

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2128

Title: Blackwall Reach Regeneration Project – Leasing and Project Delivery

Executive Summary:

Further to the approvals granted under MD1504, and in conjunction with MD2060, this Mayoral Decision seeks retrospective approval to GLA Land and Property Limited's (GLAP) entry into documentation giving effect to certain amendments to the Principal Development Agreement dated 19 April 2011 (PDA) and its subsidiary documents (including building agreements and leases) and into new documentation:

- (i) to allow Swan New Homes Limited (as guaranteed by its parent company, Swan Housing Association Limited) to draw down leases of the current and future phases of the development at start on site stage, rather than at practical completion as is envisaged within the PDA;
- (ii) to remove reference to Countryside Properties (in partnership) Limited which is no longer acting as contractor for the scheme and to Countryside Properties (UK) Limited which is no longer acting as contractor's guarantor;
- (iii) to reflect changes necessitated by the funding arrangements between Swan New Homes Limited and GLAP, acting separately as funder; and
- (iv) to facilitate the future working arrangements, including but not limited to allowing overage to be paid on a quarterly basis rather than on a unit by unit basis as is currently envisaged.

This report also seeks approval for disposal of a small area of highway land to London Borough of Tower Hamlets in order to facilitate the project and the continuing legal and technical advice to support the delivery of the project.

Decision:

That the Mayor retrospectively approves:

- (i) the entry by GLAP into the Deed of Amendment and Restatement of the PDA dated 31 March 2017 to give effect to the variations and amendments to the PDA and associated documents described within this report to facilitate the delivery of the project, including but not limited to allowing Swan Housing Association Limited and its subsidiary development arm Swan New Homes Limited to drawdown a lease of the relevant part of the development site(s) at start on site stage for Phase 1B and all future Phases;
- (ii) the entry by GLAP into the Phase 1B Building Agreement and Phase 1B Lease dated 31 March 2017 and ancillary documents; and
- (iii) the entry by GLAP into a Deed of Overage Priority dated 31 March 2017 required in connection with the loan facility to Swan New Homes Limited described within this report.

That the Mayor also approves:

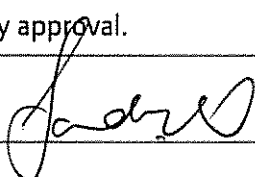
- (iv) expenditure of up to £75,000 per annum (a total of £225,000) until 31st March 2021 to cover all Blackwall Reach legal fees relating to the development as set out in the 2017/18 GLAP budget;
- (v) expenditure of up to £40,000 for external technical advice as set out in the 2017/18 GLAP budget;
- (vi) disposal of an area of former highway land to the London Borough of Tower Hamlets in order to enable the delivery of the project.

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:

