

REQUEST FOR DIRECTOR DECISION – DD2326

Affordable Homes Programme 2016-2021 – The Mayor's Innovation Fund: Apex Airspace Developments

Executive Summary:

This Decision seeks approval for a loan facility of £10 million through GLA Land and Property Limited for Apex Airspace Limited. The company will develop the airspace above existing properties using Offsite Precision Manufactured housing units, as part of a programme to deliver at least 250 genuinely affordable homes together with homes of other tenures – all starting on site by 31 March 2022. This funding will be drawn from the Mayor's Homes for Londoners Affordable Homes Programme Innovation Fund and be fully repaid by 30 September 2023.

Approval for the funding is therefore sought through a Decision by the Executive Director, in line with the policy in MD2125 and the provisions concerning the Affordable Homes Programme in the Mayoral Decision-Making in the GLA framework, for complex and bespoke financial arrangements.

Decision:

That the Executive Director of Housing and Land approves:

The loan facility of £10 million from the Affordable Homes Programme Budget – Homes for Londoners' Innovation Fund for Apex Airspace Limited to support its delivery of at least 250 affordable homes together with homes of other tenures.

AUTHORISING DIRECTOR

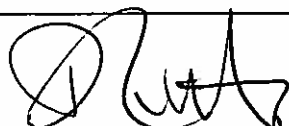
I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: David Lunts

Position: Executive Director of Housing and Land

Signature:



Date:

30/02/19

PART 1 - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1. MD2125 of 13 June 2017, approved an Affordable Homes Programme budget of £3.25 billion for the Homes for Londoners: Affordable Homes Programme 2016-21. MD2282 of 2 May 2018, increased this budget to £4.92 billion to deliver starts of 116,000 affordable homes by March 2022.
- 1.2. MD2125 noted that part of this budget would be used for the Innovation Fund, as described in the Funding Guidance for the Homes for Londoners: Affordable Homes Programme 2016-21, published on 29 November 2016. The Funding Guidance invited providers to submit proposals to deliver affordable housing using GLA investment in innovative ways, especially those utilising offsite and precision manufacturing. These proposals must deliver products that offer a similar level of affordability as the three tenure products set out in paragraphs 6 – 24 of the Guidance.
- 1.3. In the London Housing Strategy (May 2018), the Mayor offers packages of support to enable new entrants to the market to complement the work of traditional private sector developers, with help too for small- and medium-sized builders to build more on smaller sites. This will contribute towards the Mayor's aim that half of all new homes in London are genuinely affordable.
- 1.4. Apex Housing Group Limited (AHGL) incorporated Apex Airspace Limited (AAL) in May 2018, as a wholly-owned subsidiary to deliver the programme set out in this report through the innovative development of accommodation in the airspace above existing properties, by using Offsite Precision Manufacturing (OPM) to produce the housing units. AHGL subsequently incorporated another subsidiary, Apex Airspace Holdco Limited, to be the direct parent and shareholder of AAL for the reasons set out in paragraphs 1.12 – 14 of Part 2.
- 1.5. The Apex Group is a small developer, with schemes of up to 120 units including completed airspace projects in Camden and on Abbey Road. It is, however, one of the forerunners in combining OPM and airspace to deliver residential accommodation in London.
- 1.6. Apex Airspace Development Limited (AADL) is a separate development subsidiary of AHGL, which completed the projects above, and is now funded by Homes England to deliver an open market airspace development programme. AADL would not be involved in the proposed programme with the GLA, but the director is the same, and the management and personnel are shared, so AAL should have the appropriate skills and experience.
- 1.7. Apex approached the GLA to explore options to fund the pre-planning and development costs of sites. Apex was relying on its own finance to fund initial market schemes and sought funding to accelerate these schemes and to deliver affordable housing. A study by HTA Design LLP, which was commissioned by Apex in 2016, estimated that there is the potential to deliver 179,000 such housing units in London (<http://www.apexairspace.co.uk/wp-content/uploads/2017/03/HTA-P-Rooftop-Development-Report.pdf>). This, however, would require schemes to be scaled up to deliver significant numbers of new homes.
- 1.8. The proposed programme is to develop the airspace above existing properties using OPM housing units, for at least 250 genuinely affordable homes and 250 homes of other open market tenures (to make the programme financially viable), with the overriding purpose that all the affordable homes start on site by 31 March 2022. It is expected that around 20 sites will be developed in the programme having regard to the Mayor's Affordable Housing SPG and local planning policy, but this will depend on the size and structure of the sites brought forward for the GLA Land and Property Limited's (GLALP) approval under the funding arrangements.
- 1.9. The proportion of affordable housing units started may vary from site to site, but annually there must be at least: 50 starts by 31 March 2020; 100 starts by 31 March 2021; and 100 starts by 31 March 2022, to achieve the overriding purpose as above.

