

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DD2020

Title: **Mayor's Housing Covenant – Pocket Homes further variations**

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

The information below is not for publication until the stated date, because:

The information contained within this document is commercially sensitive, has in part been provided to the GLA in confidence as part of a funding application and if disclosed could prejudice the commercial interests of the GLA and/or Lloyds Bank and/or Pocket.

Following the completion of the contracting and due diligence process the GLA has published selected information on allocations, ensuring that commercial confidentiality is not breached.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed: July 2019

Legal recommendation on the grounds of keeping the information confidential:

The information in this document is commercially sensitive and, if disclosed, could prejudice the commercial interests of the GLA, Lloyds Bank, Pocket Living Ltd and Pocket Living (2013) LLP impacting adversely on:

- The GLA's bargaining position with Lloyds Bank, Pocket Living Ltd and Pocket Living (2013) LLP by affecting its ability efficiently to manage the finalisation of the amendments to the funding documentation and related waiver and consent and achieve the optimal outcome process for this funding programme; and
- The ability of Pocket Living (2013) LLP to stimulate genuine competition for supplies, services and/or works required for efficient delivery of funded schemes.

For these reasons it is considered that the information below is exempt from publication in reliance upon the exclusions contained in section 43(2) (commercial interests) of the Freedom of Information Act and because the public interest in withholding the information outweighs the public interest in releasing it.

Legal Adviser – I make the above recommendations that this information should be considered confidential at this time

Name Gemma Jackson

Date 1 July 2016

Once this form is fully authorised, this should be circulated with the Part 1 form.

Confidential decision and/or advice:

Approval is sought to enter into a Deed of Consent waiving the requirement for senior lender development finance to be in place prior to the GLA funding the acquisition of the Mapleton Crescent site by Pocket Living (2013) LLP and consenting to the onward disposal of this Funded Site to a wholly owned subsidiary of Pocket Living (2013) LLP. Approval is also sought for entry into a replacement Intercreditor Deed with Lloyds Bank as set out in this Director Decision form (Parts 1 and 2).

1. Replacement Intercreditor Deed between the GLA and Lloyd's Bank

- 1.1 Lloyds Bank, in agreeing the increased facility, has sought to amend provisions in the existing Intercreditor Deed dated 13 June 2014 to enhance its protection.
- 1.2 The facility would cover the seven Funded Sites where construction is underway (Wynne Road, Willingham Terrace, Mountearl Gardens, Marischal Road, Sail Street, Juxon Street and Rosina Street) and the two most advanced of the seven pipeline schemes (Arklow Road and Cowleaze Road) where start on site is expected in the next two months.
- 1.3 The GLA will continue to benefit from a second ranking charge over Funded Sites. Lloyds will also now have a first ranking fixed charge over all Funded Sites owned by Pocket Living (2013) LLP except Mapleton Crescent (see below) from the date upon which Pocket Living (2013) LLP takes ownership. In practice this would only materially affect the security offered by the two sites (Arklow Road and Cowleaze Road) where construction is yet to start on site and only for the (estimated) two month period until the Lloyds facility is called on.
- 1.4 Lloyds will also benefit from the protection that in the event that any of these Funded Sites fall behind schedule or incur unfunded cost overruns that would entitle Lloyds to prevent the GLA receiving proceeds due to it on completed sites and instead to receive those proceeds from any and all Funded Sites still under construction at that time until it had recovered its investment. This exposes the GLA to the risk that its investment in these sites would not recycle on to its charged account and be available for re-investment for the duration of the construction of the remaining schemes. It also exposes GLA to the risk that the funding to Pocket Living (2013) LLP under the GLA Funding Agreement would not be fully repaid. This could be a period of around eighteen months depending on when this was triggered.
- 1.5 In view of the progress already made on the seven Funded Sites under construction, the method of construction and the contingency factored into their construction programmes this is currently considered unlikely to occur in practice. The greatest risk arises from the two schemes (Arklow Road and Cowleaze Road) yet to start on site and their construction programmes have been duly scrutinised. Overall this change does present some additional risk to the programme. This risk has been weighed against the risk to the programme of not securing construction finance and the construction of these sites. On balance the failure to realise the development of these sites and their affordable housing output in the short term is considered a greater risk to GLA interests than any medium term delay in funds recycling due to scheme delays.

