

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD645

Title: Olympic Park Visitor Attraction Design and Development

Executive Summary:

Approval of delivery arrangements for the Olympic Park Visitor Attraction, including a change to the direction to deliver funding for the Visitor Attraction.

Decision:

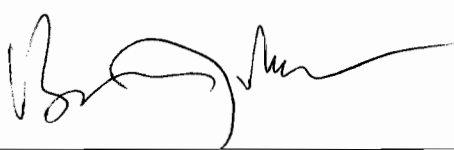
To approve:

- a) The cancellation of the direction to the LDA in MD590 relating to funding for the Visitor Attraction.
- b) The direction to the LDA to capital grant fund to Arcelor Mittal Orbit Limited and [on substantially the same terms as those contained in the attached Grant Agreement] an amount not exceeding £3.1 million towards capital elements of the Visitor Attraction project completed in time for the Games, but not later than 1 January 2014.
- c) The entering into of the agreements related to the Visitor Attraction as listed:
 - (i) GLA IP sub-licence to Arcelor Mittal Orbit Limited for construction of the Orbit.
 - (ii) GLA IP sub-licence to OPLC for fit out and operation.
 - (iii) GLA IP sub-licence to LOCOG for Games-Time operation.
 - (iv) MOU between GLA, OLPC and Arcelor Mittal Orbit Limited for the Visitor Attraction.
 - (v) Entering into a non legally binding Heads of Terms regarding revenue sharing.
- d) The delegation for Neale Coleman, Director of London 2012 Coordination, and Martin Clarke, Executive Director – Resources, to approve variation of the above, and the entering into of any associated agreements.
- e) As a Founder Member of the Olympic Park Legacy Company (OPLC):
 - (vi) The entering into of an agreement between OPLC and ArcelorMittal Orbit Limited for the Visitor Attraction.
 - (vii) The material changes outlined in this MD to the Heads of Terms previously approved in ODD18.
 - (viii) delegated responsibilities to the OPLC to account for the final sign off of the Guaranteed Maximum Price Brief, cost and programme ahead of the construction starting on site, and any conditions applied to this.

Mayor of London

The above request has my approval.

Signature



Date

29/9/2010

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

Decision required – supporting report

1. Introduction and background

Funding and operation

- 1.1 MD590 approved the selection of the design for the Visitor Attraction in the Olympic Park, and contained a direction to the LDA to provide £3.1 million in funding to the ODA. After discussions between the relevant stakeholders, it was decided that the funding would go to Arcelor Mittal Orbit Limited, and a parent company guarantee will be provided by Arcelor Mittal SA to the LDA. This MD approves that change and cancels the previous direction.
- 1.2 From the outset the project has been supported by the ODA, LDA, OPLC and LOCOG, as it could add a significant visitor draw to the Olympic Park to complement the Games and Legacy operation. It is believed that given the right specifications and design the proposal could create significant revenue, covering its costs and generating profit. This view was supported by initial soft market testing carried out by OPLC and LOCOG. OPLC also commissioned Grant Thornton and Mather & Co. to undertake a comprehensive business plan, which built on initial feasibility work presented to OPLC's Board on 31 March 2010.
- 1.3 These agencies and the GLA have worked together with the design team and Arcelor Mittal to strike the right balance between design, cost and operational commitments. After several months joint working a consensus has been reached as follows:
 - Arcelor Mittal will fund the agreed proportion of the capital budget in return for Games and post-Games sponsorship rights from LOCOG and OPLC;
 - The Mayor will direct the LDA to support the project by providing capital grant funding for the Visitor Attraction for the purposes of regeneration and legacy.
- 1.4 Arcelor Mittal, as client of the project, is responsible for all costs, including any overruns, that arise under the contract with SRM, howsoever they might arise. The LDA contribution to the project is capped at £3.1 million. The OPLC Board agreed on 24 September 2010 that the company would have no liabilities over any cost overruns.
- 1.5 The GLA has been provided exclusive licence by Anish Kapoor for the Intellectual Property Rights (IPR) for the Orbit. Accordingly, the GLA will licence Arcelor Mittal Orbit Limited to enable it to construct the Orbit, and it will licence OPLC in order to fit out, and operate the Orbit. The GLA licences to construct, fit out, and operate the Orbit have been agreed. GLA will licence the London Organising Committee For the Olympic and Paralympic Games (LOCOG) in order for it to exercise its rights under the supportive agreement with Arcelor Mittal. Heads of Terms relating to the revenue share of the exploitation of the IPR for the Orbit are currently being negotiated, and detailed agreements following on from the Heads of Terms will follow in the future.
- 1.6 OPLC will take ownership of the Visitor Attraction at practical completion. It will then take full responsibility for its management, maintenance and operation to the benefit of the wider legacy of the Olympic and Paralympic Games. LOCOG will operate the Attraction from 1 May 2012 to 31 October 2012.
- 1.7 Post Games, OPLC will resume operation with the Attraction forming a core component of the Olympic Park business plan. In both periods operators will be required to invest in fit-out and operational equipment.

