

## PART 2 – CONFIDENTIAL FACTS AND ADVICE

**DD2442**

**Title:** Peabody Dagenham Affordable Housing Grant

*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.*

**This information is not suitable for publication until the stated date because:**

It contains sensitive information that could negatively impact Peabody's and the GLA's commercial interests.

**Date** at which Part 2 will cease to be sensitive or when this information should be reviewed with a view to publication: **September 2021**

**Legal adviser recommendation on the grounds for not publishing information at this time:**

Under section 43 of the Freedom of Information Act 2000, information is exempt from publication if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the GLA). This is a qualified exemption, meaning that information captured under this section alone can only be withheld if the public interest in withholding it outweighs the public interest in releasing it.

The information contained in this report includes details of the financial terms for Peabody Trust's proposed acquisition of the shares in Dagenham Dock Limited (DDL). This is commercially sensitive information, the disclosure of which would, or would be likely to, prejudice the commercial interests of Peabody in relation to its acquisition of the shares in DDL and the commercial interests of the GLA in relation to the negotiation of its grant funding agreement with Peabody. Whilst there is a public interest in understanding the circumstances in which public money is provided to other bodies, it is considered that in these circumstances the public interest lies in maintaining the exemption and withholding the information.

If this information is considered for release pursuant to the provisions of the Environmental Information Regulations 2004, this information should be considered exempt information under regulation 12(5)(e) – where disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

The legal advice regarding state aid in this part 2 is subject to legal professional privilege. Accordingly, it may be withheld from publication pursuant to the corresponding exemption in section 42 of the Freedom of Information Act 2000.

**Legal Adviser** - I make the above recommendations that this information is not suitable for publication at this time.

**Name:** TfL Legal

**Date:** 11 January 2020

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

## **Decision and/or advice:**

### **Project Risks & Issues**

- 1.1. Site purchase structure
- 1.2. Peabody have agreed an overall purchase price of £101m and wish to exchange contracts for purchase of the shares in Dagenham Dock Limited (DDL) by February 2020, upon which they will pay a deposit of £25m, utilising GLA grant.
- 1.3. As set out in Part 1, the completion of the purchase is conditional on the Environment Agency issuing a validation certificate for the site. This should occur in June 2020 once the remediation works have been completed. The balance payment of £76m would then be payable by Peabody, which would include £58.7m of GLA grant. This would provide Peabody with a total grant from the GLA of £83.7m.

### **Legal Comments: State Aid Risk**

- 1.4. The grant rates being paid are in line with the rates being paid under the AHP 16-21 Addendum. However due to the large payment involved and the fact that the grant will comprise more than 80% of the total site acquisition costs, making it unlikely that it can be apportioned solely to the affordable housing element of the acquisition costs in accordance with generally acceptable accounting principles, it was thought necessary to consider the risk of a successful challenge from a state aid perspective.
- 1.5. External legal advice has been received as to how the transaction might be structured to fall within the “Services in the General Economic Interest” Decision and thus be state aid compliant. In order to mitigate risk, the GLA will notionally apportion the grant as a contribution for the delivery (and the whole cost of delivering) the 1,550 affordable homes.
- 1.6. However, the fact that Peabody will draw down the grant at the commencement of the project, rather than against milestones for each phase, and the final affordable home is not scheduled to be delivered until the 2030s raises a risk that a hostile party could argue that Peabody has received the benefit of being cash-flowed costs which relate to market activity. It is important that the GLA understands that there would be a degree of merit in such an argument.
- 1.7. On the other hand, under the *Risk Based Approach*, there is also a credible argument (though not one that would automatically prevail) that this is not the GLA’s intention and further that by taking steps to mitigate and manage that risk any incidental state aid benefit to Peabody will have been minimised. The external legal advice sets out a number of recommendations to mitigate and manage the state aid risk, which GLA officers will seek to incorporate in the grant agreement.
- 1.8. To support this an assessment will be carried out by Peabody, and reviewed by GLA officers, demonstrating that there is a net cost gap to deliver all of the affordable homes (with a nominal net cost gap by affordable tenure and size of such homes) that is equal to or more than the amount of grant the GLA intends to provide.