

REQUEST FOR MAYORAL DECISION – MD1352

Title: Statutory Transfer of the Cofely Concession Agreement from the ODA to the LLDC

Executive Summary:

The London Legacy Development Corporation (“Legacy Corporation” or “LLDC”) seeks the Mayor’s agreement to the decision of the LLDC Board to approve the terms of the statutory transfer scheme which is to be made by the Secretary of State for Culture Media and Sport, which will transfer the “Cofely Concession Agreement”, including all variations, from the Olympic Delivery Authority (ODA) to the Legacy Corporation under the proposed London Legacy Development Corporation and Olympic Delivery Authority Transfer Scheme (4) 2014 (“Transfer Scheme”).

Decision:

- 1) To agree to the decision of the London Legacy Development Corporation’s Board to approve the statutory transfer of the Cofely Concession Agreement, including all variations, from the ODA to the LLDC, under the London Legacy Development Corporation and Olympic Delivery Authority Transfer Scheme (4) 2014.
- 2) To note that the Legacy Corporation has entered into an agreement with the ODA to accede to an agreement between the ODA and Stratford City Development Limited (SCDL), and Cofely East London Energy Limited (“Cofely”) for the maintenance, metering and billing for secondary energy networks within development sites on Queen Elizabeth Olympic Park (QEOP), which is a variation to the existing Concession Agreement between the ODA with Cofely.

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: 30 May 2014

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

Decision required – supporting report

1. Introduction and background

- 1.1 The Olympic Delivery Authority (ODA), in discharging its obligation to maximise legacy benefits from the 2012 Games, entered into various contracts for the delivery of utility networks in the Olympic Park. This included a Concession Agreement entered into between the ODA and Stratford City Development Limited (SCDL) (The ‘Employers’) and Cofely East London Energy Limited (“Cofely”) in 2008 for the supply of energy services in the Concession Area, encompassing Queen Elizabeth Olympic Park (QEOP), East Village, development land between QEOP and the Westfield Shopping Centre, the Westfield Centre itself and peripheral future development plots.
- 1.2 Cofely designed, built, financed and own the two energy centres and the primary heating and cooling distribution networks between the energy centre and the development site boundary, and Cofely will operate this district energy network for 40 years from July 2013. The Concession gives Cofely exclusivity of heating and cooling energy supply within the Concession boundaries and obliges the Concession’s Employers (currently ODA and SCDL jointly) to ensure that all developers within the Concession area connect to the network and install no other forms of central heating or cooling. Under this agreement the provision of energy and cooling is regulated by a Price Control Formula that in essence prevents Cofely charging consumption tariffs to residents above average market rates. This consumer protection is enforceable by the Concession’s Employers.
- 1.3 It has been the intention for the Legacy Corporation to replace the ODA in the Concession Agreement as an Employer at an appropriate point in the closure of the ODA’s affairs. Accordingly, the transfer has been planned by agreement between the ODA and the Legacy Corporation. The transfer will permit the Legacy Corporation to step into the contracts in the place of the ODA and will assist LLDC by enjoying the benefits of the contracts in the continued development and management of the Park.
- 1.4 A variation to the Concession Agreement has been negotiated with Cofely by the ODA to transfer full maintenance, metering and billing for the provision of secondary heating energy and cooling networks from residential plot boundaries in the Concession area to each individual dwelling or building, and bring the cost of these additional services with the Price Control Formula under the Agreement.
- 1.5 Given the potential reputational, financial and legal liabilities and risks under the Cofely Concession Agreement that might fall to the GLA if, and when, the Legacy Corporation is eventually wound-up, the Corporation has sought the Mayor’s agreement or endorsement to the decision of its Board, at its meeting on 17 September 2013, to approve the terms of the statutory transfer of the Cofely Concession Agreement, including all variations, from the ODA to the LLDC. The Transfer Scheme is made by the Secretary of State for Culture, Media and Sport, in exercise of powers conferred on him by section 200 of the Localism Act 2011. Before making the Scheme the Secretary of State must consult the LLDC and the Mayor. The Board, having consulted with the Mayor, is content with the statutory transfer of the Concession Agreement, including all variations, from the ODA to the Legacy Corporation. This form asks the Mayor to indicate his agreement or endorsement of the proposal.
- 1.6 It is anticipated that the statutory transfer will be made by the Secretary of State and come into effect at the end of May 2014.

