

Subject: Memorandum of Understanding with the Greater London Authority
Agenda item: Public item 14
Report No: 11
Meeting date: 05/12/2012
Report to: Board
Report of/by: Jonathan Dutton, Executive Director of Finance and Corporate Services

FOR DECISION

This report will be considered in public

1. SUMMARY

- 1.1. This paper informs the Board about the terms of the proposed Memorandum of Understanding (MoU) with the Greater London Authority (GLA), and seeks a delegation for the agreement of a final draft of the document.

2. RECOMMENDATIONS

- 2.1. The Board is invited to:
- **COMMENT** on the draft MoU with the GLA;
 - **AGREE** to delegate to the Chief Executive the authority to agree the final terms of the proposed Memorandum;
 - **NOTE** the GLA's intention to issue a direction to the Legacy Corporation in relation to their approval of certain decisions.

3. BACKGROUND

- 3.1. The GLA has proposed agreeing a MoU with the London Legacy Development Corporation, to provide clarity of expectations of how relationships with the Legacy Corporation will operate.
- 3.2. A draft Memorandum was prepared in March 2012, and reviewed by the Corporation's Board in April 2012, but was not formally agreed at that stage. Following the Mayor of London's assumption of the chairmanship of the Legacy Corporation, the draft Memorandum has been revised.
- 3.3. On 5 November 2012, to enable the Legacy Corporation to deliver projects that were for the benefit of areas outside the Corporation boundary, the Mayor of London formally delegated to the Corporation his powers under Section 30 of the Greater London Authority Act 1999, to promote economic development and wealth creations, social development and the improvement of the environment in Greater London.

- 3.4. The draft Memorandum covers the following issues:
- Access to information and meetings, providing that the Mayor shall be entitled to send an observer to meetings, and that observer shall be entitled to copies of all papers;
 - Approval of budgets and business plans, which sets out how the Corporation will secure the Mayor's agreement to its budgets and business plans;
 - Mayoral approval of certain decisions by the Legacy Corporation and its subsidiaries, including approval of business cases above specified thresholds, approval (above thresholds to be agreed) of land transactions covered by the Mayor's agreement with the Department for Culture Media and Sport, approval of borrowing, and other matters set out in the Localism Act;
 - A duty to inform the GLA when the Legacy Corporation is proposing to use the general powers delegated to it by the Mayor of London;
 - Consultation arrangements, including on standing orders, budgets and business plans and the issue of Mayoral directions;
 - Accountability, including provision for regular meetings between senior officers from the Legacy Corporation and GLA.
- 3.5. The current draft is attached. It has been reviewed by Board members who commented on the previous draft and amended by GLA following their feedback. It will be signed by the Chief Executive after the December Board meeting, subject to any final comments from Board members.
- 3.6. The principal outstanding issue relates to payments in relation to the Stadium, and this is being discussed further between GLA and LLDC.
- 3.7. GLA officers have also said that they intend to issue a formal Mayoral direction to the Legacy Corporation in relation to their approval of certain decisions (relating to significant expenditure and income).

4. PROPOSAL

- 4.1. It is proposed that the Board
- **COMMENT** on the draft MoU with the GLA;
 - **AGREE** to delegate to the Chief Executive the authority to agree the final terms of the proposed Memorandum;
 - **NOTE** the GLA's intention to issue a direction to the Legacy Corporation in relation to their approval of certain decisions.

5. TIMING

- 5.1. The agreement of the MoU is expected to take place shortly.

6. CONSULTATION

- 6.1. The drafting of the MoU has been undertaken by GLA officials in consultation with Legacy Corporation officials.

7. LEGAL IMPLICATIONS

- 7.1. The agreement of a MoU between parties does not imply a legally enforceable commitment.

- 7.2. GLA officials have said that the Mayor of London intends to issue a direction to the London Legacy Development Corporation, under Section 220 of the Localism Act 2011, to ensure enforceability of certain provisions. Under the terms of the proposed MoU, the Mayor would consult the Legacy Corporation before issuing any such direction.

8. LIST OF APPENDICES TO THIS REPORT

- Draft MoU between Greater London Authority and London Legacy Development Corporation

List of Background Papers

- Localism Act 2011
- Mayoral Decision 1066 – London Legacy Development Corporation General Powers Delegation 2012

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Memorandum of Understanding between the Mayor of London and the London Legacy Development Corporation