19/2/18

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

Decision required – supporting report

1. Introduction and background

- 1.1. The Blackwall Reach Regeneration Project (BRRP) involves the comprehensive redevelopment of the Robin Hood Gardens housing estate and adjoining commercial land in Poplar adjacent to Blackwall DLR station. The project has been brought forward jointly by the GLA and LB Tower Hamlets (LBTH) as the principal land owners. The arrangements in respect of the development are set out in a Principal Development Agreement (PDA) dated 19 April 2011 (as amended in 2013) with LBTH and the appointed development partner, Swan Housing Association (Swan HA).
- 1.2. Outline planning permission for BRRP was secured on 30th March 2012 for a scheme that will provide up to 1,575 new homes (of which more than 50% are affordable by habitable room and 98 of which are already completed). There will be no net loss of social housing, with 472 net new affordable homes across the scheme (including Phase 1A affordable units). In addition, the scheme will provide a new park and play space, a new community centre, retail floor space, business floor space and a replacement mosque. The scheme also provides funding through a Section 106 Agreement for infrastructure improvements and the expansion of the adjacent Woolmore primary school to increase school places from 204 to 420. Work is currently due to complete on the scheme in 2026-27. The scheme will be delivered in five phases, the first of which (phase 1A) is already completed.
- 1.3. Swan HA and its subsidiary development company, Swan New Homes Limited (Swan NH), together referred to as “Swan”, have the ability pursuant to the PDA to raise finance to fund the development scheme. In 2015/16 Swan HA explored various financing arrangements in order to raise a funding package to deliver Phase 1B (and potentially future Phases) of the scheme including approaching financial institutions and the HCA.
- 1.4. One of the funding options which has subsequently been agreed under MD2060 is that the GLA, via GLAP, will provide £50m of interest bearing loan funding.
- 1.5. Now the financing agreements are in place, this Mayoral Decision seeks retrospective endorsement of various amendments to the PDA and entry into documentation required to facilitate such financing.
- 1.6. In particular, GLAP as funder requires security over Swan’s assets. For Swan to be able to offer such security it requires a legal interest in the site.
- 1.7. Under the terms of the PDA Swan constructs each Phase under license and then takes a lease of the relevant Phase at practical completion stage. However, as now varied, Swan HA is to take the lease of Phase 1B and future Phases at start on site stage, rather than at practical completion, allowing it to have sufficient legal interest to raise finance on the scheme and offer the required security over the relevant Phase to GLAP as funder. In order to protect the land owners in this arrangement, it is also proposed to vary the Building Agreement to incorporate claw back arrangements in the event of under performance and/or non-completion for both Phase 1B and all future Phases of the scheme.
- 1.8. It has been agreed that Swan HA will enter in to a Deed of Overage Priority to pay any overage due to the land owners prior to the calculation of any cost overrun from its own accounts, insulating the land owners from any unexpected issues with construction.
- 1.9. In addition there are a number of provisions that would benefit from amendment or clarification within the existing PDA to reflect the updated position. The amendments are summarised as follows:
 - a) Two of the original parties to the PDA, Countryside Properties (in partnership) Limited and Countryside Properties (UK) Limited no longer have any role to play in the scheme. Accordingly all references to them in the PDA and associated documents have been removed. The commercial nature and structure of the agreement otherwise remains unchanged;
 - b) The parties agreed to incorporate affordable workshop space in a later phase;
 - c) The survey condition was removed as a prerequisite to completion of Phase 1B documents;

- d) The longstop date for the secondary conditions for Phase 1B was changed from 30 July 2014 to such later date as GLAP and LBTH shall elect acting reasonably;
- e) A new clause was added providing an indemnity from Swan HA to LBTH and GLAP in relation to any claims made by Transport for London in respect of any damage to the Blackwall Tunnel caused by the works being undertaken by Swan at Blackwall Reach;
- f) A new clause was added to provide that statutory consents do not have to be entered into as a prerequisite to the grant of a building agreement and Phase lease completion;
- g) A new clause was added in acknowledgement that the "consents condition" may also not be completely satisfied by the time a building agreement is entered into.
- h) An amendment to give flexibility, only where appropriate and in line with relevant statutory and legislative requirements, for the parties to vary or in some instances waive hard deadlines which would otherwise entitle them to terminate the agreement;
- i) An amendment to clarify that GLAP and LBTH could agree to enter into documents jointly as opposed to GLAP surrendering its interests to LBTH and LBTH entering into documents by itself;
- j) The form of building agreement attached to the PDA was revised back to the 2011 form (as the form attached to the 2013 PDA was tailored specifically for Phase 1A).
- k) Swan NH entered into the Building Agreement as sub-developer but with joint and several liability alongside Swan HA as developer.
- l) Robin Hood Gardens West has to be demolished (subject to various conditions) by a fixed date. This date has been modified in acknowledgement of difficulties in removing the last lawful occupier from Robin Hood Gardens West.

