

	<p style="text-align: center;"><b>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 20 July 2017</b></p>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Brent Cross Cricklewood Scheme – DB Cargo</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Deputy Chief Executive</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>Childs Hill, Golders Green and West Hendon</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public with separate exempt report (Not for publication by virtue of paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 as amended (as this relates to the financial matters and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings).</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>None</p>
<p style="text-align: right;"><b>Officer Contact Details</b></p>	<p>Karen Mercer BXC Programme Director Email: Karen.Mercer@barnet.gov.uk</p>

## Summary

To report and approve the Council (LBB) entering into a legal agreement (Implementation Agreement) with DB Cargo (UK) Limited which gives effect to the Heads of Terms that were approved in February 2017. The Council is seeking to secure the delivery of the scheme which includes the delivery of a Rail Freight Facility (RFF) on the Downside Goods Yard as a key element of the Brent Cross Cricklewood redevelopment. DB Cargo will deliver the RFF and operate it at its own cost subject to progressing and submitting a joint planning application which is currently being worked up with input from Re to ensure the application sits within the overall planning strategy in relation to the s.73 Planning Permission for the wider BXC scheme. Upon entering this agreement DB Cargo are required to withdraw their objection to CPO3.

## Decisions

- 1. To approve the Council entering into the Implementation Agreement with DB Cargo (UK) Limited on the terms outlined in this report.**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1 The February 2017 DPR requested approving the Heads of Terms to enter into negotiations and sets the context for this report. The delivery of the Rail Freight Facility (RFF) by DB Cargo has a number of benefits for the Council. The Council can ensure that a facility is delivered which meets objectives of the Brent Cross Scheme and which does not prejudice the delivery of the remainder of the comprehensive Brent Cross Scheme. It will ensure that the RFF will be delivered by private sector investment rather than public funds. Furthermore, if the RFF is delivered in the form approved by the Council and in accordance with the agreed programme, the Council will not need to implement compulsory purchase powers pursuant to CPO3 to acquire DB Cargo's land. The Council can only be confident of these matters if it has the necessary binding commitments from the land owner in the form of the proposed agreement.
- 1.2 It is considered that this is an appropriate form of agreement with DB Cargo as it provides the Council with continued control over the form of development, its relationship with the s.73 consent in planning terms and the timing of delivery. The agreement will provide a long stop date of 30 June 2018 for DB Cargo to deliver an operational RFF, with key milestone dates identified allowing progress on achieving this date to be monitored. If one of the key milestones of this programme is not met (for example, starting on site by 8 January 2018), or failing to deliver the operational RFF by the 30 June 2018, the Council will be able to terminate the agreement and exercise its CPO powers to deliver the facility itself, paying compensation to DB Cargo as appropriate for the acquisition of the land. In the event that DB Cargo fail to comply with the agreed development programme, the Council may serve notice for DB Cargo to provide a remedial development programme. If DB Cargo fail to comply with the remedial development programme, the right for the Council to terminate arises.
- 1.3 The Council's advisors consider that the Council agreeing to DB Cargo delivering the RFF is a sensible route forward and has a number of benefits, notably that a Rail Freight Facility will be delivered that meets the Council's requirements at DB Cargo's cost, whilst providing the Council with the ability (providing the CPO is confirmed) to acquire DB Cargo's interest in the event that they fail to meet the agreed project milestones that will see the facility delivered by June 2018. Concluding the agreement will result in DB Cargo withdrawing their objection to the CPO which in turn reduces the risk of a refusal by the Secretary of State to confirm the CPO.

1.4 The long stop dates in the agreement are:

- (a) **Consents Longstop Date** – 11 April 2018, or such later date as agreed between the parties.
- (b) **Commencement Longstop Date** – 11 April 2018, or such later date as agreed between the parties.
- (c) **Planning Permission Longstop Date** – 28 February 2018, or such later date as may be agreed below.
- (d) **Operational Longstop Date** – 30 June 2018, or such later date as may be agreed. To summarise the overall key areas for approval contained within the Implementation agreement are:
  - A. DB Cargo progress collaboratively with the Council's regeneration team and consult with the LPA to submit a joint planning application in accordance with an agreed planning strategy.
  - B. The joint application shall not prejudice the remainder of the s73 planning permission for the wider scheme.
  - C. DB Cargo withdraw their objection to the CPO upon entering into the Implementation Agreement.
  - D. A high level summary of the terms of the Implementation Agreement is set out in the attached Legal Summary provided by Gowling WLG (UK) LLP.

## **2. REASONS FOR DECISIONS**

- 2.1 As set out above and in the previous public DPR of February 2017 approving the Heads of Terms, and in the accompanying Implementation Agreement.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 3.1 Not completing the agreement and instead pursuing the proposed compulsory acquisition of the property for the Council to deliver the RFF itself.
- 3.2 This option was rejected on the basis that the use of CPO powers should be a measure of last resort and it would not be appropriate for the Council to acquire the land compulsorily in circumstances where an agreement can be completed which will secure the delivery of the Council's objectives for Brent Cross through alternative means.