Delivery

- 1.8 Arcelor Mittal has funded the design work, Building Control and Town Planning applications. Arcelor Mittal will contract directly with Sir Robert McAlpine (SRM) on the basis of a fixed price for the construction of the scheme. Arcelor Mittal Orbit Limited will enter into a construction license with the ODA. The project will be handed to OPLC on completion via a commercial contract between OPLC and Arcelor Mittal.
- 1.9 The GLA, supported by the ODA, has agreed key milestone dates for the project (through to receipt of planning permission and the signature of the contract between Arcelor Mittal Orbit Limited and SRM), and has monitored these closely.
- 1.10 The following project governance arrangements have been put in place for the scheme, and these are the subject of a Memorandum of Understanding (MOU):
- The overall project will be supervised by a Project Group, consisting of representatives of GLA, ArcelorMittal and OPLC as final landowner and owner/operator.
 - A dedicated Project Sponsorship Team will support the Project Group, co-ordinating reporting, risk and change management and decision-making and steering the design and town planning processes.
 - Alongside the Project Sponsorship Team, operational management, commercial, licensing and legal issues will be supervised by OPLC, reporting to the Project Group.
 - A project steering group – consisting of the Project Group plus ODA, LOCOG, SRM and Arup – will be the regular forum for enabling quick decision making and instructions.
- 1.11 Under the Founder Members Agreement for the OPLC, the Mayor will have to approve, alongside the other Founder Members, the commercial agreements related to the Orbit between Arcelor Mittal and OPLC. ODD18 approved the delegation of authority to the OPLC to:
- sign a Heads of Terms agreement between OPLC and Arcelor Mittal;
 - approve the Guaranteed Maximum Price brief for the Orbit capital costs and programme; and
 - enter into a MOU with the relevant parties regarding governance arrangements for the Client Group.
- 1.12 Planning permission for the Visitor Attraction has been granted.

2. Issues for consideration

- a. Links to strategies and Strategic Plan
- 2.1 The Mayor's draft replacement London Plan states that *'The Mayor will work with partners to develop and implement a viable and sustainable legacy for the Olympic and Paralympic Games to deliver fundamental economic, social and environmental change within east London, and to close the deprivation gap between the Olympic host boroughs and the rest of London. This will be London's single most important regeneration project for the next 25 years.'* The Visitor Attraction will make a significant contribution to the achievement of this aim.
- b. Impact assessments and Consultation
- 2.2 Extensive non-statutory consultation has already taken place with key partners during the selection process, design process and commercial negotiations, and a number of key agencies including ODA, LOCOG and the Olympic Park Legacy Company have been consulted. Detailed public consultation on the proposals for the attraction has also taken place as part of the pre-planning stage of the formal town planning process.
- 2.3 The LDA has been consulted on the Direction. It supports the project, and is satisfied that a direction is necessary to ensure a timely contribution from the Agency.

