

Committee: Strategic Development	Date: 8 th November 2007	Classification: Unrestricted	Agenda Item No: 8.2
Report of: Corporate Director of Development and Renewal		Title: Millennium Quarter and Docklands Light Railway – Deed of Variation	
Project Officer: David Williams, Development Manager		Ref No: Ward(s): Millwall and Blackwall and Cubitt Town	

1. SUMMARY

- 1.1 This report concerns an existing legal agreement between the Council and the Docklands Light Railway (DLR) to use s106 resources from the Millennium Quarter (MQ) development contributions for the provision of DLR station improvements at South Quay.
- 1.2 A legal agreement secured in October 2003 identifies that on collection of £9 million (as indexed linked from 1st April 2002) for the station improvements from the developers within the MQ the payment is triggered to the DLR. They will in exchange provide station improvements with the capacity to accommodate the new workers and residents in the Millennium Quarter. It will also be an important asset for the Isle of Dogs as a whole.
- 1.3 This report is required because the DLR are in a position to deliver the station improvements before the £9 million (index linked) has been collected. This report seeks to secure Members approval to agree to a Deed of Variation to the existing agreement to provide for a total maximum payment to DLR of £7 million, which is currently collected. This can then be paid over to the DLR within the financial year 2007-08.
- 1.4 It is anticipated that this will deliver the necessary station improvements for the Isle of Dogs by 2010.
- 1.5 The £2 million of s106 released from this allocation will need to be re-allocated to existing “Authorised Works” (see paragraph 3.3 below) or consideration given to whether it might be applied to new projects linked to the MQ. The various s106 agreements entered into to-date with landowners/developers include a procedure for agreement or determination of additional/alternative projects which are considered necessary or appropriate in connection with the development of the MQ. The MQ Developers Liaison Group will lead this process.

2. RECOMMENDATIONS

- 2.1 That the Committee agree to vary the legal agreement dated 24th October 2003 between the London Borough of Tower Hamlets and Docklands Light Railway Limited relating to station improvements at South Quay.
- 2.2 That the Committee authorise officers to negotiate and complete the necessary Deed of Variation to the 2003 agreement to revise the payment to DLR and to include any appropriate consequential amendments to the

agreement, to the satisfaction of the Assistant Chief Executive (Legal Services).

3. BACKGROUND

3.1 The Isle of Dogs Area Action Plan (AAP) interim planning guidance, as adopted by Cabinet on 7th September 2007, identifies the Millennium Quarter as part of the Central Sub-area.

3.2 The Millennium Quarter Masterplan was adopted as Interim policy on 13th September 2000 by the Policy and Implementation Committee. The masterplan provides a planning framework for the area and is used to determine planning applications within the boundary. This is shown attached on Plan A.

3.3 The Millennium Quarter Masterplan covers an area of 20 hectares at the heart of the Isle of Dogs. It promotes a high quality, mixed use, urban quarter with new residential, commercial office space, hotel, retail and leisure uses. The masterplan when implemented over an estimated 15 year period will deliver:

- a minimum of 2000 new housing units;
- affordable housing in accordance with policy targets;
- an estimated 5 million sq/ft of commercial uses (offices, hotels etc);
- new jobs and training opportunities.

3.3 It will also secure circa £36 million from s106 payments for a range of infrastructure and other projects related to the development of the MQ, including:

- A range of new open spaces;
- improved public realm and streetscape throughout the quarter;
- a new DLR station at South Quay;
- a new, second, pedestrian bridge between South Quay and Canary Wharf;
- highway improvements in the area;
- new bus services.

3.4 The Development Panel on 19th April 2002 received a detailed report updating the Panel on the extensive negotiations at that time on the MQ. This included those on Third Party agreements such as that needed for the DLR station and attached a Developers Guidance Note detailing the s106 Framework for the MQ.

3.5 This Guidance Note explains all the pieces of infrastructure that are required to support the build out of the MQ area. It provides costs, as at April 2002, (which are to be index linked from this date to the date of payment) and details the mechanism by which the monies are secured through in the individual s106 agreements. This note also details the prioritisation of the various improvements, it lays out what is needed, by when to support the MQ developments and the wider area. It also details that a number of Third Party agreements are needed and being negotiated, specifically in this instance the DLR South Quay station agreement.

