

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2228

Title: London Housing Bank – Portal West, London Borough of Ealing

Executive Summary:

The London Housing bank provides low cost loans to accelerate the pace of development and provide homes at below market rent for an initial period of at least 7 years. Initial allocations were approved in January 2015 in MD1442 which also opened the fund to Continuous Market Engagement. MD1666 delegated authority to approve the remaining allocations to the Executive Director – Housing and Land, subject to detailed due diligence and available resources. This Director Decision approves an allocation of £27m to City & Docklands Construction Limited to provide 164 homes for intermediate rent at Portal West in the LB Ealing.

Decision:

That the Executive Director of Housing and Land approves:

in light of the due diligence set out in this decision form, entering into a contractual commitment to provide £27m loan funding from the London Housing Bank programme to City & Docklands Construction Limited to fund 164 homes for intermediate rent at Portal West in the LB Ealing.

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 and Land

Signature:



Date:

21.3.2018

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: Martin Clarke

Position: Executive Director Resources

Signature:



Date:

20.3.18

PART I – NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 The London Housing Bank (LHB) aims to accelerate the pace of development and bring forward additional housing supply, particularly on large sites, by enabling rapid market absorption. The GLA makes funding available in the form of a fully recoverable low-cost loan. Mayoral Decision (MD) 1393 approved the first phase of the LHB offering £200m of loan funding to deliver up to 4,000 homes affordable homes. Initial allocations were approved in MD 1442 which also opened the fund to continuous market engagement. Homes funded by the LHB must be let at below market levels for as long as the loan is outstanding, subject to an initial period of at least seven years. The interest rate payable by borrowers under the LHB is 1%, rising by 0.25% per annum from year nine of the loan. The longstop date for final repayment of LHB loans is the earlier of: (i) 16 years from the date of drawdown of the loan; (ii) the date the entire loan is sold or refinanced; or, (iii) 31 March 2032.
- 1.2 LHB funding is made available to the GLA through a facility agreement with government in March 2015. The facility agreement provides a £200m interest free loan, which is fully repayable by 31 March 2032.
- 1.3 Progress has been slower than anticipated in utilising the LHB given market conditions. Only £21,037,590 of the overall programme facility has been drawn and contracted to date. As authorised in DD2066, the £21m was drawn in March 2017 against Atrium Point in the LB Ealing. A new funding proposal has been submitted by City & Docklands Construction Limited (C&D) for £27m to provide 164 homes for intermediate rent at Portal West in the LB Ealing and this Decision recommends approving the proposal and entering into contractual agreements reflecting the agreed proposal.
- 1.4 C&D has been approved as a GLA Investment Partner for the purposes of this transaction. The parent company is a residential developer specialising in new build apartment schemes in key London growth areas. Since its inception it has delivered nearly 2,400 homes across London and, at the time of writing, has a further 688 in its pipeline. LHB funding is providing junior debt on C&D's Portal West development, which comprises approximately 34,000 square feet of flexible use class commercial space and 578 apartments. The affordable element within the development comprises 164 homes for intermediate rent, which equates to 30 per cent by habitable rooms. There is provision in the section 106 agreement for the development to deliver up to 5 per cent additional affordable housing (as cash in lieu of on-site provision) should viability allow.
- 1.5 Further to MD 1393, MD 1666 delegated authority to the Executive Director Housing and Land to approve the remaining allocations of the LHB programme, subject to due diligence and available resources. The Executive Director is now asked to approve the outcome of due diligence detailed in this report, which demonstrates that it is appropriate for the GLA to contractually commit loan funding of £27m from the LHB programme to C&D to fund the provision of 164 intermediate rent homes at Portal West in the LB Ealing.
- 1.6 The balance of LHB funding not utilised by the GLA in contracting on Atrium Point and Portal West – approximately £152m – is no longer available. Government confirmed in March 2018 that the programme is closed to future funding. Also, any funding not utilised during 2017/18 is to be withdrawn. In response to the market conditions referred to in 1.3 above, the GLA repeatedly sought to 'repurpose' the LHB – to seek more flexibility on the terms of its use. Towards this end, the GLA submitted a formal paper to government in July 2017 setting out how a repurposed fund would work. This was followed up with a number of requests to use the LHB in way described with the objective of increasing housing supply in London. The withdrawal of LHB funding means the housing target associated with the funding will not now be met.

Assessment

- 1.7 The assessment process involved two stages: (i) a quantitative (including counterparty creditworthiness) and qualitative assessment of the counterparty as part of its application to gain GLA Investment Partner status; (ii) an assessment of a formal bid for LHB funding made through the GLA's Open Project System. The GLA approved C&D as an Investment Partner for the purposes of this transaction on the back of the assessment subject to the satisfactory completion of Know Your Customer (KYC) due diligence, ensuring the loan contract contains appropriate provisions to mitigate identified risks and that this MD highlights these approval requirements¹.

Value for Money

- 1.8 C&D is seeking loan funding of £27m to provide 164 homes. In accordance with the LHB Prospectus, the funding requested does not exceed 30% of total scheme costs.

