

Headline summary of proposed terms for a Conditional Land Sale Agreement to be entered into between the London Borough of Hammersmith and Fulham (the Council) and a EC Properties LP (part of the Capital and Counties group) (Capco).

16 August 2012

Thumbnail sketch: The CLSA is to be an agreement for the disposal of land in phases by the Council to Capco with vacant possession at a price of £105m (the **Price**). As the land is currently occupied by secure tenants and by leaseholders (and some freeholders) the agreement is to provide as a pre-condition of the transfer of land that the relevant statutory consents have been obtained and that 760 (or an increased number if Seagrave Houses are included (see below)) replacement homes are constructed to current London wide standards. It is a pre-condition of transfer, although not an obligation, that CapCo provides replacement homes to objectively-assessed standards. The Council will hold a long leasehold interest in each of these replacement homes. They will be used in part to re-house secure tenants. The Council will also grant long leases to qualifying owners who have elected to take up such leases in replacement to their existing homes. The Council will retain any Replacement Homes not required for either of the above.

Key terms:

Exclusivity Agreement: In July 2011 (extended for a further year on its expiry in 2012), the Council signed an Exclusivity Agreement with Capco. In return for the right to negotiate exclusively with the Council for a year to ascertain whether the final terms of a CLSA could be concluded, Capco paid £15m, £5m of this is non-refundable and £10m is refundable if the parties do not enter into the CLSA. These payments will be treated as part payment of the consideration under the terms of the CLSA when entered into. Once the CLSA is completed the Council will retain the £10m sum unless it is unable to secure Secretary of State's (SOS) consent to sell the land (or otherwise is not authorised to enter into the CLSA).

Gibbs Green School and 11 Farm Lane. It is proposed that Capco will acquire these properties at a price of £15m at the same time that the CLSA is exchanged. Completion is to take place straight away and the full price is to be paid on completion. These funds would not be repayable unless the Council did not have the power to sell. If the CLSA is terminated then a conventional overage provision will apply to development undertaken on these sites. Capco have requested that completion of the transfer of title to Gibbs Green School is postponed until the school vacate. Consequently at exchange of the CLSA there will be in place an unconditional agreement for the transfer of title to Gibbs Green School and the full consideration of £9,300,000 will have been paid and released to the Council. This does mean that any consents required for the disposal of the school (and if relevant Farm Lane) will need to have been obtained prior to exchange of the CLSA.

Gibbs Green and Farm Lane Overage. Where no material development has commenced prior to service of the Trigger Notice the Council will have a right to buy back both properties at the cost paid plus indexation (and cost of works undertaken). If the Trigger Notice is served Gibbs Green falls out of this overage regime and is only subject to Scheme Overage (if relevant). If material development has taken place but the Trigger Notice is not served (in the case of Gibbs Green School) or in any event where material works have been commenced in the case of Farm Lane overage is payable at the rate of 25% of any profit earned on the development after a 20% IRR.

Seagrave Road Houses (8a and 8b and 10 and 12 and 1 Rickitt Street). Capco is entitled to make proposals for these properties to be included within the project. Capco are to provide documentation at a level that would support an outline planning permission to facilitate consultation on this proposal. If the Council believe it is appropriate to do so having regard to such proposal the Council will then

commence consultation with the residents. The tenants are to be offered the same arrangements as those proposed for secure tenants across the wider site.

Following completion of the consultation process and the making of a planning application Capco wish to be able to request that the Council makes an application to the Secretary of State for disposal. The decision to dispose cannot be made ahead of the consultation and consequently the Council reserves its rights to make this decision having regard to the consultation.

If (following consultation) a decision is made to include Seagrave Road Houses then the requirement in relation to replacement homes is increased accordingly and the number of houses to be provided is increased to 77 houses.

Land to be Sold: This is referred to as the "Option Land". In addition to the two sites above the land to be sold comprises the West Kensington and Gibbs Green Estates. Gibbs Green School will be treated as part of the Option Land for the purposes of main scheme overage where the Trigger Notice is served (see below) but Farm Lane will not.

Secretary of State's Consent: Consent is required for the sale of housing land. The agreement (and the option granted by it) will be exchanged conditional on this consent which will be applied for shortly following exchange. The decision to apply for consent needs to be confirmed by a full Council meeting. If consent cannot be obtained (either without conflicting conditions or to both parties satisfaction) then the agreement can be terminated and £10m will be repayable to Capco.

