

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 7 July 2010	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Elephant and Castle – Regeneration Agreement and Disposal of Associated Land	
<b>Ward(s) or groups affected:</b>		Cathedrals, Chaucer, East Walworth and Newington	
<b>From:</b>		Leader of the Council Cabinet Member for Regeneration and Corporate Strategy	

**Introduction and Recommendations from Leader and Cabinet Member for Regeneration and Corporate Strategy**

The regeneration of the Elephant and Castle is vital to the renewal of our borough. It is a project which was conceived over a decade ago, and the decisions which we take as an administration on the proposed Regeneration Agreement (RA) with Lend Lease ('LL') (Elephant and Castle) Limited are likely to be some of the most significant during this term of office. Therefore, we are delighted to present for the consideration and approval of the Cabinet the following recommendations on the RA with LL (Elephant and Castle) Ltd. We are pleased to have been able to realign the outcome of the negotiations and to bring to fruition such an important milestone on a journey that started in 1999. It is very encouraging to see the recent progress that has been made and we hope that this new pace will continue to be reflected in the regeneration process going forward.

We have fully considered the report from officers, including the supplementary advice from our professional advisors, which commences at paragraph 6 below. We put forward the following recommendations:

**RECOMMENDATIONS**

1. That Cabinet agrees to the terms of the RA with LL (Elephant and Castle) Ltd for the regeneration of the Elephant & Castle as outlined in this report.
2. That Cabinet approve the disposal of housing land at the Heygate Estate, shown edged in red on the plan at Appendix 1 ("the Land"), to LL on the terms outlined in the RA by way of 999 year leases for premiums plus overage if applicable as set out in the closed report subject to:
  - 2.1. the Council obtaining confirmation from the Secretary of State for the Department for Communities and Local Government ("CLG") that specific consent to the transfer of housing Land will not be necessary; or,
  - 2.2. Council Assembly's approval of an application to CLG for consent to the disposal of housing Land at less than best consideration and that consent being obtained; and,
  - 2.3. other conditions precedent being met.
3. That Cabinet recommends to Council Assembly that it approves an application to CLG for consent to transfer the Land if such consent is necessary

4. That Cabinet agree to a minimum level of affordable housing to be delivered as part of the scheme to be 25% as set out in the Minimum Development Requirements.
5. In the event that negotiations to bring forward the development of the shopping centre site are unsuccessful that Cabinet instructs officers to report back to a future meeting to seek further instruction on the compulsory purchase of the site, underwritten by LL.

## **Background**

6. Since the Executive meeting of 27 July 2009 and subsequent update, a detailed process of discussion and negotiation has been carried out between the Council and LL with the aim of reaching an agreed RA that provided both the Council and LL with the necessary comfort to progress the regeneration of the Elephant and Castle and enter into contract on a long term relationship for the delivery of the Council's ambitions for the Elephant and Castle.
7. Following discussions, the Executive received Heads of Terms for the regeneration at its meeting of 30 November 2009 and agreed to enter into those terms. On the basis of the Heads of Terms, officers have negotiated with LL a detailed RA that sets out the parameters of the contractual relationship between the Council and LL. Update reports were given to the Executive at their meetings in February and March 2010. At the March 2010 meeting of the Executive, it was reported that 95 per cent of the agreement was finalised. At that time, the Executive agreed to make the final decision on the RA at the next scheduled meeting on 22 June 2010 in order to allow for the final detail of the agreement to be drafted and to provide more time for discussions with St Modwen the current owners of the shopping centre.
8. Following the results of the local elections on the 6 May 2010, it was agreed to present a report to the newly elected Cabinet at their meeting on 7 July 2010 in order to allow officers to realign the RA with the aspirations of the new Cabinet. Since the election of the new administration, the negotiations have focused on 3 key elements:
  - Affordable housing
  - The shopping centre
  - Leisure facilities
9. Significant progress has been made on these issues and these are dealt with in greater detail within the body of this report, the closed report and the report on the leisure centre to be presented at the same cabinet meeting.
10. It should be noted that the contents of the RA represent the outcome of a focused period of negotiation and discussion with LL on the regeneration of the Elephant and Castle. The context of the proposed agreement, therefore, represents the culmination of discussions in how best to balance risk and value in order to achieve the maximum benefit for the Council at an appropriate level of exposure whilst realising the wider benefits of the regeneration.