2. Objectives and expected outcomes

- 2.1 The Cofely Concession Agreement and its variation will ensure consistent and controlled energy charges to residents in the new neighbourhoods on QEOP, and in the wider Concession area.

3. Other considerations

a) key risks and issues

Information relating to the analysis of risk in this decision were provided in confidence and would, if disclosed, prejudice the commercial interests of the ODA, SCDL, Cofely, LLDC (and ultimately the GLA), and are therefore contained in Part 2 of this Form.

In general, it should be noted in this Part 1 report that if the transfer of the Agreement, including all variations, is not effected, each new neighbourhood will need to establish its own solution and secondary network provider. This would lead to inconsistency of suppliers and tariffs, and the possibility that the cost of providing the secondary networks would be passed on to consumers in their standing charges. There is also a risk that energy prices in the new neighbourhoods would be unregulated as the secondary networks would be outside the basic residential Price Control Formula. However these risks are mitigated by the Legacy Corporation taking a transfer of the Cofely Concession Agreement, including all variations, from the ODA.

b) links to Mayoral strategies and priorities

The Mayor's 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 transfer of the Cofely Concession Agreement, including all variations, from the ODA to the LLDC will ensure that residents of the new neighbourhoods on QEOP will benefit from a reliable energy supply and consistent and controlled energy charges, which is essential to the delivery of this objective.

c) impact assessments and consultations.

By adopting consistency of energy charges, the Legacy Corporation is contributing to its community objectives, and strengthening its regulatory role in the Concession, once transferred. This also moves the Concession in the direction of regulation of district heating in the UK that is now being promoted by Government.

It is not considered that any additional impact assessment relating to this particular decision is required.

The LLDC's Investment Committee members and Board members have been consulted on this decision, and approved the Legacy Corporation entering into an agreement with the ODA to accede to a variation agreement between the ODA and Cofely at their meetings on 9 and 17 September 2013, respectively, subject to confirmation that the Mayor of London is content with the statutory transfer of the Cofely Concession Agreement from the ODA to the LLDC.

The Mayor has also consulted the ODA in making his decision. It is not considered that the Mayor need undertake any further additional consultation in respect of this decision.

4. Financial comments

- 4.1 As the LLDC's principal grant funder any financial impact and risks arising from this decision are directly relevant to the GLA. These are set out in Part 2 of this decision.

5. Legal comments

- 5.1 This section deals with any legal implications not mentioned elsewhere in this form. Under section 200 of the Localism Act 2011 the Secretary of State may make a statutory transfer scheme transferring the property rights and liabilities of the ODA to the LLDC. The LLDC and Mayor must be consulted before he does so. Under the Act, anything done by the ODA under the contracts prior to the transfer date will have effect (after the transfer date) as if done by, or on behalf of, LLDC. Other legal implications are reported in Part 2 of this Form.

6. Investment & Performance Board

- 6.1 This matter was not considered at the Investment & Performance Board, Housing Investment Group or Regeneration Investment Group as it does not in itself commit the GLA to any additional expenditure, other than the financial implications associated with the low probability risks outlined in Part 2 of this Form.

7. Planned delivery approach and next steps

Activity	Timeline
LLDC advised its acceptance of the terms of Cofely variation Agreement	15 October 2013
Variation agreement entered into by ODA, SCDL and Cofely	29 November 2013
Cofely Concession Agreement statutory transfer effective	End May 2014

Appendices and supporting papers:

- Schedule for The London Legacy Development Corporation and Olympic Delivery Authority Transfer Scheme (4) 2014, received from the ODA;
- Schedule, Localism Act 2011, The London Legacy Development Corporation and Olympic Delivery Authority Transfer Scheme (4) 2014, Heating and Cooling Utilities, received from the ODA.

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? YES

If YES, for what reason: Until the statutory transfer is undertaken.

Until what date: Early June 2014

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 – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

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

✓

Assistant Director/Head of Service:

Fiona Duncan has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

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:

Neale Coleman has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

Date

CHIEF OF STAFF:

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

Signature

Date