

Item 12: Earls Court – Proposed Joint Venture

This paper will be considered in public

1 Summary

1.1 The purpose of this paper is to:

- (a) update the Committee on the proposed development of London Underground's (LU's) interest in the Earls Court and West Kensington Opportunity Area with Capital and Counties Properties PLC (Capco), following the Committee's decision on 18 July 2013, pursuant to authority delegated by the Board, to grant authority for TfL to enter into non binding Heads of Terms regarding the proposed development; and
- (b) ask that the Committee make a recommendation to the Board that TfL enter into a joint venture arrangement with Capco and/or a wholly owned undertaking of Capco with regard to the development of the exhibition centres Earls Court 1 and 2 (EC1&2), of which LU is the freeholder and Capco the long leaseholder, along with other properties owned by LU and Capco, the details of which are set out in this paper and the supplemental paper on Part 2 of the agenda.

1.2 The benefits of TfL entering into the proposed joint venture arrangement with Capco are that the parties will be able to merge their respective land interests into a single vehicle to promote development, thereby allowing both parties to participate in the development in a flexible way and share both the risks and the rewards. LU would not be able to derive this benefit at this time without joining with Capco. The anticipated returns that TfL makes on its investment over time will be available for reinvestment into the transport system in accordance with the TfL Business Plan.

1.3 A paper is included on Part 2 of the agenda, which contains exempt supplemental information. The information is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial and business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from this meeting.

2 Recommendations

2.1 The Committee is asked to:

- (a) note this paper and the supplemental paper on Part 2 of the agenda;
and**
- (b) recommend that the Board:**
 - (i) approves TfL and/or any other of its Subsidiaries (as described in paragraph 2.2 below) to enter into a joint venture with Capital and Counties Properties PLC and/or a wholly owned undertaking of Capital and Counties Properties PLC, with regard to the development of the exhibition centres Earls Court 1 and 2 (EC1&2) and any additional land, which includes proposals for the granting of long leasehold interests in EC1&2, as described in this paper and the supplemental paper on part 2 of the agenda;**
 - (ii) approves TfL or any of its Subsidiaries (as described in paragraph 2.2 below) to establish such subsidiary companies as it may require to enable the joint venture, and, further in the event that one or more new subsidiaries are required or desirable, to delegate to the TfL Officers (as described in paragraph 2.2 below) the authority to form one or more of the companies as subsidiaries of TfL or any of the Subsidiaries (as appropriate). The Board further resolves that the approval of: (i) the adoption of the memorandum and articles of the subsidiary; (ii) the individuals to comprise the board of directors of the subsidiary; (iii) the individuals to be appointed officers of the subsidiary; and (iv) the name of the subsidiary, be and is hereby delegated to TfL Officers (as described in paragraph 2.2 below, and that such officers be and are hereby authorised to negotiate, approve, authorise, agree and execute any documentation to be entered into by TfL and the Subsidiaries in connection with the incorporation of the subsidiary;**
 - (iii) delegates to the Chairman of the Finance and Policy Committee (in consultation with available members of the Committee) the authority to approve any investment decisions required within the maximum approved budget set out in the supplemental paper on Part 2 of the agenda. Any such investment decisions to be taken in accordance with TfL's usual investment processes;**
 - (iv) approves TfL, upon entering into the joint venture, to commit to spend up to £18.5m as its contribution to the initial funding of the development of EC1&2;**

- (v) delegates to the Subsidiaries and TfL Officers (as described in paragraph 2.2 below) the authority to approve and finalise the terms (including the financial terms) of all documentation required in relation to the creation, operation and management of the joint venture with Capital and Counties Properties PLC and/or its wholly owned undertaking and authorise the agreement and execution (whether by deed or otherwise) on behalf of TfL or any Subsidiary (as appropriate) of any documentation to be entered into in connection with the completion and implementation of the joint venture (including, without limitation, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, letters or other documents); and
- (vi) authorises TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the execution and implementation of the joint venture.