## **4. POST DECISION IMPLEMENTATION**

- 4.1 Completion of the Implementation Agreement, and its agreed form of documentation and annexures acknowledged and finalised. Exchange of documentation by all parties.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

5.1.1 The regeneration of Brent Cross Cricklewood supports the Council's Corporate Plan 2015-20 which states that the council will work with local, regional and national partners to strive to ensure that Barnet is a place:

- of opportunity, where people can further their quality of life
- where people are helped to help themselves, recognising that prevention is better than cure
- where responsibility is shared, fairly
- where services are delivered efficiently to get value for money for the taxpayer

5.2 The Growth Strategy for Barnet recognised that regeneration and growth are vital for ensuring the future prosperity of the Borough and maintaining Barnet as a successful London suburb. The scheme to transform Brent Cross Cricklewood will play a major role in delivering this prosperity, doubling the size of the shopping centre and linking seamlessly to a new town centre for Barnet and North London across the North Circular Road. Brent Cross Cricklewood is one of Barnet's priority regeneration areas, and will provide approximately 7,500 new homes over the next 20 years. It is a key part of the wider revitalisation of the A5 corridor, linking Brent Cross Cricklewood with developments at West Hendon, Colindale and Edgware and improvements to Cricklewood Town Centre, to create a series of high quality modern suburbs.

5.3 These are framed within the conditions of the accompanying Implementation Agreement. The Implementation Agreement itself provides for a commitment by DB Cargo to develop and for so long as it is operated as a Rail Freight Facility to do so on an open access basis on the land held by DB Cargo on the western side of the Network Rail running lines at the Brent Cross Cricklewood site. An open access facility is one to which all rail freight operating companies are able to provide rail services without discrimination. The concept is not special to this site, but is enshrined in rail regulatory law, although there are limited existing examples of sites with specific contractual arrangements to ensure open access.

5.4 Robust arrangements to ensure open access will be significant for freight companies other than DB Cargo

5.5 The Brent Cross Cricklewood regeneration plans will involve the closure of certain existing rail freight facilities on the eastern side of the running lines, and the planning consent for the regeneration project requires that replacement rail freight facilities are provided before that closure takes place. Provision of the facility to be developed by DB Cargo under the Heads of terms would satisfy that requirement.

- 5.6 The existing planning consent for the regeneration project provides for a different form of rail freight facility from that now proposed. The Implementation Agreement provides for DB Cargo to prepare and submit a 'drop-in' planning application for a revised facility, following consultation with the council's Brent Cross Cricklewood regeneration team on the design and other relevant matters, in the joint names of DB Cargo and the council.

## **6. Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 6.1 This Thameslink Budget as agreed by Policy & Resources Committee is set out in the Assets, Regeneration and Growth Committee dated 5 September 2016.
- 6.2 Under the terms of the agreement subject to this DPR, the facility will be provided at DB Cargo's cost.
- 6.3 If the Implementation Agreement is determined following DB Cargo's default, DB Cargo will indemnify the Council in respect of additional sums, costs and expenses incurred by the Council in completing the development. This is calculated as the difference between what the Development would have cost DB Cargo to complete under its contracts and the actual cost for the Council to complete the Development.

## **7. Legal and Constitutional References**

- 7.1 Assets Regeneration and Growth Committee of 5th September 2016 approved the making of CPO 3 and the acquisition of interests within the CPO area and delegated authority to the appropriate Chief Officers to enter into agreements and make undertakings, contracts and transfers on behalf of the Council with third parties having an interest in the CPO land in order to facilitate the development. This decision is being made further to that delegation and the earlier delegated powers report of February 2017 approving the outline heads of terms for the Implementation Agreement.

## **8. Risk Management**

- 8.1 As set out in the ARG committee papers on 5<sup>th</sup> September 2016.

## **9. Equalities and Diversity**

- 9.1 As set out in the ARG committee papers on 5th September 2016.

## **10. Consultation and Engagement**

- 10.1 As set out in the ARG committee papers on 5<sup>th</sup> September 2016.

## **11. BACKGROUND PAPERS**

- 11.1 The February DPR approving Heads of Terms for the Implementation Agreement and the accompanying Implementation Agreement.

## **12. DECISION TAKERS STATEMENT**

- 12.1 I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.

## **13. OFFICER'S DECISION**

### **I authorise the following action**

- 13.1 To approve entry into the Implementation Agreement with DB Cargo (UK) Limited on the terms outlined in this report.

**Signed**            Deputy Chief Executive

**Date**             20 July 2017

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