

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2068

### Title: London Development Panel

#### Executive Summary:

This MD recommends the procurement of a new London Development Panel (LDP) following the expiry of the current Panel and sets out the associated timescales for doing so. The Panel has proved successful in securing development partners and contractors for a wide range of housing and regeneration projects on public sector land across London and has become widely used across the London public sector as a streamlined, effective and fully OJEU-compliant procurement process.

This MD also recommends a six month extension of the current panel, meaning LDP 1 will expire on 9 November 2017.

#### Decision:

That the Mayor **approves**:

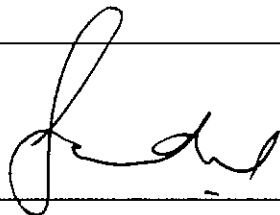
- The Procurement of a new London Development Panel on the basis set out in this paper;
- The proposed expenditure required to do so;
- The proposed extension of the current LDP.

#### 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:

24/1/17

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

### **Decision required – supporting report**

#### **1 Introduction**

1.1 The GLA established the London Development Panel (“LDP1”) in 2013 with the express aim of accelerating the release and development of public land for residential-led development. LDP1 is an OJEU procured framework comprising 25 of London’s most prominent developers and contractors. It is available to all public sector landowners and Registered Housing Providers across Greater London.

1.2 A range of sites have been put through the panel from large-scale, multiphase, development opportunities down to contracting opportunities for small residential schemes. The Panel has proved attractive to public sector landowners as it is an efficient mechanism for securing development partners for the following reasons:

- The Panel’s mini-competition process reduces the time taken to select a development partner in comparison to a full OJEU exercise;
- Cost savings are achieved through use of the Panel’s standard mini-competition and legal documents;
- The Panel provides free soft market testing advice, allowing public land owners to informally test development options before committing to a mini-competition;
- 37 organisations have signed up to use the LDP including 24 boroughs;
- 14 schemes are under contract with a total GDV of £3.3bn. These sites will deliver 9500 new homes;
- A further 31 schemes are currently progressing through the panel. These sites will deliver approximately 7200 new homes;
- A further 6 sites are in the indicative pipeline and are likely to launch procurement via the LDP in the next year.<sup>1</sup>

1.3 LDP1 has a four year lifespan and is due to expire in May 2017. LDP1 will however be extended by six months to November 2017. There is no equivalent framework available in London. Recent consultation with public sector landowners across London has clearly indicated that there is support for the procurement of a new Panel (“LDP2”) to support the delivery of new residential-led development over the next four years.

1.4 The new Mayoral team has also indicated support for the procurement of a new Panel to help accelerate residential development on surplus public sector land across the capital. It is expected that LDP2 will become a key tool of Homes for Londoners – the umbrella organisation for housing delivery in London, led by the Mayor. The LDP’s streamlined methodology for securing

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<sup>1</sup> Statistics taken from a Panel User data collection exercise in April 2016. Additional sites are expected to have contracted since this date.

development partners has proved successful both within the GLA on its own sites as well as externally. LDP2 is expected to build on this success and become the default methodology for residential-led development on public land in the capital.

## 2 Consultation

2.1 As part of an exercise to review LDP1 and consider options for LDP2, GLA officers consulted with a range of partners including GLA family organisations, Panel Members and Panel Users (inc London Boroughs).

2.2 This exercise focussed on understanding the benefits of the current LDP and what works well for both panel members and users. It also sought to understand whether a new Panel is required, what could be improved and how it could be tailored to respond to the types of development opportunities likely to come forward between 2017 and 2021. The key findings were as follows:

- **The current Panel is being used more and more frequently** and it is expected that this demand will continue as more projects successfully contract. Furthermore, there is no equivalent framework in London. It is expected that LDP2 will become a key tool of Homes for Londoners and a large number of sites from London Boroughs and government departments would be put through a second LDP.
- **The benefits of the current panel must be retained in a second panel.** The speed and simplicity of the mini-competition process and the standard form of legal agreements are what attracts organisations to use the LDP. Any amendments to the process and the Panel documents must be considered in this context.
- It is clear that there can be **limited interest in the smaller sites** from the larger companies on the Panel (particularly the small contracting opportunities) as they are not of a sufficient scale or profitability.
- **The current LDP development agreement and building lease need to be reviewed**, updated and improved where possible to build on the learning we have from the schemes already procured. In particular, their ability to accommodate multi-phase strategic projects needs to be considered.
- The possibility of enabling **joint venture or long term income-share arrangements** through the Panel should be explored. This type of arrangement is becoming more commonplace and may offer benefits to the contracting authority including the ability to share in development profit across the life of a project.
- A range of suggestions were received for how the LDP could be **split into 'Lots'**, each with different specialisms e.g. a small sites Lot, a commercial development Lot. In particular, a Lot of specialist providers to deliver Build-to-Rent (BtR) development was considered to have merit as more and more public landowners seek to deliver this type of product.

