

**Subject:** Legacy Communities Scheme Planning Permission  
**Agenda Item:** Public item 13  
**Report No:** 10  
**Meeting date:** 27 September 2012  
**Report to:** Board  
**Report of:** Paul Brickell Executive Director of Regeneration and Community Partnerships

FOR DECISION

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**This report will be considered in public**

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## **1. SUMMARY**

- 1.1 This paper is submitted to the Board with the support of the Investment Committee, following its meeting on 4 September 2012. The Committee has reviewed the financial requirements of entering into the S106 agreement and implementing the permission. The Investment Committee recommends that the Board **APPROVE** the Corporation entering into a S106 Agreement in order that the LCS planning permission can be issued, the scheme can be implemented and the first phase development at Chobham Manor can commence.
- 1.2 The Legacy Communities Scheme (LCS) planning application to deliver comprehensive mixed use development of the Queen Elizabeth Olympic Park (QEOP) was considered at the Olympic Delivery Authority (ODA) Planning Committee on 26 June and received a resolution to grant planning permission. This is subject to the finalisation of a number of planning conditions and the completion of a Section 106 (S106) legal agreement.
- 1.3 The ODA Planning Committee's resolution was also subject to referral to the Mayor of London and Secretary of State. The GLA Planning Authority has since confirmed it is satisfied with the LCS planning application and the Secretary of State has written to confirm that he does not wish to call-in the application.
- 1.4 This report provides a summary of the LCS planning application and delivery arrangements. It summarises the conditions and S106 legal agreement that will form the LCS planning permission.

## 2. RECOMMENDATIONS

- 2.1. The Board members are asked to **NOTE** the negotiated planning permission and S106 financial package.
- 2.2. The Board members are asked to **APPROVE** the Corporation entering into a S106 Agreement.
- 2.3. The Board members are invited to **DELEGATE** the completion and signing of the S106 Agreement to the Chief Executive/ Executive Director of Regeneration and Community Partnerships to ensure that this is completed by 30 September before LLDC assumes planning powers on 1 October 2012.
- 2.4. Given the size of the financial commitment that the LLDC will be entering into under this agreement (subject to developments proceeding) it is **RECOMMENDED** the GLA is informed and are able to comment before the document is signed.

## 3. TIMING

- 3.1. The content of this paper is **URGENT** as the LCS planning permission will not be issued until a S106 agreement has been signed. Without the agreement the scheme cannot be implemented and development of Chobham Manor cannot commence.
- 3.2. On 1 October 2012 the LLDC will take over ODA Planning Decisions Team's (ODAPDT) planning powers and become the local planning authority for the LLDC area. Under the terms of a S106 agreement it is not possible to contract with the same entity or enforce obligations against the same entity. From this date the LLDC will become both promoter and local planning authority (i.e. a single entity) which cannot contract with itself. Failure to complete the S106 before this date would also require determination by the new LLDC Planning Committee which would represent a significant delay to obtaining planning permission and implementation. Taking into account any additional statutory consultation and reporting the additional time that could be required is estimated to be 5-8 months.
- 3.3. The governance, legal and delivery implications are considered at Section 8 of this report.

## 4. BACKGROUND

### LCS planning application

- 4.1. The application site covers 64.48 hectares (160 acres) of the future Queen Elizabeth Olympic Park. A plan identifying the red line boundary is attached at Appendix 1. The developable area is approximately 40 hectares (c.100 acres).
- 4.2. The LCS outline planning application facilitates the development of a maximum floorspace of 763,500sq.m (8.2million sq.ft) broken down as follows:

