

<b>Cabinet</b>  28 October 2020	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director of Place	<b>Classification:</b> Part Exempt
<b>Billingsgate Market – Update on Joint Working with the City of London Corporation</b>	

<b>Lead Member</b>	<b>Mayor Biggs</b>
<b>Originating Officer(s)</b>	Michael Rourke, Divisional Director Property and Major Programmes
<b>Wards affected</b>	Canary Wharf
<b>Key Decision?</b>	Yes
<b>Forward Plan Notice Published</b>	28 August 2020
<b>Reason for Key Decision</b>	Financial threshold and significant material impact upon the community.
<b>Strategic Plan Priority / Outcome</b>	<ol style="list-style-type: none"> <li>1. A better deal for children and young people: aspiration, education and skills</li> <li>2. Good jobs and employment</li> <li>3. Strong, resilient and safe communities</li> <li>4. Better health and wellbeing.</li> </ol>

### **Executive Summary**

The report is to update Cabinet with respect to the joint working with the City of London on the future of the site following the proposed relocation of the Market, to seek approval to the terms of a cooperation agreement, to note the financial implications of entering into the agreement and to approve the content of a statement of support to be issued by the Council.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Note the position with respect to the future of Billingsgate Market and the joint working with the City of London Corporation (the City) in relation to its future redevelopment.
2. Approve the terms of a Cooperation Agreement between the Council and the City as outlined in paragraph 3.7, to be entered into on or before the laying of the draft Bill in Parliament by the City on the 27 November 2020, in accordance with the heads of terms included in the exempt Appendix 2.
3. Approve the statement of support for the future redevelopment of Billingsgate Market attached at Appendix 1.
4. Approve the Qualifying and Abortive Costs set out in the exempt Appendices 2 and 3.
5. Delegate authority to the Corporate Director of Place, in consultation with the Corporate Director of Governance to agree minor changes to the heads of terms as may be appropriate in the light of further negotiations, and to complete the Cooperation Agreement.
6. Note the financial risk to the Council set out in paragraph 6 of the report and in the exempt Appendix 3.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The future of the Billingsgate Market site is of strategic importance for the Council. It is jointly owned with the City. Officers have been working with the City on arrangements for the future joint disposal of the site and a Cooperation Agreement is being developed. The heads of the terms for the agreement have been provisionally agreed, subject to approval under this report, and these will form the basis of the Cooperation Agreement. There are financial implications of entering into the Agreement. At the same time, it is appropriate for Cabinet to receive an update on other matters related to the site.
- 1.2 As part of the Parliamentary process associated with relocating the Market, the City has asked the Council to provide a Statement of Support, in the form of a letter, which has been drafted in consultation with the Mayor's office and the City.
- 1.3 The Mayor in Cabinet will be asked to make future decisions as the project develops, in particular, about a future marketing and disposal agreement, outside of the scope of officers delegated authority, which will be based on the principles contained in the proposed Cooperation Agreement.

## **2 ALTERNATIVE OPTIONS**

- 2.1 The main alternative options to the single comprehensive Agreement proposed are to enter into a series of detailed legal agreements with the City, or not to enter into an agreement at all. Given that the process for relocating the Market will take several years and involves Parliamentary approval, it would be difficult to devise multiple detailed legal agreements to cover the variety of potential situations that could arise. Therefore, an overarching agreement is required. The absence of any agreement with the City would be problematic, as joint working with the City is imperative to establish the framework of future negotiations in order for an alternative future for the site to be realised, given that the Council is a joint owner of the site.

## **3 DETAILS OF THE REPORT**

- 3.1 The freehold of Billingsgate Market is owned by the City. The Council holds a 999-year lease of the major part (around 80%) of the site. The Council granted a 99-year sub-lease of this same area to the City. The City operates the Market under an Act of Parliament. The total site area is approximately 5.5 hectares (14 acres).
- 3.2 The two authorities have been working together to facilitate the redevelopment of the site following the planned relocation of the Market. In 2018 a Memorandum of Undertaking was agreed between the parties. Amongst other things, this allowed for the splitting of costs relating to preserving and enhancing the future development options.
- 3.3 The City plans to consolidate the three wholesale markets of Billingsgate, Smithfield and New Spitalfields which will be re-located to a site at Barking Reach. It has set up a Markets Consolidation Programme to deal with the many aspects involved. One of the aspects is that an Act of Parliament is required to provide authorisation to the relocations. The City intends to commence the Parliamentary process in November 2020, and it is likely to take a few years to complete.
- 3.4 To support the Parliamentary process, the City has asked for a statement of support from the Council and it is planned that the statement, which will take the form of a letter from the Mayor, will include;
- Reference to the positive working relationship with the City.
  - Note the fact that Billingsgate Market was moved to its current location relatively recently.
  - That the Council is comfortable with the loss of the market from the borough, given the redevelopment opportunities this brings.
  - Describe the Council's aspirations for the site based on the Local Plan.
  - That the Council is keen to plan for the redevelopment of the site following relocation.