### **3 Recommendation**

- 3.1 In light of the feedback from the consultation exercise and from the new Mayoral team, it is recommended that the GLA leads on the procurement of a new London Development Panel.

#### *Rationale*

- 3.2 Over the next four years, there is expected to be considerable demand for a second LDP. The use of the current Panel has increased and accelerated over the past 18 months and public landowners are becoming increasingly familiar with the Panel and the mini-competition process. As increasing numbers of projects successfully contract and the more the benefits of the Panel are realised (e.g. cost and timing efficiencies) the more Boroughs are likely to put sites through the Panel.
- 3.3 The Panel is already widely promoted externally as a tool to accelerate housing delivery and a significant number of sites from London Boroughs and government departments are anticipated to be put through LDP2. The GLA is also likely to acquire additional sites for development (recently we have acquired the Webbs site in Waltham Forest from the EFA and the Siemens Crystal in Newham) and the LDP2 would be available to procure development partners. The current LDP has been used successfully for the majority of GLA's strategic projects over the past four years and is a familiar, tried and tested tool.
- 3.4 A new LDP will also tie into the work of Homes for Londoners and support the delivery of the Mayor's housing ambitions to increase housing development in the capital and aim for half of all new homes to be affordable. Public land has a key role in the delivery of these ambitions so it is important that efficient and effective procurement arrangements are available to public landowners to enable them to bring forward their land efficiently.
- 3.5 There is no equivalent OJEU-compliant procurement framework in London. The other frameworks that do currently exist are aimed at contractor-led opportunities whereby framework members are appointed to deliver a scheme at a fixed price. Whilst the LDP can cater for this, the Panel also allows public landowners to procure development partners who are expected to take planning and financial risk in the delivery of projects under a development agreement. The absence of an LDP would create a procurement vacuum for major and complex sites and these opportunities would have to be delivered through a much more time consuming and costly OJEU procurement process.

#### *Form of LDP2*

- 3.6 Based on the considerations set out in this paper, it is recommended LDP2 incorporates the following features:
- It will be a framework for residential-led development to support the Mayor's ambition to accelerate housing development;
  - It will be a single Lot framework comprising 15-25 Panel Members;

- It will have a defined scope of services based on the comprehensive development services offered by the current LDP<sup>2</sup>;
- It will preserve the speed, clarity and flexibility of the current Panel through incorporating a defined mini-competition process, a standard set of legal agreements which are designed to adapt to the size and complexity of the scheme being procured and the ability to be used for both development and contracting opportunities;
- The LDP1 development agreement will be updated with additional flexibilities to better deal with multiphase developments and allow contracting authorities to take a longer term income from their development projects and/or a capital receipt;
- The introduction of Build-to-Rent (BtR) specialists into the new Panel will be explored. This may be achievable in a single 'Lot' or require a bespoke Lot for PRS providers. This will be tested by GLA's legal and property advisors. The options will also be tested in the market.

### *Joint Ventures*

3.7 Although the feedback from the consultation exercise indicated Panel users would like the option to enter into a formal joint venture with Panel members, it is not considered appropriate to include a JV option in LDP2 as there is a range of risks associated with formal JVs. These include:

- If the JV fails it is possible that the public landowner will lose its assets (land and/or financial investment);
- There could be unforeseen capital calls for new injections of cash creating an unknown liability for public landowners;
- JVs bind the partners into accountability/liability for the actions of the company meaning public landowners may not be able to prevent unpopular company decisions;
- Setting up a JV can often be complex, time consuming and bespoke and therefore doesn't sit well with the more standardised approach of the LDP;
- Decision making can be time-consuming as the various parties may have to refer back to their respective boards/decision makers on key decisions;
- Exit from an operational company is generally time consuming and expensive.

Advice from legal advisors suggests the key benefit of a JV (longer term income share) could instead be achieved through amending the template LDP2 Development Agreement to allow the landowner to take a longer-term share in the profitability of the development without being exposed to the risks set out above.

