

REQUEST FOR DIRECTOR DECISION – DD2020

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

Executive Summary:

To waive the requirement for senior lender development finance to be in place prior to the GLA funding the acquisition of a site by Pocket Living (2013) LLP, to approve the onward disposal of this site to a wholly owned subsidiary of Pocket Living (2013) LLP and entry into a replacement Intercreditor Deed with Lloyds Bank.

Decision:

That the Executive Director of Housing and Land in agreement with the Deputy Mayor for Housing:

- Approves entry into a Deed of Consent between the GLA and Pocket Living (2013) LLP, as described in this Director Decision form, in respect of the Mapleton Crescent site and notes that any agreements which are required to be entered into further to the Deed of Consent will be the subject of a separate Director Decision; and
- Approves entry into an Intercreditor Deed to replace the existing intercreditor deed between Pocket Living (2013) LLP, Lloyds Bank Plc and the GLA dated 13 June 2014 in respect of those matters set out in this Director Decision form.

AUTHORISING DIRECTOR

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: David Lunts

Position: Executive Director Housing & Land

Signature:



Date: 5 JUL 2016

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 On 28 September 2012 the GLA published the funding prospectus for the 'Mayor's Housing Covenant – homes for working Londoners' programme. On 8 February 2013 the Mayor approved the initial allocations under this programme under MD1145. This outlined the proposed allocation of funding to Pocket Living (2013) LLP, such allocation being conditional on the successful completion of detailed due diligence and to be the subject of a separate Mayoral Decision. It also delegated authority to the Executive Director of Housing and Land in agreement with the Deputy Mayor for Housing, Land and Property to agree any future variations or substitutions within the programme, subject to available resources and the application of equivalent criteria.
- 1.2 Subsequently on 25 March 2013, under MD1174, the Mayor approved the proposed allocation of £21.7m to Pocket Living Ltd and delegated authority to approve the remaining allocations under the programme, subject to the completion of detailed due diligence and in line with the information set out in Part 2 of MD1145, to the Executive Director Housing and Land in consultation with the Deputy Mayor, Housing and Land. Pursuant to the approvals referred to above under MD1145 and MD1174, the Executive Director of Housing and Land therefore has delegated authority to approve the decisions set out above.
- 1.3 On 1 May 2013, following financial due diligence, the Executive Director of Housing and Land, in consultation with the Deputy Mayor for Housing, Land and Property, approved under DD1054 the selection of Pocket Homes subject to legal due diligence and Pocket procuring a suitably qualified stable joint venture partner.
- 1.4 On 16 July 2013 the Executive Director of Housing and Land, in consultation with the Deputy Mayor for Housing, Land and Property, approved under DD1090 the allocation of £21.7m (including £1.8m contingency) to Pocket for the delivery of 384 homes (250 to be delivered by March 2016) and subject to GLA being satisfied that appropriate joint venture arrangements are in place. Pocket Living (2013) LLP, a subsidiary of Pocket Living Ltd, entered into the agreement with the GLA on 19 July 2013 (the GLA Funding Agreement).
- 1.5 Pocket Living (2013) LLP did not progress joint-venture arrangements, as it subsequently progressed detailed contractual negotiations with potential banks to raise the necessary development finance and secured a £30m facility with Lloyds Bank. In conjunction the GLA entered into an intercreditor deed with Lloyds Bank and Pocket Living (2013) LLP on 13 June 2014 and a subordinated debenture over the assets of Pocket Living (2013) LLP.
- 1.6 On 7 October 2015 under DD1365 the Executive Director of Housing and Land approved the allocation of a further £4.7m of funding to Pocket Living (2013) LLP to acquire two sites (including Mapleton Crescent) and entry into a deed of variation to the existing GLA Funding Agreement, reflecting delays against delivery of the milestones.
- 1.7 The total £26.4m will deliver 391 units by 2018, thereafter the funds will be recycled to deliver 1,000 units over the ten years. The variations agreed amongst other things:
 - The removal of clauses relating to the need for Joint Venture arrangements
 - a new provision requiring Parent Company Guarantee in favour of the GLA
 - A reprofiling of housing delivery numbers
 - The inclusion of elements of market sale housing –albeit GLA only funding the affordable proportion and the setting up of escrow arrangements