## **RA key terms and Structure**

11. The structure of the RA breaks the project into three key development packages (as demonstrated in the plan at appendix 2 attached to this report) as below:

- Rodney Road (coloured green in the plan at appendix 2)
- Heygate (coloured orange in the plan at appendix 2)
- The shopping centre (coloured pink in the plan at appendix 2)

12. Conditions precedent are applied to each individual package and if the conditions are met then this triggers a draw down of Land on an agreed 999 year lease and the payment to the Council of premium/premiums in accordance with the payment schedule .

#### Lend Lease

13. LL Corporation Ltd is an international property business operating across various aspects of the real estate industry including project management and construction, property development and property investment management.

14. LL Corporation Ltd is ranked third among the top 20 global companies by sales in the real estate industry as classified by Dow Jones (information as at 6 October 2009). At it's last year end in June 2009, the company was valued at \$3958.8m.

#### Security

15. In addition to the guarantee mechanism, certain payments are secured over land at the Elephant and Castle as identified at appendix 3.

#### **Overage**

##### Profit Overage

16. A key element of the RA is the concept of sharing any overage/super profit on a 50/50 basis. For the purposes of monitoring and calculating any overage, a development account and financial model have been developed; the same model will be utilised to inform assessment of the primary viability condition. The composition of the model has been agreed and is defined in the RA.

##### Planning Overage

17. There is a methodology in place between the Council and LL in relation to any planning overage (which is the additional value created by additional or subsequent planning applications) that may be achieved over and above the current levels of development through the planning process.

#### **Financial Model**

18. The financial model underpinning the transaction is made up of certain elements in relation to the inputs or costs; and the outputs or revenues. These are summarised in the following tables and have been reviewed by PriceWaterhouseCoopers LLP (PwC).

## Revenues

<b>Revenue element</b>	<b>Definition</b>
Private Housing	Total receipt for private residential units over the life time of the scheme.
Intermediate Housing	Total receipt for sales of intermediate housing units delivered through RSL.
Social for Rent Housing	This is the total receipt expected from social rented housing within the model which will be delivered through the appropriate RSL.
Retail	This is the level of income expected to be achieved through sales and lettings of the commercial space within the scheme.
Car Parking	This is the total revenue gained through sales of car parking spaces within the scheme.
Ground Rent	This is the payment made by the leaseholder to the landlord for consideration of the lease including residential ground rents on private flats.

## Costs

<b>Cost Element</b>	<b>Definition*</b>
Construction Costs	Total construction costs including all demolition, site preparation, infrastructure costs together with all professional team fees and expenses paid by the developer.
Development Costs	The preparation for, acquisition, holding, design, financing, development, marketing, letting etc and the carrying out of the works including project management and development management costs.
Finance Costs	The developer will charge the cost of debt to the development account and will apply the same rate to any money that it invests in the scheme itself.
Developers Profit	LL will receive a profit on cost.
Professional Fees	Actual costs incurred subject to challenge and competitive tendering process

\*NB: definitions are a summary of the legal terminology and are given for information purposes only and should not be relied upon.

19. PwC have compared the relevant aspects of the model to the RA. A number of queries and issues were identified, all of which have now been resolved. As a result of the review of the model, PwC noted that the RA is very complex in structure in order to provide for

the longevity of the project and, therefore, monitoring will be required to ensure that the model is always fit for purpose.

