

The City of Edinburgh Council

10.00am, Thursday, 23 September 2021

St James Quarter GAM: Interim Payment

1. Recommendations

- 1.1 Council is asked to agree that an interim payment is made to Nuveen in relation to the Growth Accelerator Model Agreement (GAM) to the value of £56.4 million for the growth assets and £1,321,415 for the Picardy Place works, subject to the terms set out in this report.

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St James Quarter GAM: Interim Payment

2. Executive Summary

- 2.1 This report sets out the current position for the ongoing management of the GAM agreement between the Council and Nuveen with particular regard to the request by Nuveen for payment in relation to the Growth Assets.
- 2.2 The GAM was agreed between the Council and TH Real Estate (now Nuveen) as a means of ensuring the delivery of the new St James Quarter, securing additional public realm benefits alongside the new centre, and generating new jobs and economic growth for the city. It is primarily a funding mechanism where the Council funds the delivery of public realm and other improvements in and around the centre (the Growth Assets) and then recovers these costs from the Scottish Government based on the achievement of economic targets. The Scottish Government funding is generated by the increased amount of non-domestic rates as a result of the increased development.
- 2.3 Nuveen has made good progress with the development despite the challenges brought about by Covid-19, with the St James Quarter now open and shops trading. A payment is now sought from the Council for the delivery of the Growth Assets.
- 2.4 The request for payment has been assessed and, while the Council is not obliged to make any payment, it is reasonable to do so in the circumstances which are set out in more detail later in this report. This is considered a variation to the contract and, given the values involved, it is reported to Council for determination.
- 2.5 It is considered reasonable that an interim payment is made subject to suitable conditions being in place as set out in the report.

3. Background

- 3.1 On 4 June 2009, the Council approved planning permission in principle (08/03361/OUT) for the redevelopment, refurbishment and demolition works to provide a major mixed use scheme on the site of the existing St James Centre.
- 3.2 In accordance with the recommendations of the St James Quarter Compulsory Purchase Order report to Council, dated 29 May 2014, a Compulsory Purchase Order (CPO) was made and confirmed for the St James Quarter redevelopment

area, for the purpose of acquiring the land and property interests shown in the CPO Plans and Schedule of Interests.

- 3.3 A Minute of Agreement (Agency Agreement) between St James Edinburgh Limited and the City of Edinburgh Council completed on 4 September 2014 on terms which were considered acceptable by the Chief Executive, in consultation with the then Council Leader and Depute Leader. The Agency Agreement protected the interests of the Council and secured reimbursement of all costs, fees, expenses and compensation claims which would be incurred including the subsequent transfer to St James Edinburgh Limited of the property interests acquired, and such other terms as the Chief Executive considered necessary or desirable.
- 3.4 The Agency Agreement with TH Real Estate (now Nuveen) provided that in executing the CPO to support the project, all costs to the Council were fully reimbursed and there was therefore no cost to the public purse.
- 3.5 On the 19 November 2015 and 10 March 2016, in reports to Council, the Chief Executive was authorised to enter into the GAM Agreement.
- 3.6 On 14 June 2016, the GAM was signed on behalf of the Council and on 21 June 2016, the GAM was signed on behalf of the Developer.
- 3.7 In October 2016, prior to commencing construction works, Nuveen secured a development partner in APG. The Dutch pension asset management fund agreed to take a 75% stake in the Development with Nuveen holding the remaining 25%, on behalf of its UK Shopping Centre Fund.
- 3.8 On 16 October 2016, construction work on the new centre commenced. The necessary pre-conditions of the GAM agreement were satisfied on 14 October 2016. As of that date, it became a live contract and work has been under way since to deliver the provisions of the agreement.
- 3.9 On 1 February 2018, the Council agreed to make available a budget of £1.5m to increase the scope of the GAM agreement to allow additional works to Picardy Place to be carried out.