- 641,817sqm (6.9million sq.ft) of residential floorspace, delivering up 6,780 new homes;
  - 46,139sqm (496,640 sq.ft) of business and employment floorspace with mainly B1 office floorspace;
  - 25,987sqm (279,724sq.ft) of retail and food and drink floorspace; and
  - 3,606sqm (38,815sq.ft) of leisure and community facilities.
- 4.3. The LCS site and above development floorspace extends across seven Planning Delivery Zones (PDZs), which reflect the different character and neighbourhoods across the site as well as the intended delivery of LCS development. The planning permission will reflect this by identifying PDZ specific development and requirements which future development partners will be required to set out in Zonal Masterplans (ZMPs) for each PDZ. Appendix 1 also shows the boundary for each PDZ.
- 4.4. The LCS planning application was submitted in September 2011. Following statutory consultation and ODAPDT's consideration of the application, further environmental information was submitted in February 2012 together with scheme amendments. This included amendments in response to specific concerns raised by stakeholders, for example, an enlarged primary school in PDZ5, the provision of 1ha of playing fields in PDZ4, greater flexibility for non-residential uses in PDZ5, the removal of student accommodation, the inclusion of sheltered housing, a cap on retail floorspace, and the enlargement of the canal park adjacent to the Lea Navigation.
- 4.5. The LCS planning application was reported to the ODA Planning Committee on 26 June and received a resolution to grant planning permission. This resolution is subject to the following:
- The finalisation of a number of planning conditions and the completion of a S106 legal agreement which the ODAPDT Head of Development Control has delegated authority to finalise negotiations with LLDC and complete;
  - Compliance with the Mayor of London's Housing Design Guidance;
  - A reduction to the maximum building height in PDZ8;
  - An appropriate setback in PDZ5 between Waterden Road and the parkland;
  - Referral to the Mayor of London; and
  - Referral to the Secretary of State.
- 4.6. The GLA Planning Authority has since confirmed it is satisfied with the LCS planning application and the Secretary of State has written to confirm that he does not wish to call-in the application. LLDC officers and are continuing negotiations with ODAPDT to finalise the planning permission and S106 agreement.

## 5. OBJECTIVES

- 5.1. The legal obligations of the 2007 Olympic, Paralympic and Legacy Transformation planning permissions require LLDC to submit a legacy masterplan framework and “master” outline planning application for the Olympic Park site to deliver on the legacy commitments and meet the significant political and stakeholder expectations which are key objectives for the LCS planning application.
- 5.2. The LLDC is not a private sector body but has the objective to achieve significant financial returns from the Legacy development and also deliver a broad range of socio economic objectives. Ultimately it has been established to maximise the contribution of what happens after the Olympic Games for the social and economic benefit of East London, London and the UK. The obligations to return significant receipts and deliver the wider socio economic objectives are not necessarily aligned. The LLDC has sought to balance these competing objectives in its approach to the negotiations with ODAPDT.
- 5.3. Key objectives for the LCS planning application are covered below.

### **Contribute to Convergence**

- 5.4. The London Plan 2011 embeds the principle of Convergence and states that “this (the Olympic Legacy area) will be London’s single most important regeneration project for the next 25 years”. The Mayor’s Olympic Legacy Supplementary Planning Guidance (OLSPG) 2012 requires developments within the Olympic Legacy area to make a statement setting out how they will contribute to this overall long term regeneration objective. It also sets the overall strategic spatial context for all proposed developments within the Olympic Legacy area.
- 5.5. The LCS, because of the scale of development proposed, its strategic location and context and the high profile nature of the development, has a fundamentally important role to play in contributing to the delivery of Convergence objectives by:
  - Contributing to the overall economic development of London, by providing new jobs and new homes by acting as a high profile catalyst for the development of the wider area;
  - Creating lifetime neighbourhoods including new social infrastructure that will connect with the surrounding existing and new communities;
  - Creating new jobs and supply chain opportunities that could directly benefit existing local residents, many of whom are among the most deprived people living in the UK; and
  - Creating a high quality, safe environment, offering opportunities for residents and visitors to enjoy on site recreation and for neighbours to benefit from connections to the new Olympic Park, including new open spaces and waterways, new sporting and entertainment venues as well as new health facilities that will support healthy lifestyles and contribute towards improved health outcomes.