Introduction

1. This Memorandum sets out the working relationship between the Greater London Authority (“the GLA”) and the London Legacy Development Corporation (“the Corporation”), a Mayoral Development Corporation created by the London Legacy Development Corporation (Establishment) Order 2012 under the Localism Act 2011 (“the Localism Act”).
2. The Corporation is a Functional Body and the relationship between the two bodies is therefore governed to a significant extent by the Greater London Authority Act 1999 (as amended; “the GLA Act”) as well as by the Localism Act. This Memorandum does not replace or supersede the requirements of that legislation, or detract from any of the full range of statutory powers, duties and responsibilities exercisable by the GLA and the Corporation, nor is it intended to provide an exhaustive account of the relevant elements of that legislation; it does, however, reproduce some of the legislative requirements where they are deemed to be particularly relevant.
3. In particular, nothing in this Memorandum fetters or restricts:
 - the Mayor of London’s ability to delegate functions exercisable by him to the Corporation as a Functional Body under section 38 of the GLA Act;
 - the Mayor’s ability to give guidance or to give general or specific directions or consent to the Corporation as to the exercise of any of its functions under sections 219 and 220 of the Localism Act;
 - the Mayor’s ability require the Corporation to furnish the Mayor with information under sections 110 and 395 of the GLA Act;
 - the London Assembly’s powers under sections 61 to 63 or section 110 of the GLA Act.
4. These arrangements are subject to any additional expectations expressed by Government as part of its grant to the GLA.

5. This Memorandum reflects the specific relationship which the GLA and the Corporation expect to have for as long as the Mayor is Chair of the Corporation. Where it refers to the rights, powers or obligations of 'the Mayor' this means in all cases the Mayor acting in his capacity as Mayor of London, exercising the functions of the GLA, rather than in his capacity as Chair of the Corporation. If and when the Mayor ceases to be Chair of the Corporation, it is anticipated that the MOU would be revisited and most likely revised.

Access to information and meetings

6. The GLA is entitled to appoint from the staff of the Greater London Authority one observer to attend meetings of the Corporation's board and committee meetings and a substitute in the event that the observer is unavailable.
7. The Corporation will send the observer and substitute papers for all its board and committee meetings (including papers for any session not to be held in public in accordance with Part VA of the Local Government Act 1972) at the same time as those papers are sent to Board and committee members. This will include financial management reports to the Corporation's Board and audit committee. The observer and substitute will undertake in writing (in a form acceptable to the Corporation) to be bound by any obligation of confidence under which the Corporation holds information provided to them and the provision of papers to them is on the understanding that they will only copy or disclose such papers or discuss their contents with individuals employed by the GLA whose names are notified in advance to the Corporation and who accept in a written form acceptable to the Corporation the same restrictions on the use of such papers as the observer and substitute. (This clause is subject to any statutory right to require the disclosure of information including under the provisions mentioned in paragraph 3 above.)
8. The observer (or, where applicable, the substitute) will have the right to attend and speak (but not vote) at all meetings of the Corporation's Board and committees, including any session not held in public subject to the Corporation's Standing Orders on the conduct of business and to the rules adopted by the Corporation from time to time in connection with conflicts of interest. The Corporation's Members' Code of Conduct will apply to the observer and substitute.

Approval of budget and business plans

9. As a Functional Body, the Corporation's annual revenue and capital budget will each year be considered as part of the consolidated GLA Group budget, and will be subject to the established annual GLA Group process for budget-setting set out in Part III of the GLA Act, together with the requirements set out in the Mayor's budget guidance. Alongside the budget, the Corporation will present a draft core annual business plan, including any proposals for changes to baseline pay, for the year covered by that budget. The Corporation's borrowing limits and prudential indicators for the next three financial years will also need to be approved annually by the Mayor in March following consultation with the London Assembly as required under section 3 of the Local Government Act 2003.
10. As soon as reasonably practicable before the end of the financial year, the Corporation will present to the relevant officers of the GLA a final detailed business plan for the following year, as part of a three-year rolling business plan. This plan will be subject to approval by the Mayor, and the Mayor will put in place a direction under section 220 of the Localism Act to formalise and develop the circumstances where his approval is required.

GLA approval of certain decisions

Significant expenditure, contingent liabilities and income ("regulated commitments")

11. The Corporation and its Subsidiaries¹ may make their own spending decisions, except where any individual decision:
 - (a) commits expenditure, creates a contingent liability and/or generates income ("regulated commitment") of a value of £10 million or more; and
 - (b) that expenditure, liability and income is not anticipated in the business plan of the Corporation or Subsidiary, or is anticipated at a materially different value (5% difference);

¹ "*Subsidiary*" for the purposes of this Memorandum covers a company which is a subsidiary of the Corporation under section 1159 of the Companies Act 2006 (as amended) and any limited liability partnership or other entity which would be treated as a subsidiary of the Corporation under proper accounting practices.

in which case any decision of the Corporation or Subsidiary (including under delegated powers) to approve or enter into the regulated commitment shall be subject to GLA consent.

12. GLA consent will also be required for any decision by the Corporation to approve a 'Land Transaction' as defined in the Mayor's agreement with the Secretary of State for Culture, the Olympics, Media and Sport regarding returns to the Lottery and Treasury, even where it does not meet the financial threshold described in paragraph 11 or his consent would not otherwise required under section 209 of the Localism Act. In respect of this clause it is anticipated that the Corporation will share with GLA the details of all such anticipated Land Transactions but that a standing GLA consent will be approved for Land Transactions up to a defined value or description so that only Transactions over that threshold will require individual GLA consent.