4. Main report

- 4.1 The development of the St James Quarter is now significantly advanced with the majority of the retail and leisure uses now complete and open for trading. The cinema, hotels and residential uses are still under construction although the majority of work remaining is internal fitting out. They are all programmed to be completed over the next 12 months.
- 4.2 Progress has also been made with the programme of infrastructure works (the Growth Assets) which would provide the necessary impetus to take the redevelopment forward. These include improvements to the physical environment at James Craig Walk, Leith Street, Elder Street, York Place, St James Place, Cathedral Land and Little King Street as well as publicly accessible spaces and facilities within the St James Quarter itself. In addition, new public realm at Picardy

Place, together with the provision of a multi-modal transport interchange at the junction of Leith Walk, Leith Street and York Place was to be delivered. A new energy centre designed to provide power, heat and cooling to the development and, potentially, the wider area is also a Growth Asset. These works are funded through the GAM and this has provided the stimulus to take forward the development and deliver the economic growth that are sought as a result of the development. The vast majority of these works are improvements to publicly owned or controlled assets.

- 4.3 The works are all now substantially complete and Appendix 1 shows the detail of where works are not complete and the reasons why. To a large extent the areas that are not complete have been subject to delays outwith the developer or the contractor's control. The works that have been completed have all been delivered to a high standard, although their handover will not take place until final completion.
- 4.4 The GAM agreement has a funding cap of £61.4m as the maximum that the Council will pay for the Growth Assets. The funding cap is subject to change if the Council request variations to the works and all such variations have been taken forward on a cost neutral basis i.e. any enhancement was balanced with a reduction in scope elsewhere in the contract. The final account has now been agreed between the Council and Nuveen and while the actual cost to Nuveen has been £62.67m the funding cap is retained at £61.4m. As a result, the Council is required to pay this amount once the payment provisions in the GAM are triggered.
- 4.5 In addition to the £61.4m, the Council agreed a budget of £1.5m so that additional enhancements to Picardy Place could be carried out. These were undertaken as a variation to the GAM agreement and the final cost has been agreed at £1,321,415, which is in addition to the £61.4m.
- 4.6 In light of the progress made, Nuveen has submitted a request for payment for the delivery of the Growth Assets. The Council is obliged to pay once three requirements are met. The requirements are set out in the table below along with commentary on the current position.

<p>Requirement 1: That 50% of the Retail and Leisure Element in respect of which non-domestic rates are payable is open for trading.</p>

<p>Assessment: MET</p>

<p>This requirement has been met and approximately 76% of the Retail Leisure Element is currently open and trading with more units opening in the coming weeks.</p>

<p>Requirement 2: A statement or statements of practical completion has been issued for the areas comprising the Retail and Leisure Element.</p>

<p>Assessment: NOT MET (Imminent)</p>
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<p>This requirement has not been met as the cinema has not yet reached practical completion. Nuveen do not dispute this but have advised that they have reworked</p>
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their programme as a result of Covid impacts and they have also had to take on additional works on this building (warm shell as opposed to shell) to satisfy the requirements of their tenant. Their contention is that they have exceeded Requirement 1 (as above) and have satisfied the general requirement to complete and open the centre. It should also be noted that this requirement will be met in the next few days.

Requirement 3: A statement or statements of practical completion has been issued for the areas comprising the Growth Assets.

Assessment: MET (On Qualified Basis)

Nuveen have provided qualified statements of practical completion in relation to the Growth Assets. These have been provided by Gardiner Theobald (the Employer's Agent) who also have a duty of care to the Council. There is also a schedule of outstanding works provided (see Appendix 1 for outstanding items). The position stated by Nuveen is that completion certificates needed to be issued in order to open the centre and this was the appropriate approach to take in these circumstances. Officers do not dispute the approach taken but the interpretation of the contract is that a payment is not necessarily required in these circumstances although this is open to interpretation. It is, however, clear that the contract does not make provision for these circumstances. Nuveen have proposed a retention in order to deal with situation that has arisen.

- 4.7 The key issue is whether the Council is obliged to make a payment now under the terms of the agreement with Nuveen. The assessment of this situation, as stated above, is that the Council is not obliged to make a payment at this time. Requirement 2 makes this clear although this requirement will be met within the next few days and may have been achieved by the time of the Council meeting. Once this happens the assessment of whether a payment is due or not will rest on Requirement 3 alone. As stated above this is not clear cut and the contract does not make provision for this scenario. The two interpretations that could be drawn are that either the full payment is either required or that no payment at all is required at this stage. This has the potential to lead to a dispute and both parties are keen to avoid such a situation arising.
- 4.8 Notwithstanding, the position that the Council could take in this matter, it is considered appropriate to make an interim payment at this stage, subject to a variation being agreed, on the basis that:
- 4.8.1 This is a reasonable approach to take having regard to the partnership nature of this funding model and its purpose;
 - 4.8.2 That significant progress has made in terms of the delivery of the centre and the Growth Assets;
 - 4.8.3 Nuveen has had to manage significant changes in circumstance and disruption to delivery, and,

