

Memorandum of Understanding
Growth Boroughs and London Legacy Development Corporation
September 2023

1. Parties

The parties to this Memorandum of Understanding (MoU) are:

- 1.1 London Borough of Hackney (LBH);
- 1.2 London Borough of Newham (LBN);
- 1.3 London Borough of Tower Hamlets (LBTH);
- 1.4 London Borough of Waltham Forest (LBWF); and
- 1.5 London Legacy Development Corporation (LLDC).

In this MoU, the term “**Growth Boroughs**” refers to LBH, LBN, LBTH and LBWF.

2. Purpose

- 2.1. The purpose of this MoU is to agree the approach to handling the impact on the employees of LLDC affected by the transfer of planning powers from LLDC to the respective Growth Boroughs. The transfer of planning powers is intended to take effect on 1st December 2024.

3. Background

- 3.1. LLDC was established as the first ever Mayoral Development Corporation in 2012, to take forward commitments made in the London 2012 bid in relation to the physical and socio-economic regeneration of Stratford and the surrounding area.
- 3.2. The Mayor of London has a legal duty to periodically review the continued existence of Mayoral Development Corporations.
- 3.3. LLDC Board have made recommendations to the Mayor of London which he approved in early September 2022. These include that LLDC’s Town Planning powers will return to the four neighbouring boroughs, i.e. the Growth Boroughs, on 1 December 2024.
- 3.4. LLDC and the Growth Boroughs have been in discussions about the impact of point 3.3 above, i.e. the return of planning powers from LLDC to the relevant Growth Boroughs, and the application or otherwise of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) to that process. LLDC’s and the Growth Boroughs’ shared understanding of the legal position on TUPE is as follows:
 - 3.4.1. The return of LLDC’s planning functions to the Growth Boroughs will not be covered directly by the TUPE.
 - 3.4.2. Applying TUPE or the principles of TUPE to LLDC planning team would be complicated by the fact that the planning powers are to be returned to four boroughs rather than one so the activity in question is being fragmented and the team is not currently organised by Growth Borough area¹. The parties believe that this fragmentation would mean that TUPE

¹

would not ordinarily apply to a transfer of this type, ie. there is no 'relevant transfer' under TUPE.²

- 3.4.3.** Furthermore, and in any event, TUPE contains an exemption which provides that TUPE does not apply to the transfer of administrative functions between public administrative authorities (Regulation 3(5)).
- 3.4.4.** The transfer of planning powers from LLDC to the Growth Boroughs falls within this exemption.
- 3.4.5.** LLDC and the Growth Boroughs must also have regard to the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP).
- 3.4.6.** The COSOP notes that there may be legislative options to apply TUPE to the transfer of administrative functions, which should be used where possible (see further below).
- 3.4.7.** Under section 216 of the Localism Act 2011 the Mayor may make a statutory transfer scheme between LLDC and a borough (or boroughs). The Mayor may include in such a scheme the transfer of contracts of employment (i.e. staff) (section 218(6)). If he does so, TUPE will be deemed to apply to the transfer of those staff, regardless of the exemption (section 218(4)). Such a scheme can only be made with the agreement of the borough(s) in question.
- 3.4.8.** The COSOP states that even where such a legislative route is not used:
- i. *"as a matter of policy, public sector bodies should ensure that the principles underpinning TUPE are followed, so staff are offered the opportunity to transfer on terms that are, overall, no less favourable than had TUPE applied"*.
 - ii. *public sector bodies should also ensure that "appropriate pension provision and redundancy and severance terms are applied"*.
 - iii. *"staff who choose not to transfer should, where possible, be redeployed within the transferor public sector organisation"*.

(<https://www.gov.uk/government/publications/staff-transfers-in-the-public-sector> - see esp. paras 5 and 17-20)

- 3.4.9.** The COSOP envisages that there may be exceptional circumstances in which staff will not transfer (see paras 14-16). Broadly speaking these reflect the situations where TUPE does not apply for reasons other than the exemption referred to in 3.4.3.