- 1.8 Pocket Living (2013) LLP has progressed delivery of affordable homes under the GLA Funding Agreement. To date it has completed and sold 77 affordable homes across three sites and has a further 200 affordable homes under construction across seven sites. It currently has a firm pipeline of seven sites at either pre-construction, planning or pending acquisition which are together expected to yield approximately 349 affordable homes.
- 1.9 Pocket Living (2013) LLP recently identified a need for further construction finance to complete the seven schemes under construction and the two most advanced of the seven pipeline schemes. It has agreed an increase of £15m to the existing £30m facility with Lloyds Bank. In conjunction with this it is proposed to enter into a renegotiated Facility Agreement with Lloyds Bank and related Intercreditor Deed between Pocket, Lloyds Bank and the GLA. The terms of the Intercreditor Deed have been subject to due diligence and GLA officers have sought external legal advice.
- 1.10 Under the proposed Intercreditor Deed the GLA will continue to benefit from a second ranking charge over Funded Sites. Lloyds will now have a first ranking fixed charge over each Funded Site owned by Pocket Living (2013) LLP except Mapleton Crescent (see below) from the date on which Pocket Living (2013) LLP takes ownership of the Funded Site rather than from the (later) date upon which development funding is drawn down by Pocket under the Lloyds Facility Agreement. Lloyds will also benefit from the protection that, if a certain number of Funded Sites fail to be completed by the Required Completion Dates (being three to five months after the anticipated date of practical completion of a development), GLA will not be entitled to receive the proceeds due to it (pursuant to the GLA Funding Agreement) from any other sites in relation to which Lloyds has been fully repaid.
- 1.11 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 considered unlikely that the sites will fail to be completed by the required completion dates. Furthermore, if Pocket has cost overruns on a site and it is not able to fund those cost overruns, GLA will not be entitled to receive the proceeds due to it (pursuant to the GLA Funding Agreement) from any other sites in relation to which Lloyds has been fully repaid.
- 1.12 The GLA would continue to benefit from a subordinated debenture over the assets of Pocket Living (2013) LLP and benefit from a Parent Company Guarantee from Pocket Living Ltd. In addition, an American real estate firm called Related has recently made a 50 percent investment in Pocket Living, enhancing the long-term viability of the company.
- 1.13 Pocket Living (2013) LLP has also recently identified a need to secure construction finance for the five remaining pipeline schemes not covered by the increased Lloyds construction finance facility. It has provisionally sought expressions of interest from a number of lenders but is yet to confirm if funding will come from single or multiple new lenders. In any event to secure such funding will require the ownership of the relevant Funded Sites to be transferred into one or more discrete corporate entities to allow any new senior lender to take a first ranking charge over them, unfettered by the provisions of the Facility Agreement between Pocket Living (2013) LLP and Lloyds Bank. In order for the GLA to benefit from adequate security and protection, GLA will require that these entities shall be wholly owned subsidiaries of Pocket Living (2013) LLP. The consent of Lloyds Bank is required for the creation by Pocket Living (2013) LLP of any subsidiary. Lloyds has agreed to carve out the creation of a subsidiary for the transfer of a site at Mapleton Crescent, Wandsworth but not to a carve-out in relation to the creation of any other future subsidiaries. Accordingly, the consent of Lloyds will be required for these in the future.