- 1.10. The Innovation Fund Steering Group (IFSG) approved the principle of the loan funding subject to the following heads of terms, and legal and financial due diligence (which has been completed satisfactorily). The IFSG is a managers' group in the GLA's Housing and Land Directorate that approves and monitors projects in the Innovation Fund programme.
- 1.11. AAL would negotiate with owners (local authorities, registered providers of social housing and private owners) to obtain the rights to the airspace above existing sites and secure the necessary planning permissions for the homes. AAL would then establish a site specific subsidiary company ('special purpose vehicle' (SPV)) to complete the development, using OPM to produce and install the new housing in the airspace. Across the sites, an agreed proportion of the units are to be handed/sold as affordable housing units to a registered provider, with the remainder sold on the open market to ensure the viability of each scheme.
- 1.12. AAL must ensure that each development is fully funded for its duration, as part of the total costs of the programme referred to in paragraph 1.2 of Part 2
- 1.13. The GLALP funding is to be a £10 million revolving loan facility for AAL, not to exceed the percentage of the total scheme costs stated in paragraph 1.2 of Part 2. This funding would be drawn down at the point of need for each development and be repaid from the sale receipts of the developed units, subject to the terms of the facility agreement.
- 1.14. The purpose of the loan is to provide interest free funding for the affordable homes, and must be fully repaid by 30 September 2023. If the annual target for affordable homes started is not met, GLALP would be entitled to require earlier repayment of the funding and have no obligation to provide any further funding, except for an approved scheme that has already started on site provided there is no continuing default.
- 1.15. However, at the pre-planning stage, it is not possible to be certain what the respective proportions between the affordable and market units will be, and so the relevant full amount of funding drawn down at that stage for each approved site will be charged at a commercial rate of interest as recorded in Part 2. The amount of capitalised interest to date would then be apportioned between the affordable and market housing elements of the site on the grant of planning permission in accordance with the mechanism set out in Part 2, and the interest would be adjusted to reflect that interest free funding is provided for the affordable units and a commercial rate of interest continues to be charged for any market units.
- 1.16. The loan will be provided under a bespoke facility agreement between GLALP and AAL, which contains covenants relating to a negative pledge, asset disposal, and priority to secure the obligations and funding (subject to any intercreditor agreement) and to works, scheme eligibility, and the London Living Wage to secure the delivery of schemes in accordance with GLA standards. It will be supported by a guarantee from AHGL, a charge and negative pledge from Apex Airspace Holdco Limited relating to its share in AAL, debentures including fixed and floating charges over all of AAL's and any site-specific SPV's assets (including its rights in relation to any development documents and over the bank accounts into which AHGL will deposit a sum and disposal proceeds will be paid), and a legal charge over any airspace lease granted to a site-specific SPV to ensure that the loan is adequately secured as follows, and that there are adequate step-in, cure, and recovery rights in the event of default.
- 1.17. A proposal for the acquisition of airspace in which OPM units are to be installed must first be approved by GLALP, which in turn is subject to the provision of reasonable scheme details, an updated business plan including a projection of the proposed percentage of affordable homes, adequate security over the airspace being available to GLALP on terms acceptable to it; and no continuing default. GLALP must also be reasonably satisfied that the completion of all approved schemes is likely to be achieved in compliance with the facility agreement, that the overriding purpose and the annual affordable housing delivery target is achievable, and that there is satisfactory evidence that development finance is to be in place to procure the proposed outputs.
- 1.18. AHGL will provide a guarantee and deposit a sum in a charged account (as a condition precedent to AAL's first draw-down) in respect of cost overruns, interest shortfalls, and pre-planning costs. Part of

this sum will provide a guarantee for any abortive pre-planning costs drawn down under the loan, which would be charged at a commercial rate of interest from the drawdown until repaid. The guarantee is for the duration of the loan and any cost overruns/interest shortfalls which arise will be at AHGL's risk. This will also be flagged in the monitoring of the facility agreement that should lead to a review of AAL's performance.