2. Further Technical Advice

- 2.1. In 2015 MD1504 approved a multi year budget of up to £150,000 for legal advice to support the delivery of the project. GLAP and LBTH jointly appointed Berwin Leighton Paisner LLP (BLP) to undertake this work using TfL Legal's framework arrangements and it has subsequently provided legal advice on the negotiation and delivery of the terms of the PDA ever since.
- 2.2. The need for ongoing legal advice remains, and an ongoing annual allocation of £75,000 has been identified in the Housing & Land revenue budget to accommodate this appointment going forward, based on charges for previous years. This report therefore seeks approval to continue the appointment of BLP for three years (until 2021) under the terms of TfL Legal's framework.
- 2.3. Work is ongoing to identify delivery routes for Phase 4 of this scheme. In order to support this the appointment of additional technical expertise will be required including valuation advice. This report seeks approval to commit up to £40,000 to support this work for which Housing & Land has budget provision.

3. Transfer of land to LB Tower Hamlets

- 3.1. LBTH made a stopping up order (the Stopping up of Highways (London Borough of Tower Hamlets Ditchburn Street and land south of Ditchburn Street, Prestage Way, Scouler Street and Robin Hood Gardens Estate, London) Order 2015 in respect of highway land within Phases 1B, 2, 3 and 4 (the Order Land). The Order Land is identified in Appendix 1 to this report. Following the making of the order, LBTH then applied to register the Order Land in its name at the Land Registry.
- 3.2. Under the legal principles of the 'Ad Medium Filum' rule, there is a presumption that an owner of land which abuts either a public or private highway or a non-tidal river or stream also owns the subsoil of the highway. As a result, the Land Registry has identified that since GLAP owns adjacent land to the Order Land, a parcel of the Order Land should be registered in GLAP's name (as opposed to LBTH's name).
- 3.3. However the stopping up order provides that in order for the Order Land to be fully stopped up, LBTH must acquire all interests in the subsoil of the Order Land. Therefore GLAP needs to transfer its freehold interest in the Order Land within Phase 1B to LBTH in order for the stopping up in respect of phase 1B to be completed. Therefore a disposal by GLAP of its interest in a parcel of the Order Land to LBTH is necessitated.
- 3.4. For any disposal of land, GLAP is required to meet the GLA's obligations to achieve Best Consideration in line with Section 333ZC of the 2011 Localism Act. In this instance, under the terms of the PDA land within the

Blackwall scheme is disposed of via lease to Swan HA for £1 and Best Consideration is achieved via an overage agreement with LBTH and GLAP receiving a respective share of profits once units are sold. Therefore GLAP can clearly evidence that Best Consideration will be achieved for the disposal of this land to LBTH, in that it will receive a respective proportion of the receipts linked to the quantum of land it includes within the development. This arrangement has been certified as achieving Best Consideration for the partners by the valuation team at GVA as part of the original drafting of the PDA.

4. Objectives and Expected Outcomes

- 4.1. The original proposals for development at Blackwall Reach involved each phase being taken forward sequentially, without overlap. The variations and amendments to the PDA and ancillary documents permitted by this Mayoral Decision will allow Swan NH and Swan HA to accelerate the development across all phases in which it currently has an interest.
- 4.2. Without agreeing the necessary amendments to the PDA to facilitate the loan agreement, it was anticipated that Swan HA might have needed to approach the wider financial market again to seek funding, which could have risked stalling or decelerating the project. The revised arrangements set out above will allow the scheme to proceed at pace (currently 18 months ahead of the contractual timeline).