## **Enable repayments to the National Lottery**

- 5.6. In setting up the Development Corporation, the Mayor of London entered into a legal agreement with Government on the allocation of capital receipts from development on the Olympic Park. This was to support repayment of the costs of acquiring the land and repayment of funding drawn from the National Lottery to support the delivery of infrastructure for London 2012 Games and legacy. The implications of this are set out in Appendix 2 of this report.

## **Enable a coordinated development strategy and reduce risk**

- 5.7. The LCS planning application represents a significant development that will be phased and built out over an 18 year period. It is therefore important that LLDC's development strategy is coordinated and reflects the role of LLDC as master developer and the intention to procure development partners for specific development areas, infrastructure and/or phases.
- 5.8. The LLDC has therefore sought to secure a site-wide outline planning permission that provides a level of certainty to stakeholders, future development partners and investors in respect of quantum of development, land uses and key infrastructure such as schools and connections. The LLDC has also sought to provide for an appropriate level of flexibility in the phasing and delivery of the scheme in order to be responsive to changes in the property market and work through detailed planning applications once development partners have been secured.
- 5.9. The structure of the application reflects the role of LLDC as master developer and the likely model of procuring development partners for each of the PDZs. The total development floor space and land uses are divided between each PDZ with site-wide and PDZ-specific infrastructure identified. LLDC will be responsible for site-wide infrastructure and responsibility for PDZ-specific requirements will fall to the relevant development partner. The planning permission, conditions and S106 legal agreement will reflect this structure and the intention is to follow this through into future development agreements.

## **6. LCS PLANNING SECTION 106 AND CONDITIONS**

- 6.1. As a strategic regeneration project which has involved a significant degree of consultation with a number of key stakeholders over the years, the LCS is under enormous scrutiny and stakeholder expectations are high. The LCS planning application has sought to meet policy requirements and respond to the issues and concerns raised by stakeholders, many of which are already reflected in the Corporation's 3 year Business Plan and Corporate Policies.
- 6.2. The ODAPDT seeks to secure the commitments made by LLDC within the LCS planning application, including the necessary mitigation for the LCS development through the following:
- Conditions attached to the planning permission to be granted for the LCS development; and

- A S106 legal agreement between the ODA, Transport for London (due to, and limited to, transport obligations) and LLDC as landowner of the majority of the application site.
- 6.3. As set out in Section 5, the S106 agreement will bind successors in LLDC's title of such land. Most obligations and conditions will therefore pass onto PDZ development partners, however, those covering site-wide infrastructure will remain with LLDC. Further details are set out in Section 8 of this report.
- 6.4. Planning permission for LCS will not be granted until the S106 agreement has been completed. The following outlines the key commitments of the planning permission to be secured by conditions and the S106 agreement. Further details are set out in Appendix 3:
- A site-wide target of 35% affordable housing (subject to viability review) with a minimum of site-wide provision of 20% affordable housing;
  - A site-wide target of 42% family housing;
  - One 6FE secondary school, two 3FE primary schools and 9 nurseries;
  - Primary Care Centre and 2 Walk-in Centres;
  - Multi-purpose community space, library and space for three Safer Neighbourhood Teams;
  - A Quality Review Panel;
  - A transport improvement package including Hackney Wick station, Stratford Regional Station, bus infrastructure and cycle hire;
  - Sustainability commitments including Code for Sustainable Homes 4+, connection to the district heat network and zero carbon measures;
  - Local employment and training programme and targets.

## **7. FINANCIAL IMPLICATIONS**

- 7.1. Details on the financial implications of the LCS planning permission are included at Appendix 2.
- 7.2. The GLA has been briefed on, and are supportive of the approach taken in the negotiations with ODAPDT, and acknowledge the funding obligations required to implement the scheme. More recent discussions with GLA Finance has been positive and the GLA has undertaken to work with LLDC on an appropriate funding package to support LLDC to implement the scheme and discussions will continue following completion of the S106 Agreement.