Affordability

- 1.9 LHB homes would normally be let at intermediate rents, with a minimum discount of 20% to market rent (inclusive of service charges), for a minimum period of 7 years from the date they are first let or, if longer, until the LHB loan has been repaid and/or the borrower's obligations under the loan agreement have been discharged. Under the terms of the section 106 agreement with LB Ealing, C&D has agreed that the 164 affordable homes will be affordable in perpetuity. It has been further agreed that rent levels should be no more than 40% of gross household income, which is achieved across the range of LHB home types proposed with a minimum discount of 20% to market value. Finally, a five-yearly rent review is in place to ensure tenants remain eligible and genuinely in need of a discounted home.

Deliverability

- 1.10 C&D owns the freehold interest in the site and is therefore in control of the entire development. The project has detailed planning approval in the form of a signed 106 agreement, has started on site and is due to complete by 31 March 2023. These timescales have been agreed as milestones in the draft LHB facility agreement between the GLA and C&D in respect of Portal West.

Strategic Fit

- 1.11 Build to rent and affordable build to rent ('discounted market rent') are supported in current and emergent GLA policy in the form of the Affordable Housing and Viability Supplementary Planning Guidance (2017), the draft London Housing Strategy (2017) and the draft London Plan (2018).
- 1.12 The Portal West site lies within the Park Royal and Old Oak Opportunity Area, which is identified in the London Plan as an area with the potential for significant housing and economic growth linked to equally significant strategic transport infrastructure investment, including HS2, a Crossrail interchange and other transport improvements.
- 1.13 Portal West was referred to the Mayor of London for consideration under the terms of his planning powers given the scale and height of the proposal. The Mayor's Stage 2 report on the proposal confirms that it is "acceptable in strategic planning terms"; moreover, that it "will deliver a well-designed high density mixed use development within an opportunity area with a good quantum of affordable homes".

2. Objectives and expected outcomes

- 2.1 The LHB sought to deliver up to 4,000 affordable homes prior to the withdrawal of programme funding. The funding attached to the Portal West proposal will be used to facilitate the delivery of 164 homes.

¹ The approval took place at an Affordable Housing Peer Review meeting held on 14 February 2018.

- 2.2 Portal West will provide 164 homes for intermediate rent, providing the opportunity for Londoners to access high quality, well managed affordable rented homes.

3. Equality comments

- 3.1 The London Housing Bank programme implements the Mayor's policies set out in the Mayor's Draft London Housing Strategy. The Mayor published the draft strategy in September 2017. The strategy had a three-month consultation period and an equality impact assessment was also undertaken in parallel.
- 3.2 Under section 149 of the Equality Act 2010, as public authorities, the Mayor and the GLA are subject to a public-sector equality duty and must have 'due regard' to the need to (i) eliminate unlawful discrimination, harassment and victimisation; (ii) advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and (iii) foster good relations between people who share a relevant protected characteristic and those who do not. 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 Throughout the decision-making process relating to this funding due regard has been had to the 'three needs' outlined above. The housing shortage in London disproportionately negatively 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'.
- 3.4 The Mayor's Vision for a Diverse and Inclusive City was issued as a consultation draft in June 2017. The first chapter of this document is entitled "A Great Place to Live". Priority outcome 1.1 in the vision refers to delivering affordable, accessible and decent homes. This funding will help to deliver new affordable homes in London.
- 3.5 To draw funding C&D will be required to enter into a contract with the GLA. The contract will contain the following obligations (or similar obligations) on C&D in respect of the Equality Act 2010:
- o The Developer shall 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 will use reasonable endeavours to enforce the terms of the scheme project documents to which it is a party to ensure compliance with this clause.
 - o The Developer has, and is in full compliance 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 Works is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by GLA.

4. Other considerations

Key risks and issues

- 4.1 The GLA has carried out KYC on the borrower. C&D is a UK registered developer. The company's ultimate parent is Jersey based Landeck Services Limited. Given that the parent is not UK registered, consistent with the GLA's Anti-Money Laundering Policy, additional KYC checks have been carried out. Checks have also been carried out to confirm the existence of Politically Exposed Persons in the

company ownership structure. A record of these checks and the findings are saved centrally for compliance and audit purposes in a location agreed with the Officer in Charge of Keeping Records, as required by the GLA's Anti-Money Laundering Policy.

4.2 The primary risk to the GLA is in relation to non-repayment of the loans allocated through the London Housing Banks. This is mitigated by obtaining robust security cover to the value of GLA's loan (see below), monitoring delivery and isolating the financial risks to GLA Housing and Land. The £27m LHB loan to C&D represents junior or subordinated debt funding the affordable element (164 homes) of a much larger scheme (578 homes plus an element of commercial floorspace). The senior debt is worth approximately £158m excluding loan interest. The GLA has imposed a condition in its loan agreement with C&D that the senior funder's loan agreement with C&D must be in place prior to the drawing of LHB funding. The security for the senior debt is yet to be agreed but is expected to take the form of a debenture granting a fixed charge over the site and work in progress, together with a floating charge over all other C&D assets. C&D is also to grant a share charge and provide a guarantee as part of the senior debt security package. The GLA will have an identical security package to that of the senior funder, albeit subordinated to the senior lender under the terms of an intercreditor deed. The security package will give both the senior lender and the GLA, in certain circumstances, the ability to step into the development in the event of a failure to perform on the part of C&D.