- 4.8.4 There is a desire to retain a positive working relationship with Nuveen given ongoing contractual requirements and the need to secure economic outcomes from the development in order to secure Scottish Government funding.
- 4.9 Having regard to the above factors, it is considered that agreeing to make an interim payment is a reasonable approach to take in these circumstances.
- 4.10 If the Council proceed with a payment now, it is advisable to set out the conditionality of an interim payment by exchange of letters between solicitors. This would cover the arrangements around handover of the growth assets and when Nuveen need to make payments to the Council in relation to the lease of the Energy Centre (£0.150m) and the GAM Repayment (£0.350m). The Council's requirement is that the growth assets are not handed over until they are all fully complete and that the payment provisions, as appropriate, start from the date of the interim payment. These provisions are already provided for in the GAM but need to be clarified in this situation as it is considered a variation of the contract.
- 4.11 In order to protect the Council's remaining interests, it is proposed to retain £5m of the total GAM amount as a contingency to ensure that those assets still be completed (estimated cost of £0.530m) are done to the required standard. This means the Council would make a payment of £56.4m on the proposed GAM payment of £61.4m (retention £5m) and make full payment on the Picardy Place works where there are no outstanding matters. Payments in respect of the outstanding assets will be made from the proposal retention on an agreed percentage basis.
- 4.12 The proposal represents a variation to the agreement but not a material change in approach with regard to the overarching purpose of the GAM. Making an interim payment is considered to be the appropriate way forward in the circumstances.

5. Next Steps

- 5.1 Subject to agreement by Council:
- 5.1.1 A letter setting out the terms of the interim payment will be sent to Nuveen and the interim payment will be made upon acceptance of these terms;
- 5.1.2 Council officers will continue to work with Nuveen to complete the works to the St James Quarter and the Growth Assets; and,
- 5.1.3 Council officers will continue to work with both Nuveen and Scottish Government officials on delivery of the targets required to secure payment of the Scottish Government grant.

6. Financial impact

- 6.1 The Council has already borrowed the money required to pay for the GAM and has factored the overall GAM funding strategy into its financial strategy. The interim

payment will have an impact on cash flow as it involves paying out money before the Council might otherwise have to do so. The ability to secure the annual repayment from Nuveen now will help to offset this.

- 6.2 Discussions are on-going with the Scottish Government to secure the funding to meet the borrowing costs of the GAM payment. It should be noted that there was always going to be a lag between the payment being made to Nuveen and Scottish Government funding being confirmed.

7. Stakeholder/Community Impact

- 7.1 No community consultation has been carried out in relation to this specific report and are not considered appropriate given this is a contractual matter.
- 7.2 This matter has been discussed with representatives of Nuveen and they are in agreement that this is an appropriate way forward.

8. Background reading/external references

- 8.1 Previous GAM Committee reports and project information can be made available upon request.