### **S106 financial package and benchmarking**

- 7.3. A market benchmark analysis of development projects is considered at Appendix 2. In the current market the S106 package is considered to be a reasonable

reflection of the contributions and works required to mitigate the impacts of the scheme. The LCS project is unique, and reflecting LLDC's corporate objectives and policies, the S106 package is expected to exceed other commercial schemes. These commitments present a high financial burden on the project over and above others in London but are critical to delivering LLDC's corporate and regeneration objectives. These are outlined in Appendix 3 and include commitments on affordable housing, family housing, social infrastructure and sustainability.

- 7.4. In addition to these obligations, as a public sector and Mayoral body, the LLDC is not in a position to avoid the cost obligation of the Mayor's Crossrail Community Infrastructure Levy (CIL). This will add further to the financial obligation on the scheme.

### **Viability assessment**

- 7.5. Over the last 18 months LLDC and its advisors have worked closely with ODAPDT to negotiate the principles and subsequent detail of the S106 Agreement. The principal aim has been to balance the requirement for social outputs against the viability of development in order to ensure that the scheme is deliverable and the impact is mitigated.
- 7.6. To assist with these negotiations a financial model has been used which assesses the net cashflow to LLDC arising from the sale of the development land within the park, less the costs of delivering the site for development. Details of the viability model are included in Appendix 2.

### **Planning Delivery Zone 5**

- 7.7. Design work is currently being undertaken to address the condition imposed by ODAPDT Planning Committee to respond to a request by the Committee to increase the amount of open space within the North West Parkland. A number of options are being reviewed from a financial perspective with a view to negotiating a solution with ODAPDT. It is anticipated that the adjustments may place increasing pressure on the scheme's ability to deliver family housing and affordable housing. It is proposed that the financial impact of this set back will be compensated by a reduction in the affordable housing target for PDZ5 (currently 43%).
- 7.8. It is proposed that viability review mechanisms in the S106 agreement will manage LLDC exposure to this risk, but adjustments will need to be made to the overall quantum of affordable and family housing that can be delivered in PDZ5. This may adjust the overall site wide target of 42% family housing.

## **8. LEGAL IMPLICATIONS**

### **Structure**

- 8.1. The overall structure and scope of the Section 106 Agreement and planning conditions have been negotiated between the LLDC, ODA PDT and, in respect of the transport obligations and conditions, TfL.

- 8.2. As with standard S106 agreements, the obligations are binding on those with an interest in the site. As set out in Section 6, the intention is to bind only land owned by LLDC as at the time the S106 is entered into. In respect of most of the obligations, if LLDC transfers the freehold interest of the site then the transferee will assume liability for the obligations and LLDC will no longer be liable save in respect of antecedent breaches. Similarly, if LLDC grants a long leasehold interest then the lessee will also assume liability and the intention is for LLDC to no longer be liable save in respect of antecedent breaches. The duration of the lease that this would apply to is still to be discussed with ODA PDT. In respect of leases not caught by this provision, both LLDC and the lessee will be liable.
- 8.3. In respect of some of the obligations that relate to LLDC's wider role as master developer (e.g. the obligations relating to the Park wide open space requirements and the viability reviews), the intention is that these obligations will remain with LLDC even if it does transfer some of its freehold interest or grant a leasehold interest.
- 8.4. If LLDC transfers all of its freehold interest in the site, it is anticipated that all of the obligations (including those relating to LLDC's role as master developer) will pass to the transferee and LLDC will not be liable save in respect of antecedent breaches. Similarly PDZ specific planning conditions would also pass onto PDZ development partners.
- 8.5. The majority of the S106 obligations and conditions relate to specific PDZs and therefore the triggers for the obligations relate to the commencement of development or occupation of units in that PDZ. However, in respect of the provision of some infrastructure that serves more of the development than the PDZ within which it is located it has been agreed that there will be site wide triggers, for example not more than 3,300 Residential Units across the whole development can be occupied until the construction of the Secondary School has commenced. In respect of the PDZ specific triggers that will be discharged by LLDC in its role as master developer and in respect of the site wide triggers, developer partners are likely to require indemnities from LLDC in case LLDC does not comply with such obligations and the developer partner is then prevented from occupying any units.