4.3 The GLA loan agreement contains the following loan covenants:

- loan to cost – no more than 30%;
- loan to value – no more than 70%.

4.4 Based on the agreed cashflow for the project and subject to a number of condition precedents, the £27m GLA loan is fully drawn at the start of the project – month 1. C&D equity in the form of land and cash amounting to over £25m goes in at the same time as the GLA loan and rises to £56m by month 14. Senior debt is invested from month 14 and peaks in month 52. The senior debt facility is both a development and investment loan and for this reason remains in the project for 10 years following the point of initial investment. At maturity, the senior debt will be repaid or refinanced. The GLA loan is similarly a development and investment loan. Its repayment is triggered by the sale of the last affordable home or 15 March 2032, whichever is earlier. If repayment extends to the latter, the GLA loan represents a 14-year loan facility. Analysis of the agreed cashflow confirms neither of the above covenants are breached at any point in the development. The same analysis confirms the value of land plus work in progress in the project across its development period is, after allowing for the repayment of senior debt plus interest, more than sufficient to cover repayment of the GLA loan plus interest. This analysis confirms that the value of a second charge over these assets – effectively, the value of a subordinated debenture – is sufficient to cover repayment of the GLA loan plus interest.

4.5 The GLA is charging interest on its loan consistent with the pricing methodology outlined in 1.1 above. Interest is fully capitalised and paid with the principal in a single bullet repayment at maturity of the loan.

4.6 *Links to Mayoral strategies and priorities*

The purpose of the LHB is to deliver up to 4,000 affordable homes. The withdrawal of LHB programme funding will mean this target will not be met, but the proposal will support the aim in the Draft London Plan to deliver at least 64,935 homes a year by contributing to this target.

4.7 *Impact assessments and consultations*

The GLA has engaged with the counterparty to this proposed intervention as it has considered appropriate. It is not 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 Director Decision.

4.8 Details of the relevant impact assessment and strategy context are set out above at paragraph 3.1

5. **Financial comments**

5.1 The Decision is seeking approval for a loan of £27m to City & Docklands Construction Ltd to provide 164 homes for intermediate rent at Portal West in the LB Ealing. The conditions for the loan are set out in paragraph 1.1 above. The 164 intermediate rent homes are part of a larger development scheme, which consist of commercial space and 578 apartments.

5.2 The loan is a low-cost loan, which will be fully drawn at the start on site, and will be subordinate debt funding. The loan will be issued at an interest rate of 1% per annum, which will increase annually by 0.25% per annum from year nine of the loan. The interest will be capitalised, and loan plus interest will be repaid on maturity.

5.3 The longstop date for repayment of the loan is the earlier of:-

- (i) the date the entire loan is sold or refinanced
- (ii) 31 March 2032

5.4 The loan agreement contain the following loan covenants:-

- (i) Loan to cost – no more than 30%
- (ii) Loan to value – no more than 70%

5.5 As part of the due diligence process a financial appraisal was performed on the financial information provided by City & Docklands Construction Ltd for the Investment Partner Qualification Questionnaire process, the results from this appraisal are stated below:

5.6 Based on the limited information provided, we have concluded that the company is not in a strong financial position to support the loan as a result of: lack of active trading activities and a weak financial position. The company is in this respect, a development vehicle or SPV with little asset value. It is not unusual in the industry to procure construction and development through such vehicles. As with any loan, there is a risk that it may not be recovered, but security will be put in place to mitigate the impact of default by the borrower.

6. **Legal comments**

6.1 Under section 30(1) of the GLA Act 1999, the GLA has the power to provide the loan funding for the project explained above, on the basis that to do so will further one or more of the GLA's principal purposes. In exercising the power in section 30, the Mayor must have regard to the matters set out in section 30(4-GA) of the GLA Act. Those matters have been taken into account as considered appropriate by the GLA in respect of the London Housing Bank Programme (see MD1393 and MD1666) and, in respect of this funding proposal, as detailed in this report.

6.2 The GLA has engaged external lawyers to advise on the terms of the funding agreement, which includes provisions to enable the funding to be provided in a state aid compliant manner.

7. Planned delivery approach and next steps

Activity	Timeline
Contract signed with vendor	March 2018
Start on site	30 September 2018
Practical completion	31 March 2023
Repayment of loan to GLA (this is a longstop date /earlier could apply)	15 March 2032
Repayment of loan to government	31 March 2032

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:

To allow for completion of the funding agreement with C&D.

Until what date: 1 April 2018.

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 – NO.

ORIGINATING OFFICER DECLARATION:

Drafting officer
to confirm the
following (✓)

Drafting officer:

Fred Keegan has drafted this report in accordance with GLA procedures and confirms that:

✓

Assistant Director/Head of Service:

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:

The Corporate Investment Board reviewed this proposal on 19 March 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Allen

Date

20.3.18