5. Equality comments

- 5.1. The proposals will ensure the delivery of new housing units within Tower Hamlets, and the Poplar Riverside Housing Zone, which in turn will help to implement the Mayor's policies set out in the Mayor's London Housing Strategy. In January 2014 the GLA published an Integrated Impact Assessment (IIA), including an equalities impact assessment, of that strategy. The policies related to increasing housing supply, of which this paper relates, were covered by the IIA for the Further Alterations to the London Plan.
- 5.2. The IIA concluded that updating housing projections and targets would support the delivery of sufficient housing and may help stabilise housing prices, supporting equal opportunities throughout communities. Furthermore, the provision of housing, including maximising the delivery of affordable housing, would be in line with other policies of the Plan (e.g. Policy 3.5), ensuring that the needs of different groups are taken into account in the housing design. Such homes, in line with the Housing Zone programme and the existing PDA, would be designed to the Mayor's Housing Design Guide standards, promoting accessibility for all and homes suitable for all users
- 5.3. The designation of a Housing Zone within an area is designed to identify a site or sites as an area for housing growth and delivery within London, often partnered with a series of funding streams and non-financial assistance to deliver these new homes, and therefore this decision will facilitate these goals and ultimately ensure that the needs of different groups are taken into account in the design and development of housing.
- 5.4. In order to access funding Swan NH has been required to enter into contract with GLAP to deliver the scheme which matches parallel obligations in the existing PDA. With regard to project delivery, the contract places the following obligations on Swan NH in respect of the Equality Act 2010:
 - Swan NH shall comply in all material respects with all relevant Legislation, including but not limited to legislation relating to health and safety, welfare at work and equality and diversity, and will use reasonable endeavors to enforce the terms of the Scheme Project Documents to ensure compliance with this obligation.
 - Swan NH has, and is in full compliance with, a policy covering equal opportunities designed to ensure that unfair discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the Works is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by GLA.

6. Other considerations

a) Key risk and issues

- 6.1 With regard to the potential levels of housing development proposed within the scheme, it should be noted that the figures stated here do not prejudice any future Mayoral decisions on planning designations/de-designations or consideration of future planning applications.
- 6.2 The GLA has engaged with the parties to these proposed contractual amendments as it has considered appropriate. It is not considered necessary or appropriate to consult any other persons or bodies including those specified in section 32(1) of the Greater London Authority Act 1999 for the purposes of this Mayoral Decision.

b) Links to Mayoral strategies and priorities

- 6.3 The purposes of the Housing Zones programme is to increase housing supply by accelerating and unlocking development to deliver over 75,000 homes by 2026. BRRP will contribute towards this and support the aim to deliver at least 42,000 homes per annum prescribed by the Further Alterations to the London Plan March 2015.

7. Financial Comments

- 7.1 The Decision is seeking approval for: amendments to the Principal Development Agreement as set out in paragraph 1.9 and changes to the timing for entering into lease agreement for each site, so that the sites are transferred at the start on site rather than on practical completion. Consideration for the sites will be in the form of overage and a Deed of Overage Priority has been agreed.
- 7.2 Approval is also sought for the lease agreement of Phase 1B. Valuation for this site is still in progress and a VAT invoice will be issued on completion of the valuation.
- 7.3 This decision requests approval for an additional £340k of Revenue expenditure to cover the Legal Fees and Technical Advisor costs related to Blackwall Reach Regeneration Project. This is an additional revenue requirement for this project with previous financial approval of £150k, covered by MD1504 (see Section 2.2 above for further details), which brings the total lifetime budget for this project to £490k.
- 7.4 The above expenditure consists of up-to £40k of Technical Advisor costs incurring in 2017/18 financial year, as well as a yearly cost of up-to £75k (between 2017/18 and 2020/21 financial years) for Legal services to support the delivery of the scheme. Current year (2017/18) funding is available from the dedicated budget within Land & Property Programme, however, the confirmation of the future years funding is subject to the finalisation and sign-off by the Mayor.

8. Legal Comments

- 8.1 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. The principal purposes, as set out in section 30(2) of the GLA Act are:
- (1) promoting economic development and wealth creation in Greater London;
 - (2) promoting social development in Greater London; and
 - (3) promoting the improvement of the environment in Greater London.
- 8.2 Given the above and section 34 of the GLA Act, which allows the Mayor to do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of his functions, the foregoing sections of this report indicate that the Mayor has the power to make the requested decisions.

9. Planned delivery approach and next steps

Activity	Timeline
Signing of contract terms	December 2016
Start on site Phase 1B	December 2016
Completion of Phase 1B	March 2020
Start on site Phase 2	May 2017
Completion of Phase 2	March 2020

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 – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the following
(✓)

Drafting officer:

Neil Hook has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

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:

James Murray 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 19 February 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Blace

Date

19.2.18

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

19/2/2018.