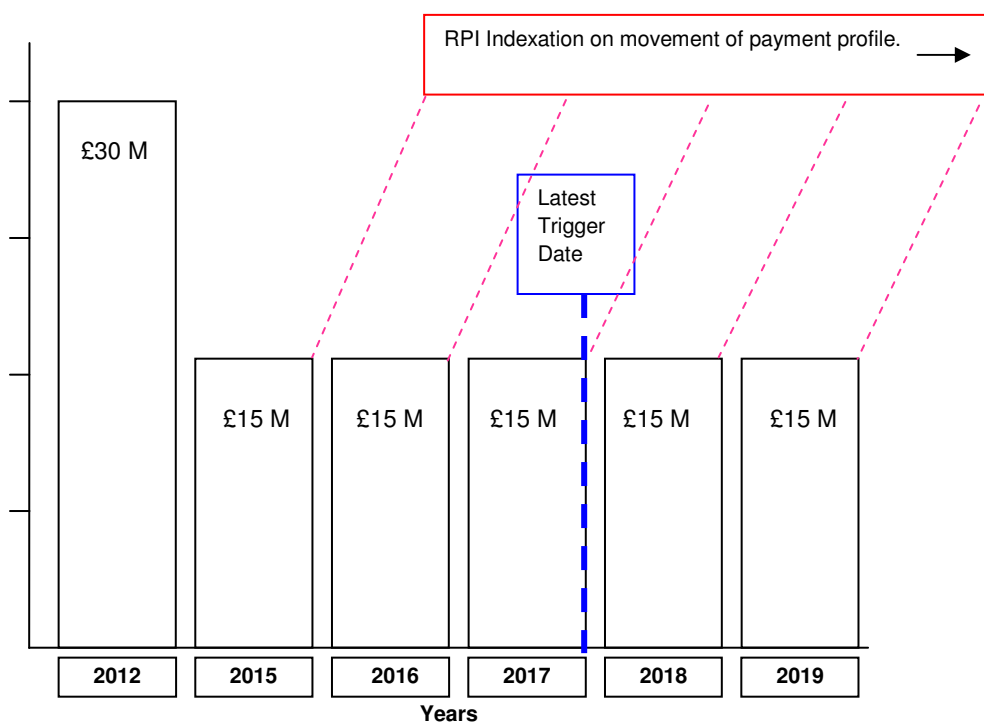
Trigger Notice: Capco is to have up to the earlier of 5 years from the date of the CLSA and 9 months from the date the Seagrave Road Affordable Housing has become Habitable to serve notice confirming that it wishes to proceed with the transaction. It should be noted that there is no obligation to build out the Seagrave Road Affordable Housing and consequently completion could be held off by Capco. This would however have implications for Capco under the Seagrave Road Section 106 Agreement. In this time it is envisaged that Capco will satisfy itself as to the acceptability of any planning consent granted and the viability of its scheme. It is anticipated that it will seek to agree terms with TfL during this period. If the trigger is not served, but SOS consent has been obtained and there has been no other successful challenge to the Council's right to enter into the CLSA then the Council will retain the £15m paid. If the Trigger notice is served the first of the Advance Payments is payable and the following Advance Payments will be due as set out below. If Capco ascertains that the terms of the planning agreement or market conditions render the transaction no longer viable it is likely that they will reject the form of SOS consent so that the £10m is repayable.

Section 34A Challenge: Insofar as a successful application is made under Section 34 A of the Housing Act 1985 the land affected will be excluded from the CLSA and the consideration will be adjusted. The number of Replacement Homes will be reduced by the number of Existing Homes within the relevant area, in addition the Advance Payments will be reduced (on a pro rata area based on a payment of £90m) provided that in any event the £15m will not be repayable by reason of the operation of such refund.

Advance Payments: The cash consideration is payable in 5 yearly instalments with the first payable on 31.12.2015 or, if later, the date the Trigger notice is served. These payments are due irrespective of when vacant possession is achieved and the land transfers take place. Notwithstanding this there is also provision to increase the payments where needed so that the phases drawn down cannot result in land having been transferred to a value in excess of the payments made. In reality it is likely that the Advance Payments will run ahead of land transfer.