2.2 The following Officers and Subsidiaries shall have delegated authority:

- (a) **TfL Officers: the Commissioner, Managing Director Finance, Managing Director Rail and Underground and General Counsel.**
- (b) **Subsidiaries: Subsidiaries of TfL including Transport Trading Limited (TTL) and any other subsidiary (whether existing presently or to be formed) of TTL and of the directors of the relevant company shall be authorised to act for and on behalf of that company.**

3 Background

Earls Court Opportunity Area and Masterplan

- 3.1 The Earls Court Opportunity Area (ECO) is one of the largest regeneration projects in London and covers an area of approximately 77 acres (31 hectares) on the western edge of central London spanning the London Borough of Hammersmith and Fulham (LBHF) and the Royal Borough of Kensington and Chelsea (RBKC). The ECO is served by West Kensington, Earls Court and West Brompton tube stations, and is bounded to the north by the A4, the east by Warwick Avenue, the west by North End Road and the south by Lillie Road.
- 3.2 The Masterplan for the ECO as is shown on the plan provided in Appendix 1, covers 10.1 million square feet of developable space, and proposals for 6,775 new homes (of which 740 are additional affordable homes and 760 are replacement homes) and 12,000 new jobs as well as new open green space, health facilities and community and cultural spaces.
- 3.3 Outline planning permission for the Masterplan was approved by the LBHF and RBKC in November 2013 following the signing of the section 106 (s106) planning agreement by all relevant parties, including TfL in its capacity as both a transport authority and landowner. The period for judicial review of the

boroughs' decision to approve the outline planning permission expired on 24 December 2013, and at the date of this report TfL has not been notified of any application for judicial review being received. On this basis, the permissions can now be implemented subject to the approval of reserved matters applications.

Earls Court Village

- 3.4 The area subject to development under the proposed joint venture arrangement between TfL and Capco is to be known as Earls Court Village and covers a 26.5 acre area within the Masterplan. It primarily covers LU's freehold interest in EC1&2 together with a number of smaller land parcels (together the Site), which are described on the plan provided in Appendix 2.
- 3.5 Earls Court Village has the potential to be developed in four core phases (broken into nine sub-phases). The vision is to create a new residential area entered through two main entrances, Brompton Square and Exhibition Square. It will feature a combination of townhouses and apartments in new residential squares, new green space, a new High Street as well as community and cultural facilities. Table 1 sets out the projected Gross External Area (GEA) for the development uses.

Table 1: Projected development areas

Sq ft	Residential	Retail	Hotel & Leisure	Cultural & Community	Offices	Total
GEA	2,928,000	172,000	84,000	60,000	303,000	3,547,000

- 3.6 Earls Court Village has the potential to create over 1,600 residential units.

TfL's interest

- 3.7 LU's interest in EC1&2 covers an area of 19 acres (7.7 hectares) and is subject to two leases to EC Properties LP (an undertaking of Capco). The lease for EC1 was granted in 1959 and has 28 years remaining. The lease for EC2 was granted in 1991 and has 102 years remaining. LU occupies part of the void beneath EC2 for storage and train sidings.
- 3.8 The Masterplan includes LU's Lillie Bridge Depot (LBD), although it has been excluded from the proposed joint venture and TfL has no obligation to develop it. The operational feasibility of bringing this element forward is still being investigated.
- 3.9 As a landowner, LU is a party to the s106 agreement, which covers the whole of the Masterplan area and which will deliver a package of benefits to the local community worth £450m which has been apportioned between the landowners of the Masterplan area. The package includes £54m towards transport. The terms of the s106 agreement will not bind on LU land at EC1&2 until TfL has entered into the joint venture. TfL will only become liable for its obligations

under the s106 agreement relating to LBD if and when the operational and commercial feasibility of developing LBD is proven and development takes place. The planning application and associated activities have been fully funded at risk by Capco with no obligation on TfL to fund should these prove to be abortive.

Recommended Approach/Heads of Terms

- 3.10 TfL's commercial property adviser, Cushman and Wakefield (C&W), has advised that, unless the disposal of EC1&2 was to Capco, any third party disposals would be subject to the existing leases to EC Properties LP and would not maximise the value for LU. C&W also advises that LU will optimise its value by agreeing terms with its current tenant, Capco, to release the long term marriage value generated by combining the respective freehold and leasehold interests. C&W further confirms that the best way to capture value in light of the size, complexity and length of the development programme is through a joint venture, as opposed to a more traditional development agreement with overage.
- 3.11 Following approval from the Committee in July 2013, TfL negotiated detailed legal documentation, based on the draft Heads of Terms summarised to the Committee in July 2013.
- 3.12 The terms proposed a separate joint venture vehicle be established as it offers the opportunity but not the obligation for Capco and TfL to fully participate in the development. As the negotiations of the detailed legal documentation were then the focus, the Heads of Terms were not subsequently signed.