## **Timing**

- 8.6. On 1 October 2012, LLDC will take over ODAPDT's planning powers and become the local planning authority for the MDC area. LLDC will therefore be both promoter and local planning authority i.e. a single entity. A Section 106 Agreement cannot be entered into from 1 October 2012 as it is not possible to contract with the same entity or enforce obligations against the same entity. Before 1 October 2012 the local planning authority and promoter will be two separate entities and so a S106 agreement can be entered into. The intention is therefore to enter into the S106 agreement by 30 September 2012.
- 8.7. Given the high profile nature of the project and level of public and stakeholder scrutiny it is important that LLDC and ODAPDT complete the S106 agreement before 1 October 2012 for reasons of probity and transparency. Failure to complete the S106 before this date could also require determination by the new



LLDC Planning Committee which could potentially lead to a significant delay to obtaining planning permission and implementation of the LCS development and therefore Chobham Manor. Taking into account any additional statutory consultation and reporting, the additional time that could be required is estimated to be 5-8 months.

## **Protocol**

- 8.8. From 1 October 2012 it is proposed that a "protocol" is established for dealing with the operation of the S106 agreement, including any variations to the S106 obligations and where Section 73 applications for material amendments to the planning permission are granted that would otherwise require a new S106 agreement. It is anticipated the protocol will set out procedures to ensure that obligations in the S106 agreement continue to be complied with and there will be a form of annual monitoring of compliance with the terms of the S106 agreement which will either be made available publicly or will be made available to just the Boroughs and the GLA. The details of the protocol have not yet been finalised.

## **9. RISK MANAGEMENT**

- 9.1. The Corporation will be entering into legal obligations to deliver social and physical infrastructure that is necessary to enable the scheme. An appropriate funding package will need to be agreed with the GLA. The Corporation will continue to engage with the GLA about the requirement to support the enabling infrastructure, legal and financial commitments beyond the current Comprehensive Spending Review (CSR) period to 2014/15.

## **10. PRIORITY THEMES**

- 10.1. The LCS planning application has been developed alongside the preparation of the Legacy Corporation's priority themes and corporate policies and has both informed and been informed by these.
- 10.2. The LCS has fully considered the impact of proposals on equality and inclusion, sustainability, community engagement, socio-economic issues, design quality and sport and healthy living as well as how to positively promote the Legacy Corporation's objectives in these areas.
- 10.3. It does so by setting out proposals that will create new neighbourhoods, community facilities, public realm and connections to embed the immediately adjoining venues and Parklands as well as integrate with the wider surrounding fringe neighbourhoods and communities.
- 10.4. The Legacy Corporation has also ensured that the proposals in the LCS have been explicitly assessed from an equality impact perspective. The Equality Statement submitted in support of the LCS concluded that the LCS has fully considered and addressed the relevant equality issues in terms of access and inclusive design, housing, social infrastructure, employment and enterprise, community cohesion, safety and security, access to public open space, healthy living, leisure and play.

## APPENDICES

- **Appendix 1 – Site Plan and Planning Delivery Zones**
- **Appendix 2 – Financial Information (Exempt information - paragraph 3 of Schedule 12A)**
- **Appendix 3 – Summary of Planning Permission (Exempt information - paragraph 3 of Schedule 12A)**

### List of Background Papers:

- A Walk Around Queen Elizabeth Olympic Park (October 2010)
- Legacy Communities Scheme Planning Application (September 2011)
- Legacy Communities Scheme Planning Application Additional Information (February 2012)
- Olympic Delivery Authority Planning Committee Report - Legacy Communities Scheme (Ref: 11/90621/OUTODA) (26 June 2012)

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# Report 10 - APPENDIX 1

## LEGACY COMMUNITIES SCHEME PLANNING APPLICATION SITE BOUNDARY AND PLANNING DELIVERY ZONES