The statement will be used and published in support of the City's efforts to move the market. The statement is attached at Appendix 1.

3.5 Officers have been working with the City to develop a comprehensive, Cooperation Agreement to prepare for a future joint disposal. The majority of the agreement is not legally binding, with the exception of a financial costs undertaking, which is discussed at section 7 and Appendix 3. During the Parliamentary process, joint work will be undertaken to prepare for the future disposal and redevelopment of the site. The Local Plan has a site allocation which sets out the planning policy requirements for redevelopment. The land use and infrastructure elements are:

- Land use; Employment (preferred office location (secondary) with ancillary supporting uses such as gyms, hotels, restaurants and retail). Housing.
- Infrastructure requirements; Small open space (minimum of 0.4 hectares), and a secondary school.

3.6 The Council has appointed consultants, CBRE to provide advice in respect of the proposed agreement with the City. During the currency of the agreement, there will be a joint governance structure in place to manage the delivery of the activities and deal with issues as they arise. Once all necessary approvals are in place in the future, the intention is that the future marketing and disposal will be subject to a new and binding legal agreement with the City. However, this would not be required until the conclusion of the Parliamentary process.

3.7 The agreement covers the following aspects. The heads of terms for the agreement are included in exempt Appendix 2

- Purpose

The intention is for the parties to work together to prepare the site for potential disposal through the joint sale of their respective interests. In preparing for disposal the primary intention of the Parties is to maximise the development potential and thus value and potential receipts from a sale of their joint interests.

Following grant of Royal Assent to a new statute permitting the City to relocate the parties will agree a marketing and disposal strategy and subsequently a binding marketing and disposal agreement for the marketing and disposal of their joint interests in the site.

- Future disposal

The agreement records the intention for a joint disposal to maximise the capital value, although other disposal objectives are possible subject to mutual agreement and value adjustment mechanisms. The basis on which proceeds will be shared is specified in percentage terms.

- Value protection

The parties intend to cooperate to undertake a range of activities to prepare the site for disposal. These include activities intended to mitigate the risk of a disposal through appropriate due diligence (e.g. title, surveys, etc). A planning strategy will be prepared and a brief for the development of the site drawn up. These will be developed in consultation with Planning officers who are currently developing South Poplar Masterplan SPD. The City will lead on actions to secure vacant possession of the site in line with the statutory process and the development of the new market site.

- Qualifying costs

The value protection work and the achievement of vacant possession will involve expenditure. The expenditure which is to be shared between the parties under the agreement is referred to as qualifying costs. These costs are set out in a schedule to the heads of terms. They include all costs associated with achieving vacant possession of the site. The future costs are estimates and therefore subject to change. The vacant possession costs, which are subject to third party negotiations, are particularly subject to potential variation. The City will consult with the Council on the vacant possession strategy and costs will be provided with transparency and on an open book basis. Further the City will be under a duty to minimise costs associated with the securing vacant possession. The costs of value protection and the preparation of the site for disposal will include all measures which may be agreed between the parties to achieve the agreed outcomes. There will be qualifying costs linked to the marketing and disposal strategy and arising from the implementation of the disposal.

The intention is for some of the costs to be paid by the Council as they are incurred whilst the more substantial amounts related to vacant possession could be deducted from the Council's share of the disposal receipt. The Council will have options as to the preferred funding route.

- Abortive costs

In the event that either party no longer wishes to proceed with the disposal, other than for the reasons that planning permission for the new market is not secured or that vacant possession is not achievable, the withdrawing party shall be liable to pay the appropriate proportion of costs the other party has incurred. In general, this relates to costs incurred after the completion of the agreement.

- Governance

A joint project steering group will be formed for the purposes of effecting equal input in implementing the objectives of the agreement as may be authorised through the decision-making procedures of each party. The group will comprise an equal number of members from both parties and will generally meet quarterly to provide oversight and strategic direction on the shared

objectives and the specific activities required to progress the Agreement; to oversee performance against the business plan, project programme and project budget. It will approve certain more significant items of expenditure.

The routine matters under the agreement will be undertaken by a working party comprising officers of the two authorities and any third party consultant/s. The working party will meet on a monthly basis and report to the steering group on key matters including agreeing new appointments and expenditure against budgets.