- 1.19. The aggregate pre-planning costs across all approved schemes without planning permission is not to exceed an agreed sum at any time. This paragraph and paragraph 1.18 above, are set out in full in paragraphs 1.3 and 1.4 of Part 2
- 1.20. Pre-planning costs are the allowable costs that GLALP will fund under the loan, which are directly associated with acquiring rights to develop airspace at an approved scheme and as set out in the facility agreement.
- 1.21. Before AAL claims any pre-planning costs in respect of a site, it must have set up a site-specific SPV to deliver the scheme and agreed the form of development agreement for lease that the SPV will enter into for the airspace. AAL should have obtained its own certificate of title in respect of the site by this time and therefore provide it to GLALP. This will then be updated if need be once the lease is granted. A full valuation report for the planned site will be provided at this stage, to be updated if necessary following the grant of planning permission. Valuation reports can be required at any time.
- 1.22. On the grant of planning permission, the AAL site-specific SPV delivers the approved scheme.
- 1.23. Starts on site must be within 18 weeks of the grant of planning permission, or such longer period as may be agreed by GLALP, otherwise the loan for that site becomes immediately repayable with interest. The loan in respect of a site must also be repaid into the charged account if a "failure to develop" event occurs such as if planning permission is not obtained by the relevant planning milestone date, or if AAL no longer intend to develop the site, or if it has not confirmed within the above time period that all the required finance is committed to complete the development of the site. This is to mitigate the risk that AAL will have had to start on site but may not have finalised the senior funding arrangements for the approved scheme.
- 1.24. Post-planning permission, and until there is a senior lender (or other sources of funding) to fund at least the percentage of a scheme as set out in Part 2, GLALP will have priority for the company, work in progress, and property security (the latter based on the above agreed valuation reports) for its facility, but it would then rank behind the senior lender (as set out in the intercreditor agreement).
- 1.25. Once an approved scheme has planning permission, AAL will procure that it is carried out in accordance with the scheme details by the agreed practical completion date. It will also procure that each modular home installer/provider and each contractor involved in the design or provision of the units are Buildoffsite Property Assurance Scheme (BOPAS) accredited and suitable and competent, and that they comply with the contracts for the scheme. BOPAS is recognised by mortgage lenders as providing the necessary assurance with a warranty provision, that homes built using innovative or non-traditional methods of construction will be readily mortgageable for at least 60 years.
- 1.26. AAL will pay the receipts (the balance of the proceeds after deducting the sums approved under the facility agreement or any intercreditor agreement) from the disposal of any completed dwelling into an account, over which GLALP will have security. Withdrawals from this account may be used by AAL for allowable costs subject to the same conditions as if it was a claim for funding. GLALP may apply the funding standing to the credit of this account for the repayment of the loan as permitted by the facility agreement. On completion of the programme and the full repayment of the loan and interest, any balance in the charged account will be paid to AAL. The effect of this is that AAL will not take any 'profit' from the programme until its completion.
- 1.27. AAL must notify GLALP promptly of any material change in its financial circumstances, including any withdrawal or reduction of any senior funding. If GLALP believes that any such change has a material adverse effect as defined in the facility agreement, it will be entitled to exercise any of the default rights and remedies under the agreement.

- 1.28. AAL, any site specific SPV, the funding, the annual affordable homes delivery target, and the overriding purpose will be subject to quarterly and annual monitoring and review in accordance with the facility agreement.
- 1.29. AHGL are to pay the GLALP's reasonable legal, valuation and other costs relating to the preparation of any facility and security agreements, irrespective of whether these documents proceed to completion. Presently, AHGL are paying the GLA's legal costs up to an agreed sum.