Venue agreements

13. [subject to further discussion between GLA and LLDC]

Borrowings

14. The Corporation will comply with Part 1 of the Local Government Act 2003 and in particular shall submit all proposals for borrowing by the Corporation or a Subsidiary (including by the Subsidiary from the Corporation) to the GLA for its formal approval unless that item of borrowing has already been approved as part of the annual budget and setting of prudential borrowing limits.

Exercise of Mayor's delegated general powers

15. The Corporation shall notify the GLA whenever it considers that it is proposing to exercise the general powers of the GLA under section 30 of the GLA Act as delegated to it by the Mayor under the London Legacy Development Corporation General Powers Delegation 2012.
16. The Mayor may put in place a statutory direction under section 220 of the Localism Act to formalise and develop the circumstances where GLA notification or approval of the matters mentioned in paragraphs 10 to 15 above is required. Given his role as Chair of the Corporation, he may also delegate responsibility for these GLA approvals, and for other approvals and consultations including those required under statute as set out below, to other senior staff in the GLA.

Localism Act requirements

17. As required by the Localism Act, and subject to the terms of the relevant section, the Corporation must obtain the prior written consent of the Mayor before:
- a. submitting a compulsory purchase order (section 207);
 - b. disposing of land for less than the best consideration which can reasonably be obtained or which has been compulsorily acquired under the Act (section 209);
 - c. forming or acquiring interests in bodies corporate (section 212);
 - d. permitting a subsidiary to borrow money or raise finance by the issue of stocks and shares otherwise than from the Corporation (section 212);
 - e. giving financial assistance to any person (section 213);
 - f. the terms and conditions on which staff are to be appointed (Schedule 21, paragraph 3);
 - g. determining the rates and eligibility criteria for staff remuneration, travelling and other allowances and pensions and gratuities (Schedule 21, paragraph 4); or
 - h. appointing persons who are not members of the Corporation board to a committee or sub-committee of the Corporation (Schedule 21, paragraph 6).

Procedure for obtaining consent

18. All consents specified in paragraph 17 are subject to section 221 of the Localism Act under which the GLA may give a general consent (e.g. in relation to the provision of financial assistance in appropriate cases) so that only proposals not falling within the scope of such a general consent need be referred to him for approval on an individual basis.
19. GLA consents required under the Localism Act or under any Mayoral Direction may only be given by the Mayor or a person with appropriate delegated authority from the Mayor.
20. Unless specified by the Mayor in a Mayoral Direction, the Corporation or Subsidiary may choose to present requests for approval or consent to the GLA

required under the Localism Act or under any Mayoral Direction before or after the Board, relevant committee or relevant official(s) have approved the decision for the Corporation's or Subsidiary's own purposes, but the Corporation/ Subsidiary must not in any case act upon or implement a decision or enter into any legally binding commitment to do so until the matter has been determined by the GLA.

21. Details of matters for approval will be presented to the GLA in the same format as that used for the Corporation's internal decision-making processes subject to the right to require further information if reasonably required.

Consultation

22. The Corporation will consult the GLA before:
 - a. adopting its standing orders or rules of procedure;
 - b. adopting its scheme of delegation;
 - c. formally submitting its budget and business plan to its Board for approval and then for formal submission to the Mayor as part of the statutory budget process; or
 - d. determining any matters that have been delegated by the Mayor to the Corporation under section 38 of the GLA Act where that delegation stipulates that the Mayor will be consulted.
23. The Mayor will consult the Corporation's Board before:
 - a. issuing any guidance or direction to the Corporation;
 - b. deciding whether the planning or rate relief functions of the Corporation are to change;
 - c. reviewing the existence of the Corporation or dissolving the Corporation;
 - d. excluding land from the Mayoral development area; or
 - e. making, under any statutory transfer scheme, a transfer of property rights or liabilities into or away from the Corporation, or responding to the Secretary of State in respect of any such proposed transfer into the Corporation by means of a statutory transfer scheme.

Accountability

24. Senior officers of the Corporation and the GLA will meet on a regular basis, to be agreed between them, to monitor the work of the Corporation and its Subsidiaries and to consider relevant activities and policies of the GLA which affect the Corporation and Mayoral Development Area, including in the preparation of the GLA's strategies and in the discharge of its planning, housing and regeneration functions.
25. The Corporation will produce and publish an annual report, as required Schedule 21, paragraph 10 of the Localism Act.
26. The Corporation will comply with reasonable requests from GLA officers for information, including financial reporting and monitoring information, as and when they arise, in line with any specified deadlines having regard to the Mayor's and Assembly's statutory powers to require information. This includes (but is not limited to) the GLA's group-wide responsibility for meeting the requirements of the Assembly and Government, subject to any relevant legal ground protecting information provided to the Corporation in confidence from disclosure.

Dated:

Approved on behalf of the Greater London Authority:

Approved on behalf of the London Legacy Development Corporation:

Martin Clarke
Executive Director (Resources), Greater London Authority
For and on behalf of Mayor of London

Dennis Hone
CEO, London Legacy Development Corporation