

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD1365

Title: Mayor's Housing Covenant – Pocket Homes update

Executive Summary:

To approve the allocation of a further £4.7m of funding to Pocket Living (2013) LLP under the Mayor's Housing Covenant programme together with amendments to the existing contract governing the funding allocated to Pocket Living (2013) LLP under the Mayor's Housing Covenant pursuant to MD1174, DD1054 and DD1090.

Decision:

That the Executive Director of Housing and Land:

- Approves the allocation of a further £4.7m of funding under the Mayor's Housing Covenant programme to Pocket Living (2013) LLP, as set out in part two of this Director Decision form and in accordance with the delegation agreed in MD1174; and
- Approves entry into a deed of variation of the Agreement between the GLA and Pocket Living (2013) LLP dated 19 June 2013 in respect of those matters set out in this Director Decision form.

AUTHORISING DIRECTOR

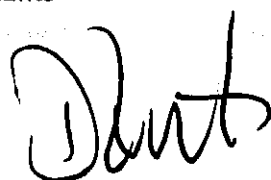
I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: David Lunts

Position: Executive Director Housing & Land

Signature:



Date: 7/10/2015

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 On 28 September 2012 the Mayor published his 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. In addition, MD1145 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 (Part 2, MD1145). 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 the Mayor approved further allocations under MD1174 (the "separate Mayoral Decision" referred to in MD1145). In approving MD1174 the Mayor agreed the total funding allocation for the programme and delegated authority to approve the remaining allocations under the programme, subject to detailed due diligence and in line with the information set out in Part 2 of MD1145, to the Executive Director of Housing and Land, in consultation with the Deputy Mayor for Housing, Land and Property. 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 Pocket Living (2013) LLP, a subsidiary of Pocket Living Ltd, entered into the Agreement with the GLA on 19 July 2013. Pocket subsequently progressed detailed contractual negotiations with the identified Joint Venture Partner on the basis of the Heads of Terms agreed at the time of DD1090.
- 1.4 Pocket Living (2013) LLP, having duly progressed detailed contractual negotiations with the identified Joint Venture Partner, subsequently advised the GLA that the prospective parties were unable to agree terms and would not progress into contract. Pocket Living (2013) LLP has considered how best to proceed in light of its contractual commitment to the GLA and, having consulted GLA officers, proposes to bring forward a panel of construction contractors in preference to a further joint venture partner arrangement. The panel of construction contractors would be competitively procured, subject to a framework agreement, and thereafter compete to win construction contracts for individual sites in the programme.
- 1.5 Pocket Living (2013) LLP has also progressed detailed contractual negotiations with potential banks to raise the necessary development finance and has secured a £30m facility with Lloyds Bank. The GLA has duly entered into an inter-creditor agreement with Lloyds Bank and Pocket Living (2013) LLP and has agreed a subordinated debenture over the assets of Pocket Living (2013) LLP. The Lloyds banking facility meets the requirements of the existing contract with the GLA and furthermore incorporates a contingency sum in respect of construction cost overruns.
- 1.6 This revised approach of a contractor panel framework agreement, with a contingency sum in respect of construction cost overruns provided under the Lloyds banking facility, is supported by GLA officers but requires amendments to the GLA's contract with Pocket Living (2013) LLP, approval for which is sought under this Director's Decision.
- 1.7 It should be noted that in tandem with these activities Pocket Living (2013) LLP has, as anticipated under the Agreement, drawn down some of the allocated funding for expenditure on preliminary expenses associated with bringing forward several sites in the programme. One of the sites has

subsequently been aborted as a firm scheme under the contract. The GLA has also approved funding for the first site acquisitions pursuant to the contract and, in light of the joint venture arrangement no longer proceeding, it has waived the current contractual requirement for a joint venture arrangement to have been entered into in respect of each of these initial sites.