2. Objectives and expected outcomes

- 2.1. The expected outcome is that by 31 March 2022, the overriding purpose of starts on site for at least 250 genuinely affordable homes is achieved, representing at least 50% of the total homes delivered by AAL over the programme term, all to be completed and the loan repaid by 30 September 2023.
- 2.2. The GLAP funding attributable to the affordable housing is interest free. The average amount of funding for each affordable home across all the approved schemes must not exceed £40,000. This is a value for money metric, which was set in the heads of terms.
- 2.3. AAL will identify and contract with registered providers to manage and be the landlord of the affordable housing units on a basis which complies with the Housing and Regeneration Act 2008 requirements. The registered providers may apply to use the GLA's Grant to acquire these units subject to the GLA's standard conditions.
- 2.4. A further expected outcome is the growth of a new housing provider, building on smaller sites, and a viable model for new homes that can be followed by others to accelerate the delivery of more affordable housing.

3. Equality comments

- 3.1. Section 149(1) of the Equality Act 2010 provides that, in the exercise of their functions, public authorities must have due regard to the need to: Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2. Protected characteristics under section 149 of the Equality Act are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership status.
- 3.3. The housing shortage in London disproportionately affects people with certain protected characteristics. Increasing the supply of housing, and in particular affordable housing, will help to achieve positive impacts in line with the 'three needs' outlined above.
- 3.4. The allocation of the funding is from the Homes for Londoners: Affordable Homes Programme 2016 – 21 Innovation Fund and is aimed at implementing the Mayor's policies set out in the London Housing Strategy. In September 2017, the GLA published an impact assessment, including an equalities impact assessment, of that strategy. Policies related to increasing housing supply and delivering affordable housing, to which this programme will contribute, were also covered by the Integrated Impact Assessment (IIA) for the Draft London Plan, published in November 2017.
- 3.5. The IIA concluded that the cumulative impact of these policies combined with policies for flexible housing mix, inclusive design and accessible housing would contribute to creating inclusive communities, relieve housing pressures that disproportionately affect lower-income groups and ensure the needs of diverse groups are considered in housing delivery and design.

- 3.6. To access the loan funding, AAL will be required to enter into a facility agreement with GLALP, which places the following obligations on AAL in respect of the Equality Act 2010: to comply in all material respects with all relevant legislation, including but not limited to legislation relating to health and safety; welfare at work; and equality and diversity; and to have, and fully comply with, a policy covering equal opportunities designed to ensure that unfair discrimination on the grounds of colour, race, creed, nationality or any other unjustifiable basis directly or indirectly in relation to the delivery of the agreement is avoided at all times. AAL will also provide a copy of that policy and evidence of the actual implementation of that policy upon request by GLALP.

4. Other considerations

- 4.1. The counter-party to the facility agreement is Apex Airspace Limited.
- 4.2. The 'Know Your Customer' due diligence process under the GLA's Anti-Money Laundering Policy has been completed against the counter-party, and those parties with a beneficial interest in it, and no areas of concern have been highlighted through that process.
- 4.3. Apex Housing Group Limited applied for Investment Partner Consortium status, including Apex Airspace Limited, in accordance with the Partner Qualification process. Apex Airspace Limited has provisionally qualified as an Investment Partner on the strength of the consortium application, limited to the delivery of this programme, and to be renewed annually. It is a condition precedent to the payment of funding under the loan that the company has qualified as an Investment Partner and retains that status.
- 4.4. The GLA has engaged with Apex in relation to this proposal which is the subject of this report. It is not considered necessary or appropriate to consult any other persons or bodies including those specified in section 32(1) of the Greater London Authority Act 1999 for the purposes of this Mayoral Decision.
- 4.5. GLA is providing this funding with the intention of facilitating the delivery of more affordable housing; the overriding purpose of the facility agreement is the provision of at least 250 affordable homes through an interest free loan. However, as the GLA will be providing part of the funding at a commercial rate albeit to support the above outcome, it needs nevertheless to act through a subsidiary company, being GLA Land and Property Limited as stated in paragraph 6.5 below.
- 4.6. There are risks relating to this programme, but as an innovative proposal to meet a specific housing need in London it is felt that these risks have been appropriately addressed as part of the due diligence assessment, as summarised in Part 2.
- 4.7. The facility agreement for this loan, which has been negotiated with Apex (following external legal advice), is bespoke to this scheme. Approval for its funding is therefore sought through a Decision by the Executive Director, in line with the provisions concerning the Affordable Homes Programme in paragraph 18 of the Mayoral Decision-Making in the GLA framework. MD2125 is clear that it is unlikely that innovation fund proposals will be Novel, Contentious or Repercussive (NCR). These proposals are to fund the delivery of affordable homes at an average cost below standard GLA grant rates, with the loan to be repaid, and therefore they are not considered to be NCR.