- 2.4 It is expected that the delivery of the Games and their legacy and benefits according to the vision set out by the Olympic Board will contribute significantly to the regeneration of the Lower Lea Valley, one of London's most diverse and deprived areas, and to the equality and diversity objectives of the Mayor.
- 2.5 It is expected that the delivery of the Games and their legacy and benefits according to the vision set out by the Olympic Board will contribute significantly to the health and sustainable development objectives of the Mayor.
- c. Risk
- 2.6 GLA Officers will work closely with all relevant stakeholders, both internal and external, to ensure the mitigation of any risks both to this project and with the Olympic programme.
- 2.7 The key risks to the project are those associated with any construction project. Construction is by definition not a risk free process and the tight deadlines for delivering the Games amplify this. However potential risks have been mitigated by risk allocation between Arcelor Mittal and SRM.

3. Financial Comments

- 3.1 The GLA group contribution to the project is capital funding of £3.1 million from the LDA, which will be provided to Arcelor Mittal Orbit Limited on the terms contained in the attached Grant Agreement. An initial grant payment will be paid upon receipt of the executed Grant Agreement, completed grant form with supporting evidence of amounts expended, and executed parent company guarantee from Arcelor Mittal SA. A further payment will be made for any outstanding balance also with supporting evidence to LDA's satisfaction. The grant will be capped at £3.1 million so if the project is delivered within budget there would be no direct financial implications for the GLA.
- 3.2 The possibility of cost overruns in such a complex and novel construction project cannot be ruled out, but Arcelor Mittal will bear any additional costs above the agreed construction price, should they arise to complete the project, and the OPLC Board is satisfied with the terms of the deal and the funding arrangements.

4. Legal Comments

Powers

Olympic Power

- 4.1 The decision requested of the Mayor falls within the GLA's statutory powers under section 34 of the London Olympic Games and Paralympics Act 2006 (the "Olympics Act"). Section 34 of the Olympics Act provides that the GLA may do anything:
- (a) for the purpose of complying with an obligation of the Mayor of London under the Host City Contract (whether before, during or after the London Olympics),
 - (b) for a purpose connected with preparing for or managing the London Olympics, or
 - (c) for a purpose connected with anything done in accordance with paragraph a) or b).

The Candidature File made specific commitments about the legacy of the Games for sport, the community, the environment and the economy and these now form part of the obligations of the Mayor under the Host City Contract. As the Visitor Attraction will assist with meeting these obligations, the creation of the Visitor Attraction can therefore reasonably be seen as falling under this power. Section 34(2) (g) of the Act further states that the GLA may 'give financial or other assistance to persons in respect of activity connected with the London Olympics'.

- 4.2 Furthermore in exercising its functions under section 34 of the Olympics Act, the GLA must have regards to the desirability of maximising the benefits to be derived after the London Olympics. The Visitor Attraction will serve to better ensure that London derives a lasting benefit from the 2012 Olympics and fulfill the commitments entered into as part of the Candidature File.
- 4.3 Under section 34(3) of the Olympics Act, the GLA shall have regard to the desirability of consulting and co-operating with the Secretary of State, British Olympic Association (the "BOA"), LOCOG and other persons with experience or knowledge which might be useful in relation to preparing for or managing the London Olympics.

Tourism Power

- 4.4 As outlined in MD340, the Mayor additionally has power to enter into the arrangements outlined in paragraph 1 under s378 of the Greater London Authority Act 1999 (the "Act"). This section places a duty on the Mayor:
- (a) to encourage people to visit Greater London;
 - (b) to encourage people from outside the United Kingdom to visit the United Kingdom by way of Greater London; and
 - (c) to encourage the provision and improvement of tourist amenities and facilities in Greater London.

As outlined in paragraph 1 the Visitor Attraction should become a tourist attraction and support for the creation of the Visitor Attraction could therefore reasonably be seen as encouraging people to visit Greater London.