## Demolition

20. As previously reported, the demolition of Rodney Road is already underway and a demolition management agreement has been signed between the Council and LL. This agreement is, however, separate to the works associated with the demolition of the Heygate.
21. In respect of the demolition of the Heygate, the Council and LL have agreed a programme which is aligned with the current estimated projection of vacant possession being achieved for the blocks on the Heygate. LL are to progress demolition of the Heygate in line with this programme with the aim of completion by 2015. The indicative programme is attached to the RA as an annexure and will be reviewed by the management board (see later section on Governance) on an ongoing basis (and is attached here at appendix 4). LL have agreed to start the technical and procurement processes to achieve early demolition as soon as the RA is signed.

## Primary and Secondary Conditions

22. At the time of the 24 November 2009 Executive meeting, officers reported that there were four conditions precedent that needed to be met in order for the scheme to progress. Following further discussion with LL, the concept of conditions precedent has evolved and the progression of the RA is now subject to two tiers of conditionality requiring primary and secondary conditions to be met. The primary conditions must be met to satisfy the progression of a phase and the secondary conditions must be met in order to satisfy the progression of a building on site.

## Governance

23. A management board will be convened to govern the project and it will consist of appropriate representatives for both the Council and LL who will be appointed to monitor the progress of each part of the development. The Council will be represented by the Deputy Chief Executive and the Strategic Director of Regeneration and Neighbourhoods, LL will appoint their Elephant and Castle Development Director and Head of Major Projects to the management board. Further details of how this board will operate are contained within the RA but specific responsibilities are listed below.
24. The management board will perform a strategic role:
  - in monitoring the rights and obligations for both parties within the RA; and,
  - in monitoring and reviewing the delivery of the Minimum Development Requirements and the level and split of affordable housing within the phases.
25. The management board is also able to consider alternative sites for the first development if it is prudent to do so through discussion and approval of the phasing and plot plans.
26. In addition to the functions of the management board outlined above, further governance arrangements for the project include the Council having approval rights to the:

- planning application;
- planning strategy;
- land assembly strategy;
- Master Regeneration Plan (MRP);
- Masterplan;
- Phase plan;
- Plot plan; and,
- Transport strategy.

27. The Council will also receive the following:

- Annual Business Plan;
- Construction Phasing Plan;
- Programme;
- Latest appraisal;
- Marketing & Letting strategy; and,
- Procurement strategy.

28. The management board is made up of a limited membership in order to provide the necessary focus and experience to take the regeneration forward and deliver on the stated objectives for the Elephant and Castle. For the avoidance of doubt, the management board is separate to and different from the proposed Steering Group. The proposed Steering Group will form an integral aspect of the consultation strategy which is contained within the Master Regeneration Plan. The consultation strategy will be formally developed over the next three months in consultation with members, stakeholders and the wider community.

29. The development of the terms of reference for the Steering Group will be carried out in full consultation with the Community Council as well as the wider community and interested stakeholders as a part of the consultation strategy. However, the aim of setting up the Steering Group will be to put in place an appropriate feedback mechanism to review progress of the project and provide a public forum for discussion and debate in respect of the regeneration and its impact on the wider community. Similarly, a feedback mechanism will be put in place to ensure that the views of the Steering Group are raised and discussed with the management board in order to ensure that the views and opinions of all interested parties are considered throughout the development of the project. These proposals will be worked up over time and are part of the consultation strategy which is contained within the MRP. It is anticipated that a full consultation programme will be agreed three months after the RA is signed as part of the annual business plan.

## MUSCo

30. Both the Council and LL acknowledge that a key aspect of the regeneration is the provision of a sustainable energy solution that meets the requirements of the relevant legislation and specifically, to meet the "zero carbon emissions" standard which will be in place from 2016. This standard will be built into the minimum requirements set by the national Building Regulations. The Council will seek to provide a Multi Utility Services Company (MUSCo) as the preferred approach to provide an energy solution for the Elephant and Castle. LL have agreed to work with the proposed MUSCo provider on the development of the MUSCo and associated services.