- Dispute resolution

Any disputes regarding qualifying costs are to be subject to the following escalation process. The working party will escalate any dispute to the steering group. If the steering group is not able to resolve the dispute, the matter will be referred to the Chief Executives of the parties. If this fails to bring about a resolution, the matter will be referred to a third party independent expert, the costs of which are to be shared 50/50.

- Roles

In recognition of its greater stake and responsibilities, the City will lead the agreed programme of activities in consultation with the Council. The Council agrees to support the activities through participation in the governance process and the provision of information, approvals etc as required to facilitate the carrying out of the provisions of the agreement.

The Council will act in its capacity as landowner (as opposed to its role as Local Planning Authority) in relation to this and subsequent agreements.

- 3.8 The heads of terms are recommended for approval as providing a basis for joint working with the City over the coming years that safeguard the Council's interests, whilst allowing the parties to collaborate effectively to maximise the potential of the site.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 There are no specific equalities implications arising from the report at this stage. The future redevelopment of the market site will require planning consent, which will involve consideration of issues such as affordable housing, access and employment opportunities.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 The future transaction involving the Council's leasehold interest will be subject to the best consideration obligations in s123 of the 1972 Local Government Act.

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This report seeks approval from the Mayor in Cabinet to the heads of terms of a Cooperation Agreement and agreement to the financial expenditure for qualifying costs set out in exempt Appendices 2 and 3 and provides an update on the joint working arrangements with the City of London Corporation in respect of the future of Billingsgate Market.
- 6.2 The Council will benefit from a share in the site sale proceeds, should the market relocation be successful and its sale is projected to deliver a capital receipt above the threshold set out in Appendix 3.
- 6.3 Costs will be incurred in preparing of the site for disposal, which will be jointly met by LBTH and City of London Corporation. The City will meet these costs once approved and charge the Council on a regular basis. It is anticipated that these costs will primarily relate to professional fees which can be offset against the future capital receipt to the Council, up to a maximum of 4%.
- 6.4 If Royal Assent, vacant possession of the site, or planning consent for the new market are not achieved then these costs incurred will have to be written back to revenue and treated as one off abortive costs. Since no budget provision exists this represents a financial risk to the Council that should be considered in any decision around the disposal of the site as detailed in Appendix 3.
- 6.5 There will be further costs incurred ahead of any disposal, for example incentive payments to traders and other vacant possession costs. These costs will be substantial and will require inclusion in future years budgets and capital programme as appropriate as an element will exceed the 4% de minimis chargeable against disposal. If the Council were to pull out of the disposal at this later stage then the abortive costs chargeable to revenue will be substantial and include the City's abortive costs in relation to the wider market relocation programme. Additional costs ahead of disposal are also included.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Recommendations of the report requests the Mayor in Cabinet to note the parties joint working arrangements concerning the future of Billingsgate Market and the financial risk to the Council set out in both paragraph 6 of the Report and the exempt Appendix 3. It further seeks approval of the following: terms of a Cooperation Agreement between the parties, to be entered into on or before the laying of the draft Bill in Parliament by the City on the 27 November 2020, in accordance with the heads of terms included in the exempt Appendix 2; the Qualifying and Abortive Costs set out in the exempt Appendix 2 and the Statement of Support for the future redevelopment of Billingsgate Market attached at Appendix 1.

- 7.2 The Mayor in Cabinet is also requested to delegate any drafting amendments to the Cooperation Agreement to the Corporate Director of Place, in consultation with the corporate Director of Governance.
- 7.3 Paragraphs 1.1 and 3.5 of the report advises that currently a non-binding Cooperation Agreement is being negotiated with City. The purpose of the current Heads of Terms (“HoTS”) is to agree the scope and parameters of each parties respective interest in the arrangements for the future joint disposal of the site. These agreed HoTs will form the basis of the Cooperation Agreement subject to the approval of the respective Recommendations of the report.
- 7.4 It is noted that whilst the Cooperation Agreement is not legally binding in the full sense, it is underpinned by a legal undertaking in respect of the financial costs incurred on the project, as set out in the finance comments above at paragraph 6 and in further detail in the exempt Appendix 3.
- 7.5 As advised in paragraphs 6.4 and 6.5 above and exempt Appendix 3, the Mayor in Cabinet will note that there are some inherent financial risks to the Council to be considered.
- 7.6 Appendices 2 and 3 are exempt from publication under Paragraph 3 of Schedule 12 of the Local Government Act 1972, as they contain confidential financial information which could damage future commercial negotiations between City, the Council and third parties. This information includes the compensation sums payable to secure vacant possession of the site. The release of these Appendices into the public domain may be injurious to the Council’s future commercial negotiations. The implications of this could potentially have a significant cost implication to the public purse, in terms of the lost opportunity to maximise the parties financial receipt and would not be in the public interest to such a degree that this outweighs the public interest in knowing the contents of the Appendices.
- 7.7 Paragraphs 3.3 and 3.4 of the Report advises that the operation of the Billingsgate Market is governed by an Act of Parliament. Its relocation is therefore subject to a parliamentary process and the passing of a new statute by way of a private Bill. The Mayor in Cabinet is advised at paragraph 3.4 that the Council has been formally requested by the City to support the parliamentary process by way of a Statement of Support which is appended at Appendix 1. It is considered that this statement is in an acceptable form and presents no legal concerns.
- 7.8 It is the intention of the parties that, following grant of Royal Assent to a new statute permitting the relocation of the respective Markets they will undertake specific steps in preparation for the marketing and disposal of their respective legal interests in the site. This will form part of further reports to Cabinet in due course.
- 7.9 The Mayor in Cabinet will note that the parliamentary process is expected to last until mid-2023 and will entail various stages. The stages of a private Bill