2. Deed of Consent: Disposal of a Funded Site by Pocket Living (2013) LLP to a wholly owned subsidiary

- 2.1 The GLA Funding Agreement permits disposals of Funded Sites with GLA consent under clause 18. Given the scale of the GLA investment on each site and the fact that the GLA would be funding the site acquisition costs before development finance has been secured, the approval of the Executive Director of Housing and Land is sought in relation to the proposal that Pocket Living (2013) LLP

acquires the Mapleton Crescent site and then disposes of it to a limited company, wholly owned by Pocket Living (2013) LLP. As well as consent to the disposal, this proposal also requires waiving the condition that, prior to site acquisition, Pocket Living (2013) LLP has secured development finance in relation to that site. The consent of Lloyds to the creation of such a subsidiary is required, but the Lloyds facility agreement contains a consent to the creation of such a subsidiary for the transfer of Mapleton Crescent. The obligations of the GLA Funding Agreement would be passed on to the subsidiary through the entry into an agreement between the GLA, Pocket Living (2013) LLP and the new subsidiary.

2.2 It is therefore proposed that the GLA enters into a Deed of Consent in respect of the Mapleton Crescent site under which:

- (a) the GLA waives the requirement under clause 16.2(d) of the GLA Funding Agreement to be provided with the details and availability of any senior lender debt funding before the site is acquired by Pocket Living (2013) LLP, subject to the GLA being provided with a first fixed charge over the site executed by Pocket Living (2013) LLP and evidence that the GLA has unfettered rights to enforce its security over the site; and
- (b) pursuant to clause 18.2 of the GLA Funding Agreement, the GLA consents to the onward transfer of the site by Pocket Living (2013) LLP to a wholly-owned subsidiary of Pocket Living (2013) LLP subject to Pocket providing details in advance of the subsidiary and any senior funder as is required to fund the development costs of the site and either (i) Pocket fully repays any GLA funding in relation to the site and procures that the subsidiary enters into a direct agreement with the GLA in order to deliver the affordable housing units required to be delivered under the GLA Funding Agreement; or (ii) the subsidiary and any new senior funder enter into an intercreditor agreement with the GLA, the GLA continues to have adequate security and the site continues to be subject to the terms of the GLA Funding Agreement.

2.3 Beyond this there are currently a further four pipeline sites: Bollo Lane, Varcoe Road, West Green Place (Keston Centre), and Gainsford Road. If these sites are to be disposed of by Pocket Living (2013) LLP to a wholly-owned subsidiary a further Director Decision will be required. Further, the creation of any future subsidiaries will require the consent of Lloyds.

2.4 The new corporate entities holding one or more of these sites will need to secure construction finance. As and when lenders are identified the GLA would need to enter into further intercreditor agreements to protect its investment in these Funded Sites.

2.5 Risks

Risk Description	RAC	Mitigation Actions
Funded sites fail to be completed by the required Completion Dates		<ul style="list-style-type: none"> GLA officers consider this risk to have been sufficiently mitigated, having reached agreement with Lloyds that the required completion deadlines will be assessed on a sliding scale proportionate to the number of schemes which have been completed The sites with the fewest months between the anticipated date of practical completion and the Required Completion Date are those sites that are already nearing completion or well underway. It is therefore very unlikely that the sites will fail to be completed by the required completion dates and programme milestones will continue to be