If the first payment is made after 31.12.2015 (ie by reason of the Trigger notice being served after that date) then the payments will be indexed by reference to RPI (Note: the indexation is applied to that element of the payment which is received later than it would have been had the Trigger notice been served and the first payment and subsequent annual payments been made on and annually after 31.12.2015).

See diagram:



Allowable Capital Expenditure (ACE) and Allowable Revenue Expenditure (ARE)

ACE is cost incurred by the Buyer in funding acquisitions from leaseholders and freeholders or in securing vacant possession (including compensation payable). At the option of the Council it can be rolled forward until deducted from Advance Payments. If the deduction would amount to more than 50% of the Advance Payment the balance is rolled forward to the next Advance Payment. ACE carries a holding cost (cost of funding) which is 6.5% over 6 month LIBOR from time to time. This is felt to be a high cost of funds and accordingly the Council currently intends to make as little use of such funding as practicable. Where the Council does incur the costs it is to be entitled to pay down these costs early (to reduce holding cost accruing) but otherwise the costs are to be deducted from Advance Payments.

The Council would be entitled to require that Capco meet the first £7.5m of acquisition costs under Early Purchase Agreements and up to a further £7.5m of the cost of entering into agreements with Existing Owners (once there is a Satisfactory Scheme Planning Permission, SOS Consent and 106 Agreement). Once the Trigger Notice has been served the Council can require Capco fund all Standard Purchase Contracts entered into with Existing Home owners. As stated it is not currently the intention of the Council to use this facility given its cost. The Council has a degree of control as to how many Early Purchase Agreements are entered into as these are intended to address hardship as determined by the Council. Once the Satisfactory Scheme Planning Permission is in place

however it is anticipated that Council will be required, by promises that have been made to residents, to enter into Standard Purchase Contracts as requested. This process will incur transactional costs and payments and where individuals exercise their entitlement to require the Council to acquire their homes (at 10% above market value) the Council will incur capital costs (including SDLT) in so doing. If it does not intend to look to Capco to fund these acquisitions (due to the cost of funding) it will need to have funds available to meet this commitment.

ARE is the revenue cost (after income) of managing the properties acquired prior to their incorporation in a demolition phase. Deduction Accounts are to be prepared annually from 31.03.2013 however Capco have agreed to roll these sums forward (subject to holding cost) to be deducted from Advance Payments. It is now stated to be the intention of the Council wherever practicable to retain ownership of any Existing Homes acquired and to manage such properties and their letting itself in part so as to avoid incurring ARE.

Replacement Homes

The re-provision is required to include 760 (increased as appropriate if Seagrave Houses are included) (see below) homes of which 75 (77 if the Seagrave Road Houses are included) are required to be houses and 66 are required to be ground floor maisonettes or duplexes (with access to gardens) (house equivalents). It is anticipated that additional affordable homes (circa 740) will be required pursuant to the Planning Agreement entered into with the Scheme Permission.

Replacement homes are required to be built to the following standards in order to satisfy the pre-condition to transfer of land

- Space standards within the London Mayor's Design Guidelines,
- Code for Sustainable Homes 4
- 100% Lifetime Homes
- Secured by Design certification
- HQI score of upper mid-quartile
- At least Silver Standard Building for Life

Scheme Overage

Scheme overage will be payable in respect to all implementable consented gross external area (GEA) above the agreed Base GEA. This will be payable at a rate of £17.50 per sq ft and £1,000 per additional car parking space (exceeding 4311). This is payable in respect to additional consented development across the wider scheme area ie the planning red line.

Securing Vacant Possession

The land will be transferred in phases. Capco intend to undertake development at Seagrave Road which will include the first Replacement Homes. It should be noted that there is (and can be) no obligation on Capco to construct Replacement Homes or to do so in any particular location. However, there is a provision which means that Replacement Homes, if they are provided, must be provided on Seagrave Road until the cap for that site is reached and can only then be provided elsewhere. Given the pre-condition that Replacement Homes (based on the number of Existing Homes within the land requested to be drawn down by Capco) are to be constructed, independently certified as being habitable and handed over before transfer of a Demolition Phase it is anticipated that Replacement Homes will be constructed to meet the needs of residents on the next phase so that residents of one Phase are decanted to Replacement Homes constructed on land vacated by residents decanted to earlier Phases.

