

REPORT OF: FINANCIAL SERVICES MANAGER

TO: EXECUTIVE

DATE: 19th October 2017

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MATTERS REQUIRING FINANCIAL APPROVAL

PURPOSE OF REPORT

1. This regular report outlines a matter requiring consideration by the Executive under the Council's Financial and Contract Procedure Rules.

RECOMMENDATION

2. The Executive is recommended to authorise officers to agree the execution of a Deed of Subordination in favour of the Homes and Communities Agency linked to the provision of loan funding for the PEARL 2 housing development at Clitheroe Road, Brierfield.

REASONS FOR RECOMMENDATION

3. To seek approval from the Executive on a specific matter that has financial implications for the Council.

ISSUE

Clitheroe Road Housing Development – Deed of Subordination in favour of the Homes and Communities Agency

4. In August 2016, the Executive approved the provision of a parent guarantee to the Homes and Communities Agency (HCA) in respect of the Builders Finance Fund credit facility of c£1.5m in support of the housing development by PEARL 2 at Clitheroe Road, Brierfield. The provision of the Council's guarantee is conditional on the completion of a 70% counter indemnity from the Barnfield Group in favour of the Council leaving the Council exposed for the remaining 30%. The respective shares align with the current funding arrangements for all PEARL entities between the Council and Barnfield Investment Properties.
5. Authority was also given by the Executive for officers to conclude the required loan documentation in conjunction with the HCA and PEARL 2. The loan facility process has been somewhat protracted but is now nearing completion. The Council's counter-indemnity from the Barnfield Group has been completed and is awaiting formal execution once all other loan matters have been concluded with the HCA.

6. Recently, we have been asked by the HCA to agree a Deed of Subordination and as this is a new requirement it was felt appropriate to report this to the Executive and request approval to execute this Deed on behalf of the Council.
7. The Deed of Subordination is an agreement between the following parties:
 - The Homes and Communities Agency (the agency);
 - The Council and Barnfield Investment Properties (the subordinated lenders);
 - PEARL 2 (the company).
8. The rights of the subordinated lenders in respect of the subordinated liabilities are subordinated to the rights of the Agency in respect of the agency debt. Prior to the agency discharge date the subordinated lenders shall ensure that at all times an amount of the subordinated liabilities equivalent to the minimum subordinated liabilities remains owing to the subordinated lenders. *In simple terms the purpose of the Deed is to safeguard the HCA's interest in the loan facility provided to PEARL 2 and ensure that this is repaid first before any benefits accrue either to the Council or Barnfield as the subordinated lenders.*
9. Included in the obligations of the company, PEARL 2, is the stipulation that it cannot, without the consent of the HCA, amend or agree to amend the terms of (i) the Overage Deed and/or (ii) any loan stock issued in favour of the subordinated lenders or to agree any provision for the cash payment of interest on any loan stock (although this shall not prevent the accrual of interest on loan stock issued from time to time and the payment of that interest when such loan stock is redeemed).
10. Whilst the Deed is technical in nature and its primary purpose is to protect the agency, the implications for the Council are not materially different than already faced under the parent guarantee. The Council remains at risk in the event of default by Pearl 2 and would have to reimburse the agency in accordance with the guarantee. The Council's net exposure would not exceed 30% given its counter-indemnity with Barnfield. This exposure will diminish as the development proceeds and completed units are sold. Any overage that the Council might have received from the development would normally be retained for the benefit of further developments by PEARL 2.
11. As a result it is recommended that the Council executes the Deed of Subordination with the HCA and the Executive is asked to approve this and authorise officers accordingly.

IMPLICATIONS

Policy

12. There are no new policy implications arising from the contents of this report.

Financial

13. The financial implications remain as previously advised in earlier reports on this matter. Accounting requirements stipulate how the Council must account for the guarantee and this will require funding to be set aside from existing PEARL resources in the event that the guarantee is called on. As the development proceeds this requirement will diminish as properties are sold and the proceeds used to repay the HCA.

Legal

14. The Deed contains provisions that are legally binding on the Council.

Risk Management

15. The main risk consideration is the likelihood of default by PEARL 2 on its loan obligations and / or slow progress on sales with insufficient funds generated to repay the HCA within agreed timescales. The risk of either occurring is considered relatively low but this will require regular monitoring and effective liaison with the HCA over the period of the loan agreement.

Health and Safety

16. There are no health and safety implications arising from the content of this report.

Climate Change

17. There are no climate change implications arising directly from the content of this report.

Community Safety

18. There are no community safety issues arising from the content of this report.

Equality and Diversity

19. There are no equality and diversity issues arising from the content of this report.

APPENDICES

None.

LIST OF BACKGROUND PAPERS

None.