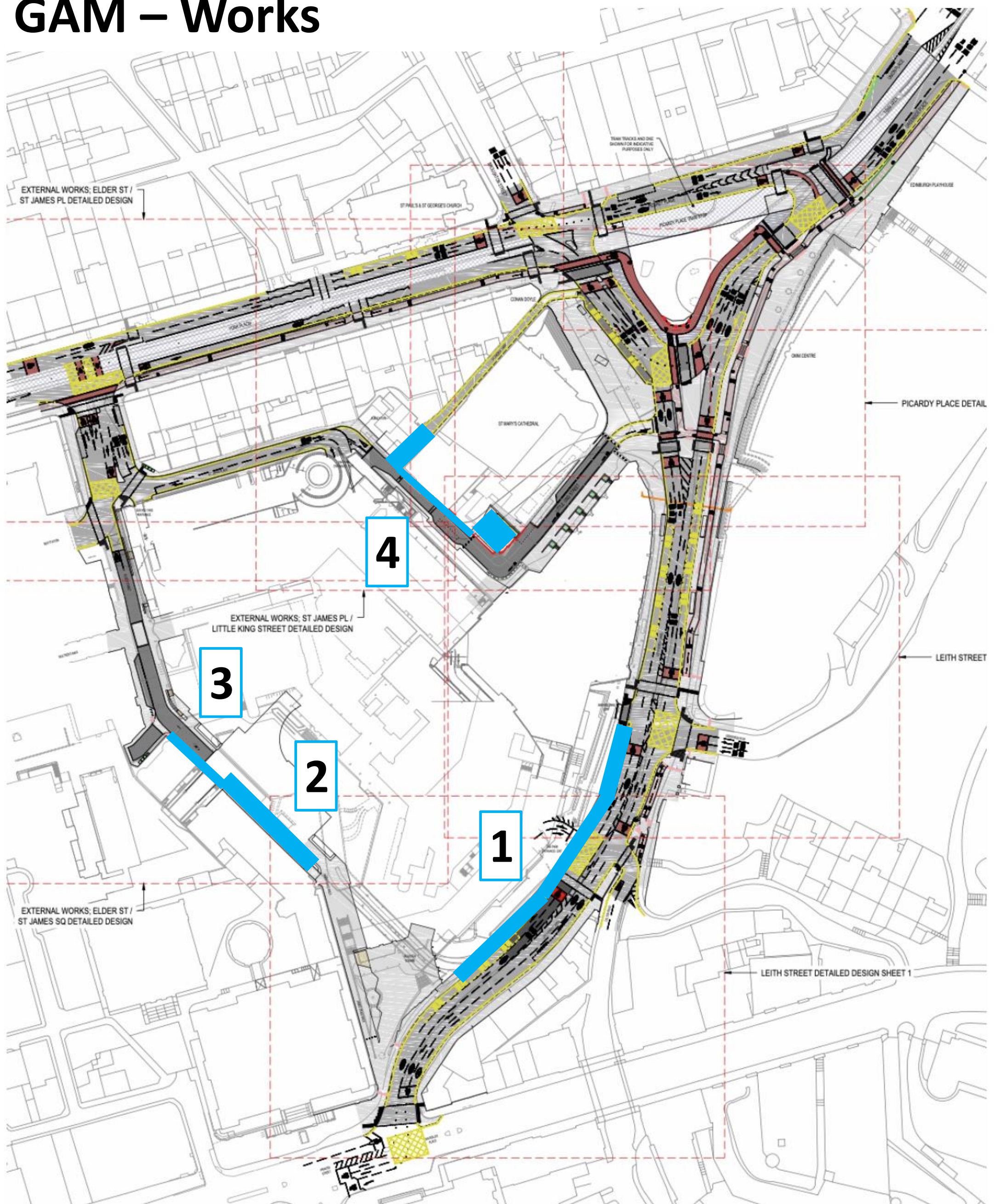
9. Appendices

- 9.1 Appendix 1 – Plan and description of incomplete works


Appendix 1

GAM – Incomplete Works

GAM – Works



1. Leith Street
2. St James Square
3. Elder Street (upper)
4. Little King Street/ Cathedral Lane

 Blue areas are the areas where works are yet to be completed.

1. Leith Street



A section of the northbound pavement and inside carriageway lane (Calton Road to Greenside Row) is being retained by the contractor to facilitate completion of the retail and leisure element of the project. The street lighting and the traffic lights on the junction with Greenside Row will not be completed, fully commissioned and tested until the hoarding is removed. As a consequence of this the Council's Street Lighting team will not accept the Leith Street system as complete.



2. St James Square



A hoarding in front of 27-31 St James Square has been erected to enable the steps to the new retail units and this part of the square to be completed. The delay to the delivery has been caused by a call in by the Scottish Ministers in relation to listed building consent. That consent has now been issued.



James Craig Walk – a section of the pavement abutting the centre was being retained to support the Contractor's completion work. The cycle parking area has now been completed.



3. Elder Street



The section of east side footway replacing the ramp abutting the gable wall of 23-26 St James Square has not be completed. The Council has not yet issued a permit for works in this area. This is likely to be resolved soon.

4. Cathedral Lane/Little King Street



Cathedral Lane – section of the carriageway and street lighting will not be completed, the latter of which will need to be commissioned and tested. As a consequence of this the Council's Street Lighting team will not accept the system as complete until the permanent supply is installed.



Little King Street - The street lighting will not have its permanent power supply, consequently will not be commissioned and fully tested. As a consequence of this the Council's Street Lighting team will not accept the system as complete until the permanent supply are installed.