- 1.8 It is expected that the funding currently allocated to Pocket Living (2013) LLP under the Agreement signed on 19 July 2013 will have been fully drawn by Q3 2015-16. It is proposed that a further £4.7m is allocated to Pocket Living (2013) LLP in order to enable the acquisition of two sites which are likely to have received planning permission at that time – which together would deliver over ninety affordable housing units – but which Pocket would not otherwise have the funding to acquire. In proposing to agree this further allocation, and taking into account that there have been delays against delivery milestones to date, it is also proposed that new milestones for delivery of the affordable housing units are incorporated into the existing contract to reflect this further funding and the GLA's required progress for delivery.
- 1.9 The initial funding to Pocket Living (2013) LLP was £21.7 million to deliver up to 384 affordable homes by 2023. It was anticipated that the funding would be recycled to build additional affordable homes beyond this over the ten year term. The additional funding increases the total funding to Pocket Living (2013) LLP to £26.4 million. This will initially enable the delivery of around 391 units by 2018 and thereafter the funds will be recycled to deliver further affordable housing. In this way over 1,000 units will be delivered over ten years through this funding.
- 1.10 It should also be noted that in October 2013 Pocket Living Limited, the parent company of Pocket Living (2013) LLP, received additional investment from Greater London Enterprises of £1million for a 10% share, suggesting a valuation of £10m at that time. This potential increase in the valuation of Pocket Living Ltd is noted but, in any event, sufficient financial risk mitigation has and continues to be incorporated into the Agreement with Pocket Living (2013) LLP. It would nevertheless be prudent for Pocket Living (2013) LLP to benefit from a Parent Company Guarantee and this will be addressed in the amendments to the Agreement.
- 1.11 In view of the above, it is proposed that the following areas of the Agreement as signed on 19 July 2013 be amended:
 - The total funding amount to include the further £4.7m of allocated funding;
 - The project management mechanisms for the monitoring of the contract and the recovery of abortive costs;
 - Removal of clauses relating to the Joint Venture arrangement;
 - new provisions to ensure that the proposed Contractor Panel Framework Agreement arrangements are satisfactory to the GLA;
 - revised provisions (following entry into an intercreditor agreement) to reflect initial repayment of Lloyds Bank funding in respect of each scheme prior to the aggregate amount of net affordable housing sales receipts on that scheme being paid into the bank account charged to the GLA (for reinvestment in affordable housing);
 - a new provision requiring a Parent Company Guarantee in favour of the GLA; and
 - any ground rents and proceeds from the sale of ground rents which Pocket receive which relate to any affordable housing units are to be paid into the account charged in favour of the GLA.

- 1.12 Further details regarding the proposed amendments to the contract are set out in Part 2 of this Director Decision form.
- 1.13 The Housing Investment Group received a paper on the Agreement with Pocket Living (2013) LLP on 1 April 2015 and endorsed the recommendation therein to allocate a further £4.7m of funding to Pocket Living (2013) LLP of the £30m allocated under MD1174, subject to due diligence.
- 2. Objectives and expected outcomes**
- 2.1 To approve amendments to the contract governing the funding allocated to Pocket Living (2013) LLP, including the allocation of a further £4.7m of funding, to allow it to progress the programme approved under the Mayor's Housing Covenant and pursuant to MD1174, DD1054 and DD1090.
- 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, MD1174, DD1054 and DD1090) 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, and key risks and issues 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 revised approach to construction procurement as set out in the financial comments below.
- 5. Financial comments**
- 5.1 The financial allocation will increase by £4.7m from that approved under DD1090. There is sufficient headroom for this increase within the overall allocation of £30m made under the MD1174. The financial security in respect of cost overruns that was previously to be provided by means of a Joint Venture Partner arrangement will not now be put in place but there will however be a ring-fenced contingency sum in the banking facility. This approach offers acceptable mitigation of this financial risk. Details of this appear in Part 2.
- 5.2 It should be noted that the move to a panel of contractors in preference to a joint venture arrangement alters the financial and delivery risk profile of the programme. A large single contractor typically offers greater financial security and scope for programme efficiencies but is vulnerable to severe financial difficulties if a major project elsewhere fails. A panel of smaller contractors entails increased exposure to the risk of an individual contractor encountering financial difficulties and reduced programme efficiencies, but greater resilience in the event of an individual contractor failing as it is probable that another panel member would step in to complete delivery of the individual scheme and realise the value uplift.
- 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 amending the contract with Pocket Living (2013) LLP via a deed of variation.

8. Appendices and supporting papers

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

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 Deed of Variation has been entered into so that it does not prejudice the GLA's negotiation with Pocket.

Until what date: 23 October 2015

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. J. Allen

Date

6.10.15