31. An alternative solution to the MUSCo is one where the developer must meet the zero carbon standard through:

- high levels of energy efficiency (building fabric insulation);
- building mounted renewable energy systems (e.g. PV, biomass boilers, solar thermal, heat pumps etc.);
- payment into an "allowable solutions" fund to offset any remaining carbon emissions that cannot be eliminated via the above. It should be noted that this element can only meet 30% of the total carbon omissions of the development. Guidance from Government suggests that this will be an option only where it can be demonstrated that these savings can not be met on site or near the site through connection to a district network.

#### Shopping centre

32. The shopping centre is included in the RA and the agreed strategy for bringing forward the development of the shopping centre within the RA is that:

- the Shopping centre will form part of the outline planning application along with the Heygate;
- both parties will try to bring the shopping centre and its owners into a Joint Venture arrangement with LL by agreement, enabling the delivery without recourse to CPO;
- if agreement can not be achieved then the Council may choose to use its CPO powers to acquire the shopping centre.

33. Negotiations are currently on-going with St Modwen (the current owners of the shopping centre). However, at the time of writing this report terms have not been agreed.

#### Programme

34. An indicative programme is attached at appendix 4.

#### Project Milestones

35. At this stage, the agreed key milestones are as follows:

<b>Milestone</b>	<b>Date</b>
Signing of RA	July 2010
Commencement of physical demolition of Rodney Road	October 2010 (if it proves viable and expedient, the demolition of the Heygate will be brought forward once the site achieves vacant possession, this will be by agreement between LL and the Council)
Detailed planning consent and conditions precedent met for Rodney Road	end 2011

Outline planning consent received and conditions precedent met for the Heygate	end February 2013 (subject to provision of an extension to allow for legal challenge)
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36. Further milestones will be agreed between both parties through the governance structure as part of the development programme.

#### Pre-development work

37. Following signing of the RA, it is currently envisaged that LL will:

- finalise the Master Regeneration Plan;
- progress pre-development work on the master plan including consultation;
- prepare planning applications for the masterplan to include elements in detail for early phases;
- commence the preparatory work to achieve an early demolition of the Heygate and work on a secondary option in the eventuality that the MUSCo is not delivered.

#### Rodney Road

38. LL have agreed to commence with the demolition of Rodney Road acting as the Council's agents prior to the signing of the RA, subject to the recovery of costs from the Council. On submission of a detailed application for Rodney Road LL will, subject to achieving consent and subject to conditions precedent being met commence construction on site, having regard to the programme.

#### Shopping Centre and the Heygate

39. On submission of an outline application for the shopping centre and the Heygate LL will, subject to achieving consent prepare detailed applications in relation to the development of the shopping centre and the Heygate. On grant of planning consent and subject to conditions precedent being met, LL will commence construction on site.

#### Plot 1 Heygate

40. LL have committed that following the satisfaction of the primary conditions for the Heygate which triggers the draw down of Land they will proceed with the construction of the first building (subject to the satisfaction of the secondary condition) which will prevent the land being drawn down and construction not commencing which would mean that the Land was "land banked" by LL.

#### Plans

41. The RA includes an indicative phase plan (showing the development packages as outlined in appendix 2) and plot plan (which is attached at appendix 5). These plans have been agreed by both parties, they are, however, subject to the statutory planning process, consultation and market forces. There are mechanisms in the governance arrangements to make changes to these plans by agreement between the parties should any of the factors outlined require them to be adapted.