¹ Currently, work is not allocated within the LLDC team by geographical area or borough, but through technical expertise, previous experience or statement of interest. LLDC job descriptions are generic rather than based upon area and reflect this more general approach. As a result, all staff working in PPDT has a workload which is not exclusive to one particular borough. Work allocation across borough areas has provided a wider breadth of opportunity for experience and development for staff that would not be possible if the work is constrained geographically. Those in scope are not wholly or mainly assigned to work for, or in an organised grouping that can be easily ascribed to, a particular borough.

² *Thomas-James & ors v Cornwall County Council & ors 2008.*

Additionally, because of the way the LLDC team is organised it is agreed that TUPE does not apply, to the extent it is argued that it would apply to transfer part of any employee's role then the practical application of that would be unworkable. This is not being pursued as it would not be in the interests of LLDC, the Growth Boroughs or the employee to attempt to divide the role.

3.4.10. Given the above, the Growth Boroughs and LLDC have sought to reach a shared understanding of how to approach the issue of staff transfer, as set out below.

4. Agreed Principles and Approach

4.1. The parties agree the following:

4.1.1. That TUPE does not apply to the transfer of planning powers from LLDC to the respective Growth Boroughs:

4.1.2. That the parties have taken COSOP into account. The Growth Boroughs' position is that it is inappropriate to treat this administrative transition of planning powers as one to which TUPE will apply due to the fragmentation of activities across multiple Growth Boroughs and the way in which the LLDC team is currently structured. The Growth Boroughs note that the COSOP does not suggest that TUPE Principles should be applied in cases where it would not otherwise apply on the facts. The Growth Boroughs are of the view that these are exceptional circumstances of the type envisaged by COSOP by analogy and LLDC accepts that this is a legitimate position to take. Additionally, because of the fragmentation of activities the Growth Boroughs have considered but are not able to accept voluntary transfers of staff.

4.2. That whilst the Mayor has the powers described in section 3.4.5 above that the Growth Boroughs' consent would be required for a staff transfer under a statutory transfer scheme and they are not willing to provide such consent for the reasons set out above. In light of the above:

4.2.1. LLDC will consult with its employees that are affected by the cessation of LLDC's planning activities on the basis that those staff will not transfer to the Growth Boroughs pursuant to TUPE;

4.2.2. Both LLDC and Growth Boroughs share the ambition to support the retention of planning talent and expertise in East London across the Growth Boroughs. The Growth Boroughs agree to share vacancies with LLDC.

5. Status

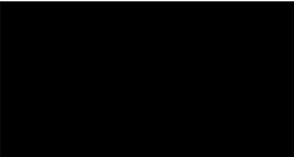
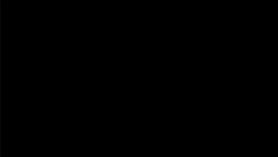
5.1. This MoU is not intended to be legally binding and no legal obligations or legal rights shall arise between the parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.

5.2. Nothing in this MoU is intended to (or shall be deemed to) supersede any existing agreement, partnership or joint venture between the parties, nor authorise any of the parties to make or enter into any commitments for or on behalf of another party.

5.3. This MoU can be modified at the request of parties concerned, following written agreement between all parties.

5.4. Any dispute arising from the interpretation or implementation of this MoU shall be resolved amicably and expeditiously by consultation or negotiation between the parties.

6. Signatures

 <p>Rickardo Hyatt Group Director Climate, Homes and Economy London Borough of Hackney</p>	 <p>Vicky Clark Interim Corporate Director of Inclusive Economy & Housing London Borough of Newham</p>
 <p>Jennifer Peters Director of Planning and Building Control London Borough of Tower Hamlets</p>	 <p>Justin Carr Assistant Director – Development Management & Building Control London Borough of Waltham Forest</p>
 <p>Lyn Garner Chief Executive Officer London Legacy Development Corporation</p>	