4 TfL Separation of Roles

- 4.1 TfL has dual roles in relation to the Site in assessing (i) the transport impacts arising from the potential development in planning terms; and (ii) TfL's position as landowner and the duty to obtain best consideration by securing the most commercially advantageous development. To ensure there are no conflicts of interest, these workstreams have been kept as separate functions within TfL.
- 4.2 This paper focuses on TfL's position as landowner and the potential opportunities to realise value from the assets at EC1&2 which are not required for operational use. TfL, as landowner, is acutely aware of the need to ensure that TfL's operations are fully protected at all times.

5 Commercial Terms

- 5.1 The proposed joint venture arrangement with Capco will see a new entity established, with Capco on inception owning 63 per cent and a controlling share, and TfL owning the remaining 37 per cent. The proposed shareholdings have been negotiated and agreed between the parties with reference to the relative values of TfL's and Capco's pre-existing interests in EC1&2 together with other factors pertinent to value, such as Capco's funding of the planning to

date and the value of third party land and interests to be transferred by Capco.

5.2 The commercial terms of the agreement are set out in the supplemental paper on Part 2 of the agenda, however the following points are highlighted:

- (a) upon certain conditions being met, the Capco's leases for EC1&2 will be surrendered simultaneously with the grant to the joint venture of new 999 year leases (the length of term TfL has been advised is required by the market) which will contain suitable development rights;
- (b) the joint venture will appoint a wholly owned undertaking of Capco, as development manager, to take forward the development on behalf of the joint venture;
- (c) TfL, through LU, will retain its freehold interest, subject to these new leases;
- (d) TfL will hold its shareholding in the new joint venture entity via a separate dedicated subsidiary company, under Transport Trading Limited (TTL); and
- (e) the joint venture will be responsible for complying with the obligations within the s106 agreement which apply to its land holdings.

5.3 TfL's tax team supported by PriceWaterhouseCoopers (PwC) has advised on the proposed tax structure for the holding vehicle and joint venture, and has advised that the proposals are acceptable.

6 Operational Implications

6.1 LU will need to relocate its operational assets including storage and train stabling from beneath the current EC2 whilst a new deck structure is built, as the existing deck is not capable of taking the loads of the proposed development. The development of EC2 cannot commence until this has taken place.

6.2 LU can re-provide the stabling currently beneath EC2 within LBD. This necessitates the relocation of transplant maintenance and storage facilities off site to Ruislip Depot. This work has full financial and operational authority and is due to be completed in the spring of 2015. The existing access will need to be re-routed during the course of the development and provisions have been included within the legal documentation to ensure that the depot maintains the current standard of access at all times with a new permanent route being provided at the earliest opportunity.

6.3 Once the new deck is constructed, it is proposed that the joint venture grants a lease back to LU of space beneath the new EC2 deck (once constructed) for stabling or other uses (if required) to facilitate any future LBD development as envisaged in the Masterplan area. Retaining this area allows maximum flexibility for TfL in the future.

- 6.4 The District and Piccadilly lines run beneath EC1 and full infrastructure protection provisions are included in line with operational requirements to ensure the proposed development and construction will not affect the operation of the railway.

7 Financial Implications

- 7.1 Receipts from the development of Earls Court Village will make a significant contribution towards the £2bn Commercial Development income target set out in the latest TfL Business Plan.
- 7.2 The proposed commercial and financial terms for entering into an agreement with Capco are described in the supplemental paper on Part 2 of the agenda.

8 Capco Due Diligence

- 8.1 Capco is the fifth largest listed property company in the UK with a market capitalisation of £2.7bn (as at 10 January 2014). It is listed on the London and Johannesburg stock exchanges and a constituent of the FTSE-250 index. Capco focuses primarily on the retail and residential market segments with a focus on central London. Further information is contained in the supplemental paper on part 2 of the agenda.