## Consultation and Community Involvement

42. Following the completion of the RA, the Council and LL have proposed through the draft Master Regeneration Plan to produce a complete consultation strategy within three months in order to allow sufficient time for the strategy to develop in consultation with relevant stakeholders and the community. The strategy will provide more detail as to how both parties propose to keep local residents, businesses and other stakeholders informed about:
- the progress of the scheme;
  - how they will have the opportunity to inform the content of the planning application;
  - the development process; and,
  - the critical decision points during the course of the regeneration.
43. The strategy will also include more information on the role and operation of the proposed steering group referred to in the governance section above and how this will interact with the development.

## Master Regeneration Plan

44. The report to Executive on 24 November 2009 set out the commitments by the Council and LL in achieving the broader regeneration benefits of the project with the aim of delivering a successful urban quarter at the Elephant and Castle. The Council's vision for the regeneration was reiterated at that meeting and is incorporated within the Heads of Terms.
45. At the time, a key document to achieving these aims was explained as being the 'Master Regeneration Business Plan'. This document has since been drafted alongside the RA and through its evolution, it is now called the 'Master Regeneration Plan' (MRP). The MRP forms an integral part of the RA, the intention being that it provides an overview of the project and the steps that the Council and LL will take in order to advance the programme and delivery of the regeneration.
46. The MRP is intended to communicate the strategic development management proposals for the RA site at the Elephant and Castle whilst also setting out for residents and businesses those objectives that the Council and LL are seeking to deliver at the RA site and how this will contribute to the wider vision of the Elephant and Castle Opportunity Area.
47. At this point in time, the MRP should be considered a draft document as it will evolve further and in more detail over time following completion of the RA and it will need to be flexible in order to take into account the requirements of the development timeline for the Elephant and Castle. However, it is a document that will be reviewed regularly by both parties at the management board as it will form the basis of the rationale behind the development for the lifetime of the project, this document will be a publicly available resource.
48. It is particularly important to note that the MRP not only addresses the planning and design issues but also the key strategies related to sustainability and socio-economic factors together with the ongoing estate management of the area.

49. The MRP is attached to this report as an appendix (appendix 6), however, in summary the RA contains the following:

- project status and document purpose;
- vision, cornerstones and development objectives for the RA site;
- planning strategy;
- RA site masterplan and design strategy including:
  - masterplan background
  - land uses
  - housing
  - design code
  - indicative RA site plans
- infrastructure strategy;
- land assembly;
- sustainability strategy;
- socio-economic strategy;
- consultation strategy;
- estate management strategy; and,
- health and safety.

#### Leisure Facilities

50. Initially, two plots were considered within the area covered by the RA for the provision of leisure facilities, however, following a technical and financial assessment, these were discounted on value for money grounds. Leisure facilities do not therefore, form part of the RA with LL and the Cabinet will consider at the same Cabinet Meeting options for the delivery of leisure facilities for the Elephant and Castle Opportunity Area. It is however important to recognise that one of the primary funding sources for leisure facilities is anticipated to be payments made under this agreement.

#### Planning Applications Affordable Housing and Section 106

51. LL will be responsible for making the appropriate applications to optimise the site value of the site in accordance with the agreed Master Plan (which forms an appendix to the RA). Issues such as transport infrastructure, Section 106 contributions and quantum of affordable housing will be determined through the statutory planning process in the normal manner. However, within the Elephant and Castle Opportunity Area, the Southwark Plan policy requires at least 35% of all new housing to be provided as affordable with a tenure mix of 50% social rent and 50% intermediate. Where developers propose to vary this policy on the grounds of viability, a 'Three Dragons' tool kit appraisal is required to support the application.

52. The Council has negotiated a contractual obligation on LL to provide a minimum level of affordable housing of 25% which is a variation to the Heads of Terms which did not provide a minimum level. In addition, LL have committed that their planning application will be based on a 50/50 split between Intermediate and Social Rented affordable housing. Irrespective of the planning process and the Three Dragons appraisal of viability, this minimum threshold will need to be met, however, it is hoped that a full policy complement of 35% will be delivered.