Land cannot be transferred to Capco unless Capco has already constructed Replacement Homes to meet the needs of residents (subject to the caps referred to but ascertained by reference to a needs assessment carried out by the Council). For each phased transfer of lands Capco will begin by providing (non-binding) information, to be used by the Council in its engagement with residents, showing the proposed phase and the replacement accommodation. The outcome of this engagement will feed into the development of a PPDN. Capco and the Council have agreed to both allocate resources to this process and Capco has agreed to provide feedback including the extent to which they are able to modify their proposals as a result of the feed back or the reasons why they cannot. This is an obligation to engage and have regard to feed back. It does not entitle the Council to impose changes.

Allied to this process, however, is a requirement for CapCo to provide for the Council's approval details of a scheme designed at minimising and mitigating the impact of demolition on the residents of the remaining estates (known as a Phase Impact strategy). The strategy deals with issues such as access, maintenance of car parking and services.

Not less than 6 months after the beginning of the engagement process a formal notice is to be served by Capco identifying the next Phase. An updated needs assessment is then carried out in relation to those Council tenants resident within the Phase. It is intended that the parties will by then have a clear understanding as to the nature and number of Replacement Homes to be provided however the requirement is to be based on the needs assessment. It will also take account of those leaseholder and freeholder contracts in place with residents within the proposed Phase. Notwithstanding this Capco are not to be obligated to provide to the Council, for Council Tenants, more than 10% more than the number of homes or gross internal area of existing homes within the Demolition Phase identified. The Flex does not extend to the number of Houses or House Equivalents.

The Council can select how many bedrooms (up to five) are to be included with each unit subject to these caps. There is an overall maximum gross internal area of replacement homes to be provided as well as the cap of 760 (increased as appropriate if Seagrave Road Houses are included).

As Replacement Homes are constructed for residents prior to transfer of the land on which they currently live there is a strong commercial incentive for Capco to develop out. Notwithstanding this where Capco have not delivered Replacement Homes (exact number and area to be agreed) by the date 10 years following exchange (with provision for additional time to be given where they have nearly done so) the Council is entitled to terminate the Agreement (although it will then need to pay back the consideration attributable to the land not transferred).

The Council will be able to reject a proposed phase if it causes such nuisance and annoyance to residents of dwellings on the retained land that such dwellings would not be reasonably habitable or if it would restrict reasonable access or necessary servicing. The Executive Group is to agree a remaining estate management strategy to ensure that the quality of life of residents is not unduly compromised.

If work ceases for 6 months (or up to 9 months where the Capco indicates work is about to re-commence but it does not) the Council can insist that actions are taken: demolition completed and made good, a partially completed building completed as to the exterior and structure and surrounding area made good etc. If Capco or its successors or funders fail to take such mitigating action the Council can gain access to undertake the works and charge Capco.

The Replacement Homes to be provided to meet the needs of a Demolition Phase must include at least 60% of the number of council for rent houses in the Demolition Phase. If Capco cannot achieve

this and no other acceptable solution can be found then the Council can veto the phase. Alternatives to houses such as ground floor maisonettes and duplexes with gardens will be provided for the remaining residents within the Phase living in houses who are not allocated houses as Replacement Homes.

Council Tenants

Secure Tenants will be offered Replacement Homes. Under-occupying tenants will be offered a new home with one additional bedroom above their need. There will be no need for temporary accommodation – tenants will have one move only to their new home.

Secure tenants will remain secure tenants and their rents will continue to be set in line with other existing council rents. A homeloss payment of £4,700 per household will be made by the Council. New white goods, carpets and curtains will be provided in their new homes.

Buy-back of existing Leasehold and Freehold Interests

To achieve vacant possession, it has been recognised to be in the interests of the Council and Capco for contracts to be entered into with owners under which they can either require the Council to buy their homes or to provide them with Replacement Homes.