- 4.5 Section 378 provides the Authority with the power to do anything for the purpose of discharging the above-described duty and to do anything which is incidental to or conducive to the discharge of this duty, including raising funds to cover the cost of carrying out this duty.
- 4.6 In discharging its duty under section 378 the Authority shall have regard to the desirability of undertaking appropriate consultation with and co-operating with the Secretary of State, the tourist board, any other persons who, or organisations which, have knowledge of, or are interested in, matters affecting the discharge of the duty.

Direction to the LDA

- 4.7 Section 27 of the Regional Development Agencies Act 1998 provides that the Mayor may give directions to the LDA in relation to the exercise of its functions and may specify in the direction the manner, in which the LDA is to exercise its functions. The LDA's functions are set out in section 4 of the RDA Act and include, inter alia, the furtherance of economic development and regeneration in Greater London and the promotion of business, efficiency, investment and competitiveness in Greater London. The Visitor attraction can be seen as falling within the regeneration function as

paragraphs 1 and 2 indicate it will assist with the regeneration of the area in London and create a new visitor attraction for London.

- 4.8 As set out at 2.3, the officers, on behalf of the Mayor, have consulted the LDA as required by section 40 of the Regional Development Agencies Act 1998.
- 4.9 In order to ensure that Mayoral direction and consent be reported to the LDA, the officers should ensure that the original direction be sent to the LDA's CEO and copied to its head of finance and the Director of Law & Governance.

Found Member approval and contract

- 4.10 As a Founder member of the OPLC, the GLA will have to approve the entering into of a contract between the OPLC and Arcelor Mittal, and give the other approvals listed in the decisions. Legal should also be consulted on the terms of this contract in order to ensure it will deliver the project on the terms outlined in this MD. Once the GLA is satisfied with the terms, clause 18.1 (c) of the OPLC Founder Members agreement states that Neale Coleman has the designated authority to consent, approve or agree on behalf of the Mayor. Legal should be consulted on the terms of the other contracts to be entered into as outlined in the decisions.

Choice of Fundee

- 4.11 The LDA is being directed to provide the grant funding to Arcelor Mittal Orbit Limited and a parent company guarantee will be provided by Arcelor Mittal SA to the LDA.

Delegation

- 4.12 Section 38(1) of the Greater London Authority Act, 1999 ("the Act") states that "any function exercisable on behalf of the Authority by the Mayor shall also be exercisable on behalf of the bodies or persons specified in subsection (2) below, if or to the extent that the Mayor so authorises, whether generally or specially, and subject to any conditions imposed by the Mayor." Section 38(2) goes on further to state that "those bodies and persons are- (a) the Deputy Mayor, (b) any member of staff of the Authority;". Therefore, the request that the Mayors powers be delegated as per the decisions may be approved by the Mayor.

5. Background/supporting papers

- Mayoral Direction to the London Development Agency in relation to the Visitor Attraction for the London 2012 Olympic and Paralympic Games.

Public access to information

Information in this form is subject to the Freedom of Information Act 2000 (FOI Act) and other legislation. Part 1 of this form will be made available on the Greater London Authority website within 1 working day of approval. Any facts and advice that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would compromise the implementation of the decision being approved.

Is the publication of this approval to be deferred? Yes

If yes, for what reason: Due to current commercial negotiations ongoing.

So as to not affect ongoing negotiations regarding the Visitor Attraction structure and responsibilities related to the project.

Until what date: Once commercial negotiations are completed.

Is there a part 2 form – Yes

OFFICER APPROVAL:

Tick to indicate approval

Sponsoring Director:

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

✓

Mayoral Advisor:

Munira Mirza has been consulted about the proposal and agrees the recommendations.

✓

Legal Advice:

The Commercial Law and Projects team have commented on this proposal.

✓

Executive Director, Resources

I have been consulted about the proposal and confirm that Financial and Legal advice have been taken into account in the preparation of this report.

Signature

Date

29.9.10

Chief of Staff

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

Signature

Date

29-9-10