53. The core strategy published in November 2009 modifies the Southwark plan approach by setting numerical targets for new housing including affordable housing for the borough as a whole and individual areas within it. In the case of the Elephant and Castle Opportunity Area, 4000 net new homes are to be provided between 2011-2026 of which 35% or 1400 units should be affordable. The previous policy which required a minimum of 35% affordable housing on sites capable of accommodating 15 or more units has been replaced by an approach which requires as much affordable housing on developments of 10 or more units as is "financially viable". In addition, the core strategy approach now requires a minimum of 35% private housing units in developments within the Elephant and Castle Opportunity Area. The required split between social rented and intermediate housing will be set out in the housing development plan document (expected in a years time), however, the split in the current Southwark plan is likely to be maintained. The core strategy examination in public is scheduled for July 2010, following which, an Inspectors binding report is likely to be published in September 2010 after which the core strategy will have a high degree of weight when planning applications (including those which are subject to pre-application discussions) are being considered.
54. The current planning strategy envisages that three applications will be made: a detailed application for Rodney Road and plot 1 Heygate and an outline application for the Heygate and shopping centre. The preferred approach will need to consider the most effective way of managing planning risks associated with the environmental assessment regulations and in particular the potential of a challenge on the grounds that the scheme has been artificially divided as a means of circumventing an assessment of the cumulative effect of the scheme as a whole.
55. Throughout the development of the applications, the Council will be fully involved (as Regeneration Partner) through the governance arrangements which will be in place as a result of the RA and the Council's agreement (acting in a reasonable capacity) and sign off to the planning applications will be required. In addition, the Council will provide a dedicated development management officer to support the planning process.

#### Risks

56. PwC have been involved in the commercial negotiations and have provided advice and input during a long series of meetings. A number of risks have been identified at this stage and PwC have recommended that a risk workshop is carried out at the earliest opportunity with a Council wide team to maintain transparency and to ensure that mitigation measures are in place where necessary. PwC recommend stringent risk management procedures to manage a number of complex risks.

#### TfL

57. The TfL Interchange team have been undertaking a modelling exercise to appraise the impacts of anticipated development within the Elephant & Castle Opportunity Area on both the Northern line and Bakerloo London Underground stations. This is an important exercise with implications for the RA and the planning application that LL are to bring forward.
58. The material is being used to inform the GLA response to the Council's core strategy which will be the subject of an examination in public in the summer. The Council in its role as planning authority will need to demonstrate that it is in conformity with London Plan

requirements including the provision of infrastructure needed to support plan development targets for new homes and jobs. In addition, the Mayor and the local planning authority will seek contributions via a s106 agreement to mitigate the impacts of the development on the transport system arising from development within the opportunity area including that proposed by LL. Other developments in the area would also be expected to make appropriate contributions. There is ongoing engagement between the Council, TfL and LL to consider the likely contributions towards public transport infrastructure.

#### Implications for LL/RA

59. The strategic and local planning authorities will expect the LL scheme to mitigate its impacts on the transport infrastructure. The planning policy framework and objectives are currently being formulated through the core strategy process. LL will be required to undertake a full transport impact assessment to support the planning application and to demonstrate how impacts can be mitigated. None of this material is currently available. The conclusions from the exercise will inform the negotiations with the relevant planning authorities and will inform decisions on the contributions that will be required to mitigate impacts on the transport system. It should be noted that these costs could have implications for the development account, the Council's overage and the achievement of the conditions precedent referred to elsewhere in this report.

#### Statement of Community Impact

60. A full Equalities Impact Assessment (EqIA) of the scheme has been undertaken in accordance with the corporate programme for production of EqIA's; this will need to be reviewed once the RA is agreed. Additional consultation over and above the requirements of the statutory planning process will be undertaken with the local community in the preparation of the planning applications.