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<sup>2</sup> The LDP1 Scope of Services can be found at Appendix 1

### *Lots*

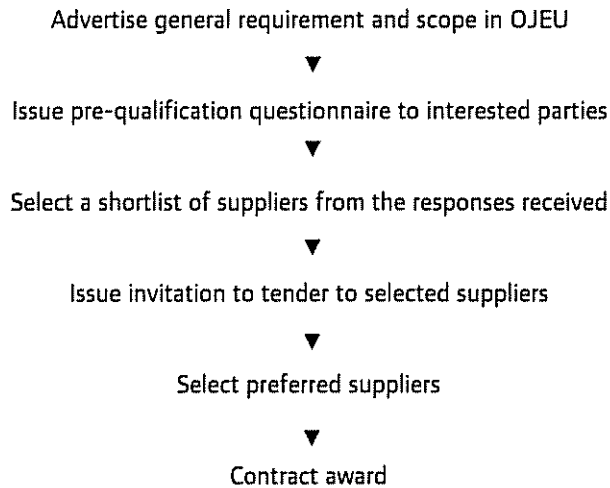
- 3.8 The inclusion of specialist Lots would broaden the scope of the Panel and allow it to be used for a wider range of projects although there are practical constraints in procuring multiple Lots as the procurement process and documents for each Lot would need to be specific and tailored to that Lot. This would be time consuming and resource intensive and could delay the commencement of a new Panel.
- 3.9 However, there may be merit in procuring a Lot for Build-to-Rent (BtR) providers to cater specifically for these projects. Alternatively, a single Lot framework whose selection process allows both Build-to-Rent and traditional developers to participate may offer a more expedient approach to including BtR providers in LDP2.

### *Small Sites*

- 3.10 There are a number of issues in engaging SMEs in a London-wide framework, particularly as many SMEs won't be familiar with public procurement processes and may not have the capacity or expertise to bid.
- 3.11 Incorporating SMEs into LDP2 would only provide opportunities for the limited number of SMEs who make it onto the London-wide Panel. Since many SMEs operate at the borough level, it may be more beneficial for boroughs to procure local SME frameworks. The GLA could have a role in facilitating this
- 3.12 Instead of encouraging SMEs onto LDP2, or creating a specific Lot for them within LDP2, the issue of small sites and small developers should be considered separately as its own distinct work stream. GLA officers are already working with TfL colleagues to work up a tailored programme to bring forward small sites and engage with SMEs.

### *Procurement*

- 3.13 The setting up of framework agreements and their subsequent use is governed by the Public Contracts Regulations 2015. Since the aggregate value of LDP2 will exceed the current threshold for advertising in the Official Journal of the European Union (OJEU), there is a requirement to either use Open, Dialogue/Negotiated or Restricted procedures. Due to the large number of anticipated applicants, it is expected that the procurement of LDP2 will follow the Restricted tender procedure. A summary of the Restricted tender procedure is as follows:



- 3.14 Given LDP2 is expected to be used by London Boroughs it is important to ensure that London Councils is consulted throughout the tender process. Their feedback will be sought at appropriate junctures throughout the procurement process including during the preparation of the new DA and during the assessment of the bids.

#### *LDP1*

- 3.15 As noted in part 4 below, it will take several months to procure LDP2 and the new panel is expected to be in place in late 2017. LDP1 expires on 9 May 2017. To minimise any 'gap' between the current panel expiring and the new panel commencing, LDP1 will be extended by 6 months and will expire on 9 November 2017. Panel members and panel users will be informed of the change.

## **4 Next Steps/Programme**

<b>Milestone</b>	<b>Timetable</b>
MD on scope/format of LDP2	January 2017
OJEU Prior Information Notice issued	January 2017
OJEU Notice Issued	February 2017
PQQ Response Deadline	March 2017
ITT Issued	April 2017
ITT Response Deadline	July 2017
Evaluation of bids	July – October 2017
MD on proposed Panel	October 2017
Contract Award	November 2017
Panel Management	2018 - 2022
Panel Expires	January 2022

## **5 Governance and Management**

- 5.1 A fortnightly Project Steering Group has been established to discuss, advise, assist and keep an overview of progress with the project. The Steering Group comprises officer from Housing & Land and TfL legal/procurement advisors with support from the GLA Finance as required.
- 5.2 Approval for the proposed LDP2 will be sought from the Mayor in late 2017 at the conclusion of the procurement exercise.