List of Appendices attached to this report:

Appendix 1: Earls Court Masterplan

Appendix 2: Earls Court Village Site Plan

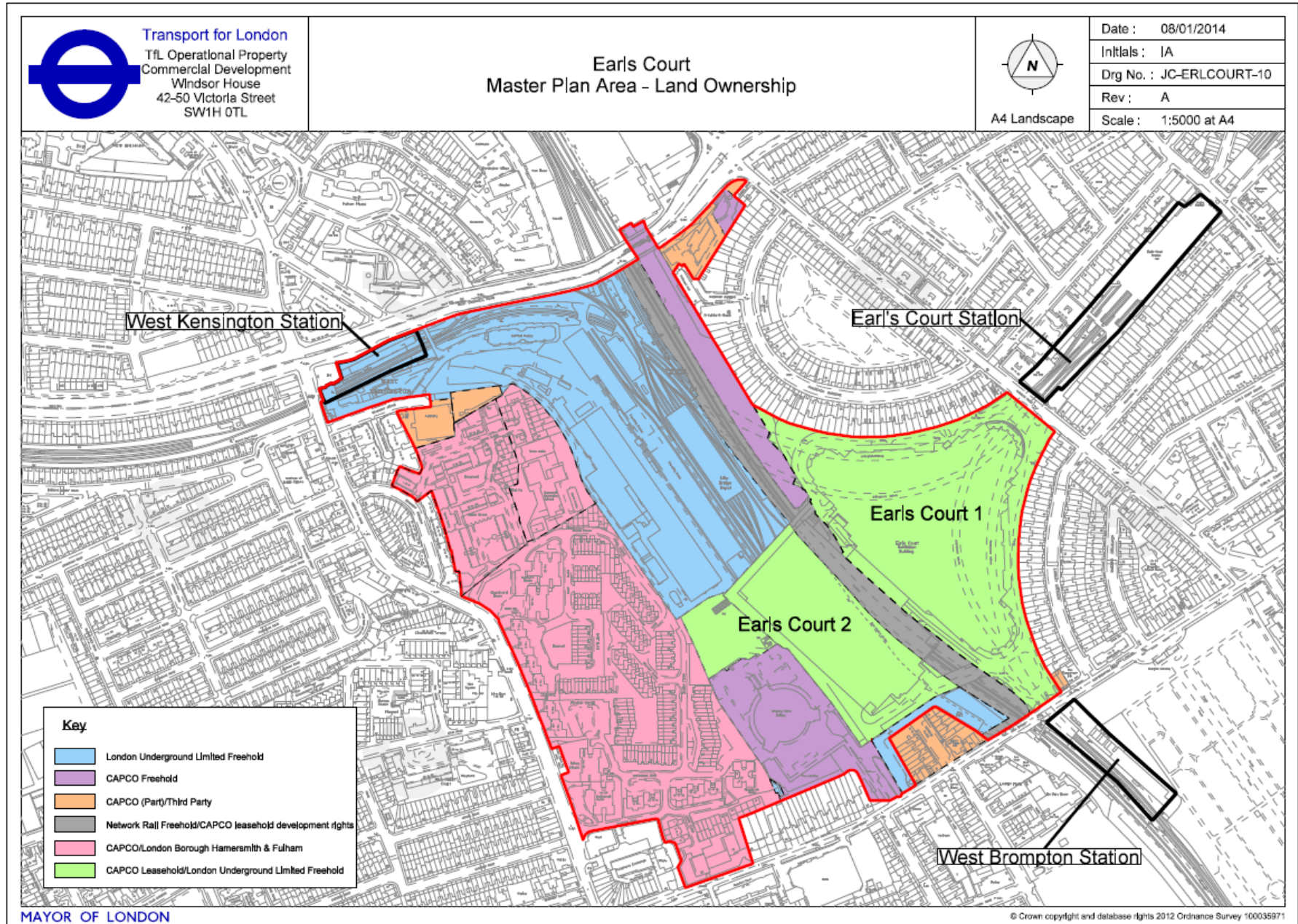
Exempt supplemental information is included in a paper on Part 2 of the agenda.

List of Background Papers

18 July 2013 Paper to Finance and Policy Committee

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For Information Only



Appendix 2 – Earls Court Village Site Plan

For Information Only