### **SUPPLEMENTARY ADVICE FROM PROFESSIONAL ADVISORS**

#### **Herbert Smith (Legal Advisors) – Key Legal Risks**

61. The summary of the RA contained in this report and set out above accurately reflects the final version of the RA.

62. This section in the closed report summarises the main legal risks that arise in the RA and the approach taken to try to minimise the impact of such risks for the Council. The RA is a complex document as it deals with the way in which the regeneration will be progressed over a number of years - the scope and approach of the document has evolved in the negotiation process from the heads of terms that were signed in December 2009.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Supplementary advice of Strategic Director of Communities, Law & Governance**

63. The RA sets out the terms on which it is proposed that the Council's housing land will be disposed of by way of the grant of three 999 year leases.

64. As the land falls within the Council's Housing Portfolio, the disposal can only proceed in accordance with Section 32 of the Housing Act 1985, for which purposes the consent of the Secretary of State for CLG is required.
65. A number of general consents have been issued in the General Housing Consents 2005.
66. Consent E3.1 states:
- "A local authority may dispose of any land held for the purposes of Part II for the best consideration that can reasonably be obtained, provided that any dwelling house included in the disposal:
  - is vacant;
  - will not be used as housing accommodation; and
  - will be demolished"
67. The RA provides that prior to the disposals the dwellings on the land will be vacant, following the programme for achieving vacant possession, and will not subsequently be used as housing accommodation but will be demolished. These requirements of General Consent E3.1 are therefore satisfied and if the payments the Council will receive for the land represent the best consideration that can reasonably be obtained, the specific consent of the Secretary of State will not be required.
68. The Council's independent valuation advisers have advised that CLG should be approached for confirmation as to whether specific consent to the disposal will be required.
69. If CLG confirm that consent will be required or if the payments the Council will receive for the land do not represent the best consideration that can reasonably be obtained, the specific consent of the Secretary of State will be required and an application to CLG will be submitted (with Council Assembly's approval). That application to CLG will form the basis of a report to Council Assembly in October.

### **Supplementary Advice of the Finance Director**

70. This report presents a number of recommendations arising from the RA for the Elephant and Castle regeneration. These follow on from detailed negotiations between the Council and LL following on from agreement to Heads of Terms by both parties in November 2009. Unlike the Heads of Terms, the RA will be legally binding on both parties and the RA therefore reflects a greater level of certainty on key issues relating to the agreement than existed previously.
71. The financial and commercial implications of entering into this RA are laid out in the body of the report and detailed within the agreement itself. They are represented within a financial model that has been agreed between both parties and independently reviewed, challenged and verified by PwC. Drivers Jonas have separately provided critical challenge to the bases for modelling assumptions in addition to external valuation advice.
72. The financial aspects of the agreement are consistent with the intentions of the Best and Final Offer submitted by LL in July 2007, although more detailed discussions have enabled these proposals to be formalised and embedded within the RA, not least in the context of a changing economic environment and market conditions.