4. DLR Third Party Agreement

- 4.1 As part of the MQ negotiations the Council agreed and signed a Third Party legal agreement with the Docklands Light Railway on the 23rd October 2003.
- 4.2 The Third Party agreement identifies that the Millennium Quarter masterplan needs an up-graded station to accommodate the anticipated increase in usage as a direct result of the levels of development promoted by the Millennium Quarter Masterplan. In exchange for making provision for these additional people the legal agreement identifies that the DLR will receive up to £9 million (index linked from 1st April 2002) to provide the station improvements. This agreement was an essential component of the MQ in that the early commercial developers could not commence their developments until it was agreed and signed, thus ensuring provision of the necessary station capacity.
- 4.3 The Third Party agreement allows for the necessary station improvements to be either works to the existing station at South Quay to increase its capacity or the provision of a new station further along Marsh Wall. There is a schedule attached to the agreement which identifies the minimum components of such improvements such as:
- capacity to take up to 4000 per hour in each direction;
 - all the platform, circulation and passageway arrangements needed to do this;
 - a station to include staircases, escalators and lifts, as necessary, to all be compliant with Disability Discrimination Act and other statutory requirements at the current time;
 - station to have necessary signage, ticketing and passenger information in accordance with operational and statutory requirements.
- 4.4 The option of more than one location is because during negotiations, at that time, it became clear that the DLR were ideally wanting a 3 car solution for the Bank – Lewisham line, but this had not been secured through a Transport and Works Order at that time. The Order has since been confirmed and the works for the 3 car project are underway with the station being provided in a new 3 car capacity location. Officers understand that works will shortly be underway and that the old station will be removed following the completion of this work and opening of new station.
- 4.5 The agreement makes provisions in detail for the triggering of the payment to the DLR and lays out a detailed approach to application for preliminary costs as well as building in a mechanism to assess and confirm estimated costs and actual costs. By revising the provisions with regard to payment and by not now formally activating the preliminary process (which was designed to provide support for the process to secure final planning approvals which has now taken place) the arrangements going forward should be more straightforward.

Funding

- 4.6 The Guidance Note on the s106 Contributions Framework for Developers identifies the new station/station up-grade as priority one. This means that as the monies are secured from MQ developers through s106 agreements this project is one of the first to build up its contribution.

- 4.7 Subsequently since 2000, the Council has been collecting s106 contributions towards the provision of the up-graded station facility at Marsh Wall. The Council has now collected £7 million towards this item.
- 4.8 The costings in detail allow £7.2 million to provide the station and an additional £1.8 million in contingencies.
- 4.9 In securing the station improvements for £7 million this will release the balance of £2 million contingency for re-allocation to projects within the MQ, known as “Authorised Works” or (subject to agreement or determination through the procedure in the MQ s106s) to alternative/new projects linked to the MQ. This process will be led by the MQ Liaison Group. The Liaison Group is operated by the Council and co-ordinates the various active MQ developers who are, through their s106 agreement, participants in this arrangement.

Deed of Variation

- 4.10 The Deed of Variation required will now address a number of points:
- secure the trigger at £7 million not £9 million;
 - clarify that £7 million is the sum to be paid – this is not index linked;
 - remove the improvements to the existing station as an option - this has now been replaced by the 3 car option at a new station;
 - any other connected issues within the agreement;
- 4.11 If Members agree to a Deed of Variation Officers will work with legal advisers to negotiate and complete the agreement.

5. FINANCE COMMENTS

- 5.1 An Agreement was put in place in 2003 that up to £9 million of Section 106 resources, accruing from developments within the Millennium Quarter, would be made available to the Docklands Light Railway for DLR station improvements at South Quay.
- 5.2 The original estimates included various contingencies and was originally focused on the existing location at South Quay being expanded. It has now been determined that the station improvements can be provided with a reduced contribution of £7 million from Section 106 resources, as outlined in this report.
- 5.3 The total cost of providing the station is in excess of £20 million, but the £7 million contribution is the full extent of the Authority’s financial input. The responsibility for financing any overspend that may arise on the contract will rest with the DLR which has earmarked provisional funding in the event of this scenario arising.
- 5.4 It is anticipated that the funds will be released in one lump sum to the DLR. To ensure that the resources are protected, appropriate safeguards must be built into the legal contracts to ensure the return of the resources to the Authority if the station is not completed in accordance with the signed agreements.
- 5.5 As a result of the revised agreement, £2 million of previously earmarked Section 106 resources will now be made available to finance infrastructure and other projects within the Millennium Quarter (as shown in paragraph 3.3).

The Millennium Quarter Liaison Group, which is led by the Council, will coordinate the use and allocation of these resources (see paragraph 4.9).

6. LEGAL COMMENTS

- 6.1 The agreement dated 24th October 2003 was made under Section 106 of the Town & Country Planning Act 1990 and Section 16 of the Greater London Council (General Powers) Act 1974. Section 106 confers power on local planning authorities to enter into planning obligations. Section 16 concerns undertakings/agreements in respect of legal interests in land and which are given to/entered into by deed with local authorities.
- 6.2 Section 106A of the 1990 Act enables the modification or discharge of planning obligations and it is proposed that the variation of the 2003 agreement is entered into under this power and also under Section 16 of the 1974 Act. Section 16 does not contain any specific requirements in relation to the variation of undertakings or agreements given under that provision and any variation of the agreement will be subject to normal rules, which for present purposes will require the variation to be by way of deed. This is a requirement of Section 106A in any event.

7. CONCLUSIONS

The Deed of Variation for this Third Party Agreement will allow the Council to secure the early release of its s106 contribution towards the provision of a new DLR 3 car capacity station at South Quay.

This will release an additional £2 million for projects in and around the Millennium Quarter. Officers consider this Deed of Variation should be supported to enable the 3 car works on the new station to commence as quickly as possible and deliver a new station for the Isle of Dogs within the timings required by the DLR for the 3 car Bank – Lewisham project.