## **6 Communications**

- 6.1 The Project Steering Group will work with the comms team to devise and implement a comprehensive communications strategy for LDP2.
- 6.2 GLA officers are also in contact with the Homes and Communities Agency to understand the programme for the procurement of their Delivery Partner Panel ("DPP") which is also due to expire in 2017. It is important to ensure the procurement of the DPP and LDP2 procurements are appropriately timed to ensure the message to the market is clear and consistent.



## **7 Equality Comments**

- 7.1 It is not anticipated that the recommendations in this paper will have a negative impact on any groups identified under the Equality Act 2010.

## 8 Key Risks and Issues

8.1 The main risks associated with the LDP2 project are noted below. Risks will be added/amended/closed as required.

Risk	Consequence	Likelihood (1-5)	Impact (1-5)	Score (LxI)	Mitigation
The current LDP is due to expire in May 2017 and no comparable framework is available to public land owners in London	Development on public land stalls or costly OJEU procurements are utilised instead. Mayor's ambitions not achieved. Reputational damage – GLA does not have available tools to meet Mayor's objectives to accelerate housing delivery.	5	3	15	Make procurement of LDP2 a priority and resource it sufficiently Compress procurement programme as far as possible Manage the scope of LDP2 to ensure the procurement programme is minimised Extend LDP1 by six months to minimise the gap between LDP1 expiring and LDP2 commencing
The LDP2 does not meet the procurement/development requirements of GLA partners	New panel is not widely used. New panel does not support the Mayor's ambitions. Reputational damage to GLA.	3	3	9	Consult widely with GLA partners to understand their requirements (complete) Shape LDP2 to respond to these requirements as far as possible
Procurement Regulations – new regs came into force in 2015. These must be reviewed and inform the procurement of LDP2	GLA risks a procurement challenge if the regs aren't adhered to.	2	4	8	Secure involvement of TfL legal and procurement advisors Take appropriate procurement advice from appointed solicitor

## **9 Financial Comments**

9.1 See Part 2.

## **10 Legal Comments**

10.1 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 as set out in section 30(2) which are:

- i. Promoting economic development and wealth creation in Greater London;
- ii. Promoting social development in Greater London; and
- iii. Promoting the improvement of the environment in Greater London

10.2 and, in formulating the proposals in respect of which a decision is sought, officers confirm they have complied with the GLA's related statutory duties to:

- pay due regard to the principle that there should be equality of opportunity for all people;
- consider how the proposals will promote the improvement of health of persons in Greater London, promote the reduction of health inequalities between persons living in Greater London, contribute towards the achievement of sustainable development in the United Kingdom and contribute towards the mitigation of or adaptation to climate change in the United Kingdom; and
- Consult with appropriate bodies.

10.3 Sections 1 - 6 of this report indicate that the Mayor has the power to proceed to as recommended within this report.

## **Appendices:**

### **1. LDP1 Scope of Services**

**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**

If YES, for what reason:

Until what date: (a date is required if deferring)

**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:**

Lauren Noble (Senior Development Manager) has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

David Lunts (Executive Director Housing & Land) has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

James Murray (Deputy Mayor) 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 the 16 January 2016.

**EXECUTIVE DIRECTOR, RESOURCES:**

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

**Signature**

**Date**

TOM MIDDLETON ON BEHALF OF MARTIN CLARKE

**CHIEF OF STAFF:**

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

**Signature**

**Date**

D. Bellamy

16 / 1 / 2017

## **Appendix 1 - LDP1 Scope of Services**

Successful panel members will be expected to provide all activities necessary to deliver housing and housing-led regeneration, including but not limited to:

- raising of development finance
- obtaining planning permission
- supply chain management
- design and construction of housing
- provision of affordable housing (in association with a registered provider)
- design and construction of infrastructure to support housing
- sales and marketing of homes
- aftercare and maintenance

Specifically:

- Development and disposal of sites for residential use
- Development and disposal of mixed-use housing-led sites. Mixed-use elements to include community facilities, retail or commercial development ancillary to and in support of housing
- Refurbishment / retrofit of existing houses, residential buildings, empty homes and associated buildings
- Refurbishment, restoration, conversion of heritage or other buildings for residential use
- Demolition, site remediation and enabling works to prepare sites for residential or mixed-use development
- Design and construction of homes
- Development of Extra care accommodation
- Self-build enabling as part of a larger development
- Maintenance and site management
- Resident / community consultation