- 1.14 In order for Pocket to acquire Mapleton Crescent using GLA funds, certain conditions have to be satisfied under the GLA Funding Agreement, including the securing of development finance for the site. Accordingly, the GLA will have to waive this condition if it is to fund the acquisition before another senior lender has been identified and an agreement entered into with that senior lender to fund the development costs of the scheme.
- 1.15 The GLA Funding Agreement permits such disposals with GLA consent. 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 will dispose of the Mapleton Crescent site to a wholly owned subsidiary.
- 1.16 The waiver and the consent to disposal for Mapleton Crescent referred to in paragraphs 1.11 and 1.12 above would be set out in a Deed of Consent between the GLA and Pocket Living (2013) LLP. GLA officers have received external legal advice on the terms of this Deed.
- 1.17 Further details regarding the proposed replacement Intercreditor Deed and the Deed of Consent are set out in Part 2 of this Director Decision form.

2. Objectives and expected outcomes

- 2.1 To approve a replacement Intercreditor Deed between the GLA, Lloyds Bank and Pocket Living (2013) LLP (based on the existing intercreditor deed with amendments) and entry into a Deed of Consent to allow the disposal of a Funded Site by Pocket Living (2013) LLP to a wholly owned subsidiary.

3. Equality comments

- 3.1 The likely potential equalities impacts of this decision have been considered having regard to the most recent iteration of the Mayor's Equalities Framework, Equal Life Chances for All, agreed in June 2014 under MD1349. This decision will not materially alter the likely potential impacts of the previous decisions (MD1065, MD1145, MD1174, DD1054, DD1090 and DD1365) on those with protected characteristics. These decisions were made having regard to previous iterations of the Mayor's Equalities Framework and implement Mayoral strategies, notably those relating to housing, planning and economic development that have themselves been subject to equalities impact assessment.

4. Other considerations

- 4.1 The other considerations regarding links to Mayoral strategies and priorities, impact assessments and consultation remain as previously approved. It should be noted, however, that the approach to managing and mitigating some financial risks will change as a consequence of the amended Intercreditor Agreement as set out in the financial comments below and in Part 2.

5. Financial comments

- 5.1 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. This approach offers acceptable mitigation of this financial risk. Details of this appear in Part 2.

6. Legal comments

6.1 Section 30 of the Greater London Authority Act 1999 ('GLA Act') gives the Mayor a general power to do anything which he considers will further one or more of the principal purposes of the GLA. The principal purposes, as set out in section 30(2) of the GLA Act are:

- (1) promoting economic development and wealth creation in Greater London;
- (2) promoting social development in Greater London; and
- (3) promoting the improvement of the environment in Greater London

6.2 Previously the GLA was prohibited from using this general power to incur expenditure in providing any housing. This prohibition was, however, removed by section 186 of the Localism Act 2011, which came into effect on 1 April 2012.

6.3 Given the above, Section 34 of the GLA Act which allows the Mayor to do anything which is calculated to facilitate or is conducive or incidental to the exercise of any of his functions (including his functions under section 30) and the Mayor's powers (under Section 38 of the GLA Act) to delegate to any GLA member of staff functions of the GLA that are exercisable by him, the foregoing sections of this report indicate that the Executive Director of Housing and Land has the power to agree to the decisions set out above.

7. Planned delivery approach and next steps

7.1 An external law firm has been instructed to act for the GLA in negotiating the replacement Intercreditor Deed and the Deed of Consent.

8. Appendices and supporting papers

8.1 These are: MD1145, MD1174, DD1054, DD1090 and DD1365.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Note: This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:**Is the publication of Part 1 of this approval to be deferred? Yes**

If YES, for what reason:

It is recommended that this Decision be deferred until the new Intercreditor Deed and the Deed of Consent in relation to the Mapleton Crescent site have been entered into so that it does not prejudice the GLA's negotiation with the other parties.

Until what date: 30 September 2016

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

David Watkinson has drafted this report in accordance with GLA procedures and confirms that:

✓

Assistant Director/Head of Service:

Nick Taylor has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Financial and Legal advice:

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

✓

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. D. Elle

Date

5.7.16