are guided by Parliamentary standing orders. Each private Bill (as in the case of public Bills) must be approved by both Houses of Parliament and each has three Readings and a Committee stage. The key procedural difference from public Bills is that opponents of a private Bill can petition against a private Bill and appear before a committee appointed to consider the Bill.

- 7.10 The first step in the parliamentary process is for a Petition to be presented to both Houses of Parliament. A Petition must be presented on 27 November each year. The Bill must also be advertised in newspapers and official gazettes. All people whose land is affected by the Bill must be notified, and any relevant plans need to be deposited in Parliament. This is the next step in the process that both the Council and City are working towards. In light of this statutory deadline for the annual deposit of the private Bills Recommendation 2 includes a caveat that the Cooperation Agreement must be entered into either on or before this specific date.
- 7.11 Once a Bill has completed the parliamentary stages, it will proceed to Royal Assent and become an Act of Parliament.
- 7.12 There are no equalities implications to be noted at this stage of the negotiation process.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None

### **Appendices**

- Appendix 1 Statement of support
- Exempt Appendix 2 Cooperation Agreement Heads of terms
- Exempt Appendix 3 – Exempt comments of the Chief Finance Officer and Legal Services

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None

**Officer contact details for documents:** N/A

## Appendix 1

Mayor Biggs  
Tower Hamlets Council  
Town Hall  
Mulberry Place  
5 Clove Crescent  
E14 2BG

xx October

Dear Policy and Resources Chair,

### City of London's Markets Consolidation Programme

The purpose of this letter is to confirm my support for the City Corporation's proposals to relocate Billingsgate Market from its current site in the Borough.

Billingsgate Wholesale Fish Market began its life in the heart of the City of London and was formalised into a building in 1850. However, by 1982 the Market needed space to expand, hence its relocation to the current site, located between Poplar and Canary Wharf in the Borough.

Since this time, the City Corporation and Tower Hamlets Council have worked closely together to ensure the prosperity of the Market, which is situated on land jointly owned by the two authorities. The Council recognises the operational, environmental and space challenges the Market faces in its current location, and understands the drivers for the proposed move to a new location in Dagenham Dock in the London Borough of Barking and Dagenham.

The Council supports this move, which should protect and enhance this important part of London's and the South East's fresh food supply. The Council also welcomes the opportunities made possible by releasing the site for other uses.

In particular, the Council looks forward to the opportunity for the site coming forward for redevelopment in line with the land uses and other requirements outlined in our [Local Plan 2031: Managing Growth and Sharing Benefits and the specific site allocation](#). The site is within the Isle of Dogs and South Poplar Opportunity Area Planning Framework and is part of the South Poplar Masterplan SPD, currently in development. The Council is working with landowners, including the City Corporation, in developing the Masterplan in which the Billingsgate site is a key element given the development potential and ability to provide important infrastructure and connections.

The ability to bring forward redevelopment with alternative uses in the medium term will support the Council's aspirations and the local communities of Poplar and Canary Wharf. It is important to the overall success of the area, which is undergoing

significant change as existing large developments mature and other major sites come forward for development.

For the reasons outlined in this letter, I hope that Parliament will recognise the value of allowing the Market to move and provide its support accordingly.

I am content for the contents of this letter to be used in support of the City Corporation's efforts to move the Market. I look forward to our continued collaboration on this key project for the Borough.

Kind regards,

**John Biggs**  
**Mayor of London Borough of Tower Hamlets**