redevelopment of utility sites; and
3. The new charges and arrangements coming into effect on 1 February 2020.

### **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:**

17/12/19

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

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

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

- 1.1. The Mayor is committed to increasing the level of affordable housing delivered through the planning process. To achieve this the draft London Plan sets out a strategic target that half of new homes should be affordable. The Mayor has also introduced the Threshold Approach to affordable housing through the draft London Plan and Affordable Housing and Viability Supplementary Planning Guidance (SPG)).

##### *Fast Track Route*

- 1.2. Under the Threshold Approach, development proposals that provide 35 per cent affordable housing and 50 per cent on public and industrial land (where industrial floorspace capacity is not being re-provided), and that meet tenure, affordability and other relevant requirements can follow the Fast Track Route.
- 1.3. The Fast Track Route enables developments to progress without the need to submit detailed viability information and without late viability review mechanisms which re-assess viability at the end of the development process.
- 1.4. The Mayor strongly encourages applicants to follow the Fast Track Route which, since it was introduced, has provided greater certainty to the land market, sped up the planning process, and helped to increase the level of affordable housing secured.
- 1.5. Schemes that do not provide the threshold level of affordable housing or meet other relevant criteria must follow the Viability Tested Route and are subject to viability scrutiny and early as well as late stage review mechanisms.

##### *Viability Tested Route*

- 1.6. Where an application does not follow the Fast Track Route and it is accepted that viability of a specific site should be considered as part of the application, the borough (as the relevant local planning authority), and the Mayor for referable applications, will determine the weight to be given to a viability assessment alongside other material considerations, ensuring that developments remain acceptable in planning terms.
- 1.7. Viability assessments need to be tested rigorously. The assessment of viability is an additional procedure that requires the commitment of dedicated and suitably experienced officers and / or external consultants. It has been standard practice for a number of years for boroughs to require the applicant to cover the costs of this process to ensure that the borough is adequately resourced to assess the information submitted and is not disadvantaged in its ability to carry out other planning functions. From discussions at the London Authorities Viability Group, officers are not aware of any London borough that does not do this. A review of these charges levied by the boroughs show that they can range from £7,000 to £20,000 depending upon the complexity of the issues involved.
- 1.8. The GLA currently does not recover the cost of officer time for viability assessments. To bring the GLA into line with accepted practice, it is proposed that applicants will be required to pay the GLA's costs for assessing viability of referable applications not following the Fast Track Route. A fixed fee of £10,000 plus VAT is proposed to cover the cost of case officer project management, specialist viability officer review and management team input. This relates to Stage 1 and Stage 2 of the referral process, including consideration of the S106 agreement and viability review clauses. The fee is in line with borough charges and is based on agreed officer rates (MD2475). It is a small proportion of development fees and is less than the costs developers incur when commissioning Financial Viability

Assessments and as such it does not impose an unacceptable additional financial burden on developers. Being fixed also provides developers with a degree of certainty as to the costs.

### *Utility Sites Extraordinary Costs*

- 1.9. For the purposes of the Threshold Approach and the Fast Track Route it is recognised that some surplus utilities sites are subject to substantial decontamination, enabling and remediation costs. If it is robustly demonstrated that extraordinary decontamination, enabling or remediation costs must be incurred to bring a surplus utilities site forward for development, then a 35 per cent (rather than 50 per cent) affordable housing threshold could be applied, subject to detailed evidence, including viability evidence, being made available.
- 1.10. This detailed evidence, including viability evidence, will need to be scrutinised rigorously by GLA officers before the 35 per cent affordable housing threshold can be agreed. A fixed fee of £5,000 plus VAT is proposed for this work. The fee reflects a lesser level of involvement compared to the Viability Tested Route as there is no need to consider late viability review clauses and the fee is based on the agreed officer rates approved within MD2475.

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

- 2.1. The principal objective is to maintain an effective high-quality strategic planning service at the GLA at a time of pressure on resources and growing demands on the service by ensuring there is sufficient capacity to deal with viability, including call ins by the Mayor.

## **3. Equality comments**

- 3.1. Under section 149 of the Equality Act 2010, in making these decisions due regard must be had to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who have a protected characteristic and those who do not. Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender, sexual orientation (and marriage or civil partnership status for the purpose of the duty to eliminate unlawful discrimination only). In this instance the proposals have been assessed against this duty and are not expected to have any impacts on those with protected characteristics as distinct from anyone else.