73. The Finance Director remains mindful of the financial and other risks inherent within any regeneration scheme of this scale. However, the proposed RA offers the Council guaranteed phased payments on land transfer throughout the development. These payments are on the basis of clear conditions precedent being met as laid out in the RA.
74. The Council has agreed overage provisions with LL within the RA on profit to be shared on a 50:50 basis. In addition, provisions for planning overage within the RA allow the Council a further opportunity to generate additional receipts in the future. Details of the overage arrangements are contained within this report.
75. Receipts arising from these guaranteed payments will be used initially to reimburse the Housing Investment Programme for costs incurred in achieving vacant possession on the site. Further decisions on the use of other receipts will be subject to regulation and to future approvals granted by the Cabinet.
76. The RA requires that the Council shares the risk associated with LL in achieving planning consent. This share of risk is considered appropriate subject to LL acting in good faith and with best endeavours to get to this point. This will be subject to continual engagement between the two parties through the governance arrangements as referred to in paragraphs 23 – 29 and especially the Council's sign off on the planning application itself. The Finance Director notes the need to make reference to any potential future liability within the Council's financial accounts.
77. The Finance Director notes that transfers of land and related payments are subject to regular tests for viability that are under the control of LL, although the Council would not expect to proceed with any scheme were it not viable to do so as this would not be in the interests of either party and may not represent best value.
78. The Council is required to ensure that best consideration is received in respect of any land transfer and these issues are referred to throughout the report (paragraphs 63 - 69). At the point of agreement to the RA, the Council will proceed to seek the consent of the Secretary of State to the transfer of housing land. This forms part of the conditions precedent and will be subject to a report to Council Assembly in due course.
79. The Finance Director notes a range of governance arrangements included as part of the RA. In particular he notes the arrangements for the Management Board, the business planning processes, annual audit arrangements and access to open book accounting. These are linked to a framework of approval routes both set out within the RA and within the Council's existing arrangements. Collectively, these will allow for the Council to have appropriate oversight of the project being delivered by LL under contract. In particular, governance arrangements will need to ensure that all costs and fees are properly controlled throughout the development and are of an appropriate nature.
80. The Council will wish to ensure that appropriate resources are made available to support these essential control mechanisms. These need to be contained within existing budgets and budget planning arrangements and will be supported by contributions from LL.
81. The Finance Director notes the costs relating to the scheme incurred by LL as set out in the report.

82. Appropriate accounting arrangements will need to be put in place to support the various financial transactions inherent within the project including any contingent liability arising from sharing development risk in gaining planning consents. The Finance Director will seek external advice on representation of various sums within the statement of accounts and refer to the District Auditor as necessary.

83. In the context of the RA being agreed by both parties and especially with regard to future guaranteed receipts, the Finance Director will review the Council's wider capital programme in order to ensure that cash flow is appropriate for both Housing Investment and other programmes.

**Reasons for Lateness**

84. The discussions and negotiations on the RA have been ongoing between the Council and LL since the agreement of the Heads of Terms. The negotiations and the RA had been substantially completed prior to the Borough Council elections in May 2010. Following the election of the new Administration it was necessary to reopen negotiations in order to re-align some of the elements within the RA to changed priorities. The subsequent redrafting of the RA and the drafting of this report required further advice from the professional advisory team of legal, property and finance specialists. The final drafting of the report was, therefore, not concluded prior to the stage at which Cabinet papers would have been circulated under normal protocols.

**Reasons for Urgency**

85. It is not possible to wait until the next meeting of the Cabinet to consider this decision because of the agreed timetable between the Council and LL. The exclusivity agreement between the Council and LL expires at the end of July 2010. A decision on the 7th July allows sufficient time for the appropriate "call in" procedures, including any reconsideration by Cabinet if necessary and any further redrafting of the RA. A decision on 20th July would not allow time for completion of all of the necessary procedures in the available timeframe.

**Background Papers**

Background Papers	Held	Contact
23 November 2009 Executive Report Elephant and Castle Heads of Terms	Everton Roberts Constitutional Team	Everton.roberts@southwark.gov.uk Ext. 57221

**Appendices**

Appendix 1	Council Land plan
Appendix 2	Development Packages plan
Appendix 3	Security Land plan
Appendix 4	Indicative programme

Appendix 5	Plot plan
Appendix 6	Master Regeneration Plan

### Audit Trail

<b>Cabinet Member</b>	Leader of the Council Cabinet Member for Regeneration and Corporate Strategy	
<b>Lead Officer</b>	Eleanor Kelly – Deputy Chief Executive	
<b>Report Author</b>	Steve Platts – Head of Property Tom Branton – Project Manager	
<b>Version</b>	FINAL	
<b>Dated</b>	30.06.10	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES</b>		
Officer Title	Comments Sought	Comments included
Strategic Director – Communities, Law & Governance	YES	YES
Finance Director	YES	YES
Date final report sent to Constitutional Support Services	30.06.10	