		monitored closely																					
		<table><tr><th>Scheme</th><th>Required Completion Date</th></tr><tr><td>Willingham</td><td>30 Nov 2016</td></tr><tr><td>Wynne</td><td>31 Dec 2016</td></tr><tr><td>Rosina</td><td>31 Feb 2016</td></tr><tr><td>Mercator</td><td>28 Feb 2017</td></tr><tr><td><u>Mountearl</u></td><td>30 Nov 2016</td></tr><tr><td>Sail</td><td>30 Apr 2017</td></tr><tr><td>Juxon</td><td>30 April 2017</td></tr><tr><td><u>Cowleaze</u></td><td>31 Dec 2017</td></tr><tr><td><u>Arklow</u></td><td>31 Dec 2017</td></tr></table>	Scheme	Required Completion Date	Willingham	30 Nov 2016	Wynne	31 Dec 2016	Rosina	31 Feb 2016	Mercator	28 Feb 2017	<u>Mountearl</u>	30 Nov 2016	Sail	30 Apr 2017	Juxon	30 April 2017	<u>Cowleaze</u>	31 Dec 2017	<u>Arklow</u>	31 Dec 2017	
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Pocket cost overruns on site		<ul style="list-style-type: none">The financial security in respect of cost overruns that was previously to be provided by means of a site by site contingency and a ring-fenced contingency sum in the banking facility remains in place																					
Lloyds' first ranking fixed charge over sites (except Mapleton Crescent)		<ul style="list-style-type: none">The GLA will continue to benefit from a second ranking charge over Funded Sites. Lloyds' first ranking fixed charge over all Funded Sites owned by Pocket Living (2013) LLP except Mapleton Crescent would only materially affect the security offered by the two sites (Arklow Road and Cowleaze Road) where the construction period is about to start. Once SoS occurs, the Lloyds facility is called on																					

Financial Comments

The DD is requesting approval to amend the Inter-creditor agreement so that Pocket Living can secure additional loan funding from its bankers (Lloyds). The impact of the amendments to the agreement will result in a change to the timing of Lloyds implementing its charges over the property, from the time of drawdown from the bank facility to the time of acquisition of the sites by Pocket living; if there is a delay beyond three months on the completion dates of one site, GLA will be restricted from receiving funds from the sale of the other sites until Lloyds is fully repaid; GLA will be responsible for meeting the cost of overruns when Pocket Living is unable to fund these costs.

Financial position: The latest set of Financial Statements as at 30th September 2015 for Pocket Living (2013) LLP and its parent company Pocket Living Ltd, showed a poor financial position; with the parent company making losses in at least two of the last three years and no income was generated in Pocket Living (2013) LLP. Performance: Pocket Living (2013) LLP has also failed to deliver on its milestones on two occasions. However, as of June 2016 property sales have commenced and is expected to continue in the following months.

The proposed amendments would result in a weakening of the security afforded to GLA in the Inter-creditor agreement. Based on the information provided, and past performance, there is a risk that the loans provided by GLA may not be recycled or repaid at the end of the loan term.

To secure additional funding for construction, Pocket Living is proposing to transfer the ownership of Mapleton Crescent, a site that will be funded by GLA, to a subsidiary of Pocket Living, the subsidiary is still to be established.

Legal Comments

The GLA has been advised by external lawyers with regard to the proposed entry into a replacement Intercreditor Deed and the proposal for the Mapleton Crescent site to be transferred by Pocket Living (2013) LLP to a wholly-owned subsidiary. Advice has been provided as to the key risks and issues regarding these proposals, which are reflected in this paper in particular at paragraphs 1.10, 1.13 and 1.14 of Part 1 and paragraphs 1.3, 1.4, 1.5 and 2.1 to 2.5 of Part 2.

The proposed amendments alter the provisions relating to the GLA's security over Pocket Living (2013) LLP, which will now take the form of:

- (i) a first charge over the bank account into which the loan monies and any net receipts are to be paid;
- (ii) a second ranking fixed charge taken over each funded site acquired by Pocket Living (2013) LLP, which is subordinated to Lloyds Bank; and
- (iii) a subordinated (to the senior lender) debenture over Pocket Living (2013) LLP.

For information only:

Delivery milestones

Pocket Living (2013) LLP has met the second contractual milestone of 49 affordable homes by 31 March 2016. It is currently on course to meet the next the next milestone of no fewer than 195 homes between 1 April 2016 and 30 September 2017.