## **4. Other considerations**

- 4.1. *Mayoral strategies and priorities:* the proposals recognise the Mayor's priority to lead the way in increasing affordable housing delivery in London; demonstrated to date through the publication of the Affordable Housing and Viability SPG and Affordable Homes Programme Funding Guidance, increasing delivery in referable applications and the appointment of a new Viability Team at the GLA. Since its formation in February 2017, the Viability Team has been providing advice on referable applications, leading on viability evidence for the draft London Plan, and supporting boroughs to increase the level of affordable housing that they secure through viability assessments
- 4.2. *Risk management issues:* there is a possibility that some developers may refuse to pay the fees because they already cover the cost of the local planning authority's viability work. Monitoring since the introduction of the GLA's pre-application fees last year shows there has been a good take up of both levels of the pre-application service and it is therefore anticipated that developers will be willing to pay the fees because of the certainty the approach provides, and conversely the costs associated with uncertainty and delay. Regular monitoring of income will be necessary to ensure the costs of providing the service are covered and the income is spent within the restrictions imposed under the regulations deriving from the Local Government Act 2003.

- 4.3. *Conflicts of interest*: the officers drafting and clearing this report have no conflicts of interest to declare.

## **5. Financial comments**

- 5.1 As outlined within the Local Government Act 2003, income derived from charging fees cannot exceed the costs of providing the service but allows the budget to be balanced over a period of time. Consequently, and in-line with previous financial years, any surplus income received beyond expenditure from charges will be placed in the GLA's Pre-application and Smoothing reserves at the end of the financial year (in-line with Section 93 of the Local Government Act which allows the GLA to establish a reserve to ensure all income generated is utilised on the service).

## **6. Legal comments**

- 6.1 The above paragraphs indicate the decision requested of the Mayor falls within his statutory powers under section 30 of the Greater London Authority Act 1999 (as amended) ("the Act"), acting on behalf of the authority to do anything he considers that will promote the importance of the environment in Greater London; and in formulating the proposals in respect of which a decision is sought officers have complied with the Authority's related statutory duties to:
- a) Pay due regard the principles that there should be equality of opportunity for all people;
  - b) Consider how the proposals will affect:
    - The health of persons in Greater London;
    - The health inequalities between persons living in Greater London;
    - The achievement of sustainable development in the United Kingdom; and
    - Climate change, and the consequences of climate change and consult with appropriate bodies.
- 6.2 The Mayor has a statutory role as strategic planning decision maker as part of the Act and the Town and Country Planning (Mayor of London) Order 2008. Rigorous assessments of scheme viability are critically important to ensure genuine affordable housing is delivered.
- 6.3 The Authority also has a subsidiary power pursuant to Section 34 of the Act to do anything which is calculated to facilitate or is conducive to the exercise of any of the statutory functions of the Authority. Viability Assessments are a facilitative way to exercise the section 30 powers defined above, and as such also fall within section 34.
- 6.4 Section 93 of the Local Government Act 2003 provides the Authority with the power to charge for discretionary services where there is no other power available. Discretionary services are those services that the Authority has the power but is not obliged to provide. The carrying out of this service is discretionary.
- 6.5 The power to charge is subject to a duty to secure that the income from charges throughout the Authority does not exceed the costs of provision of any service it provides, taking one financial year with another. As this cost is based on already agreed officer rates approved by MD2475 and has been worked out to reflect the costs of providing this service i.e. salary costs and reasonable estimated/actual on costs as set out within the body of this MD, this is lawful. The ability to take one financial year with another allows for the establishment of a contingency. For the purposes of the power to charge for discretionary services, the prohibition on raising money at section 34(2) of the Local Government Act is to be disregarded.

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

<b>Activity</b>	<b>Timeline</b>
The website is updated with the new fees and timescales. Email all the applicants who are registered and have said they would like to be contacted about changes to the service	1 January 2020
Start date	1 February 2020
Evaluation	On-going monitoring

**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:**

John Finlayson has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Debbie Jackson has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Jules Pipe has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**

This decision was agreed by the Corporate Investment Board on 16 December 2019.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature

Date

16.12.19

TOM MIDDLETON ON BEHALF OF MARTIN CLARKE

**CHIEF OF STAFF:**

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

Signature

Date

16/12/2019.

D. Bellamy