5. Financial comments

- 5.1. This decision requests approval for a loan facility of £10m from the Innovation Fund. The loan will be used to subsidise affordable housing at £40k per unit. The loan will be interest free to the extent it is used for affordable housing. Early drawdowns will be subject to interest at a commercial rate and the total interest charge will be adjusted when the total number of affordable units is known.
- 5.2. The £10m loan is to be used to deliver 250 affordable units by 31 March 2022.
- 5.3. The loan will be repaid from the receipt of sales of the developed units to a registered provider.

5.4. Further financial comments are set out in Part 2.

6. Legal comments

- 6.1. Detailed legal comments in respect of the Affordable Homes Programme 2016-21 (including the Innovation Fund) are set out in MD2125.
- 6.2. Under section 30(1) of the Greater London Authority Act 1999 (as amended) ("GLA Act"), the GLA has the power to provide the funding for this project provided that doing so will further one or more of its principal purposes of: promoting economic development and wealth creation, social development, and the improvement of the environment in Greater London. The project will deliver housing, including affordable housing, and it is open to the GLA to take the view that funding it will promote both social and economic development, and is therefore within its power, contained in section 30(1) of the GLA Act.
- 6.3. In exercising the power contained in section 30(1) of the GLA Act, the GLA must have regard to the matters set out in sections 30(3-5) and 33 of the GLA Act, and also the Public Sector Equality Duty in section 149 of the Equality Act 2010, which are explained in paragraph 6.3 of the legal comments of MD2125. Reference should be made to section 3 above in this respect.
- 6.4. In addition to the above, where the GLA is proposing to use the power conferred in section 30(1) of the GLA Act, the GLA must consider consulting in accordance with section 32 of the GLA Act. The GLA has engaged with Apex in relation to the project which is the subject of this Mayoral Decision. GLA officers have confirmed it is not considered necessary or appropriate for the GLA to consult with any other persons or bodies including those specified in section 32(2) of the GLA Act for the purposes of this Mayoral Decision.
- 6.5. The provision of the loan facility at a market rate of interest in respect of any open market housing is likely to constitute a specified activity, as defined under section 34A of the GLA Act and the Greater London Authority (Specified Activities) Order 2013/973. Accordingly, it will need to be provided by a subsidiary company of the GLA, as is proposed. GLA Land and Property Limited (GLALP) is a subsidiary of the GLA.
- 6.6. External lawyers have advised GLA officers in relation to the form of facility agreement and security documentation between the GLA and AAL.
- 6.7. Further legal comments are set out in Part 2.

7. Planned delivery approach and next steps

- 7.1. The next step, subject to this decision, would be to sign the facility agreement and the supporting documents, which may be subject to AAL securing a senior lender(s) for the programme, and the completion of an intercreditor agreement for that lending. This would allow AAL to start drawing funds on the pre-planning works for the sites it identifies through marketing work with local authorities, registered providers and private landowners.
- 7.2. The timetable should therefore be as follows:

Activity	Timeline
Signing the facility agreement and supporting documents	By 31 March 2019
Announcement	By 31 March 2019
Programme Start Date	By 31 March 2019
Start on site of at least 250 affordable housing units	31 March 2022
Repayment in full of the loan facility	30 September 2023

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved or on the defer date.

Part 1 - Deferral

Is the publication of Part 1 of this approval to be deferred? NO

If YES, for what reason:

Until what date: (a date is required if deferring)

Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included 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:

Peter Carney has drafted this report in accordance with GLA procedures and confirms the following:

✓

Assistant Director:

Jamie Ratcliff 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.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 18 February 2019.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. H. G.

Date

18.2.19