Once there is a Satisfactory Scheme Planning Permission, SOS Consent and 106 Agreement the Qualifying Owner's (QO's) are to be encouraged to take up the Advance Purchase Offer. This is an agreement under which the QO agrees to sell its property when the Phase within which it is located is selected for development. The QO is to benefit from the right at any time to elect to sell (and will be paid 10% above market value) or to take a lease of a Replacement Home when available. It is to benefit from the terms agreed between the Council and Capco so that the consideration payable for the lease of the replacement home will be treated as 10% below market value. The QO is to commit its existing equity and the Council intends to seek to facilitate/use its influence to encourage a panel of lenders to assist the resident to raise an equivalent to its existing mortgage towards the cost of the replacement home. The Council is to provide the balance of the consideration through a shared equity scheme. No rent or interest will be charged on the Council shared equity element.

The Council will have agreed with QOs that it will cap the service charges for the new properties for 5 years. The costs of moving, valuation and legal advice will be funded by the Council. Capco have agreed to cap the service charge on the Council units (for Council tenants or retained by the Council) for the life of the head lease subject to indexation. The Council may need to fund a shortfall if the QO service charge increases above the cap.

Registered Provider (Housing Association) Ownerships

The Council will need to complete negotiations for relocation of the Registered Providers (RPs) who have long leases and properties on the estates. Assured tenants of the RPs will be offered the right to become Council tenants and stay within the new development.

Compulsory Purchase

Ultimately if agreement cannot be reached with existing tenants and owners the Council has agreed (subject to it being an appropriate use of such powers at the time) seek Cabinet authority to use its compulsory purchase powers to secure vacant possession of the Option Land. This is intended to be promoted on planning grounds. The Council also agreed (subject to appropriate considerations and Counsel's advice) seek authority to promote CPO to enable development within Seagrave Road and

within other parts of the Earls Court Regeneration Area within the Council's administrative boundary. In the latter two cases all costs will be borne by Capco, but in the case of the Option Land all costs will be borne by the Council or funded by Capco and recovered from the Council by deduction from the Advance Payments.

Notwithstanding the intention that compulsory purchase would be used as a last resort the parties have agreed to the appointment of an Independent Representative (IR). This is to be an individual (or firm which allocates an individual) with significant experience of re-housing tenants and occupiers and housing relocation and renewal schemes. Residents affected by CPO will be able to make representations to the IR who will have power to advise how the process may be managed in a way to impact less severely on the personal circumstances of that individual including providing assistance, altering the order of decant or the allocations but does not extend to an ability to defer the ultimate VP date.

The Council has also agreed to use its powers of appropriation (under planning legislation) as an alternative to compulsory purchase, including in respect of land owned by CapCo. Appropriation gives rise to rights to compensation. In respect of land currently owned by the Council and forming part of the Option Land, the Council will bear any costs. In respect of land owned by CapCo, it will be necessary to agree a scheme in advance of any appropriation, the overriding principle of which is that (a) the Council will not be exposed to any costs as a result of it and which provides for security to cover any exposure, and (b) security acceptable to the Council will be provided in advance.

Damages

The Council will be subject to a performance regime for delivery of vacant possession to agreed dates. If the Council can be shown to have failed to meet dates, due to matters within its control, then the Council will be liable for damages to Capco. These damages are capped at £10m (indexed at RPI). We have been told that Officers are satisfied that the performance dates are reasonable and achievable. If damages arise in excess of the cap they accrue and are payable through Compensation Overage in the circumstances set out below.

No damages will be payable, however, in respect of a failure to meet the performance regime in respect of compulsory purchase of non-Option Land.

Termination

Termination by the Council:

As well as termination for Insolvency or breach of the NAV requirements the Council can terminate if the Trigger Notice has not been served by the Trigger Notice Long Stop Date (see above), where the Advance Payments are not made, if the Replacement Home Accommodation Leases are not granted when due, where SOS Consent has not been obtained or where the Halfway Condition (delivery of Replacement Homes) has not been met.

The Collateral Agreement also covers circumstances where a challenge can lead to an entitlement to terminate.

Termination by Capco:

Capco can terminate where:

- no application is made to the Secretary of State within 5 months of the CLSA (or 4 weeks of the first Council meeting following exchange) or if Secretary of State Consent is not obtained within 12 months of the application having been made; or
- the Council has failed to complete any Time Critical Item by the expiry of the relevant period; or
- in relation to any Phase or CPO a cabinet resolution is not made or otherwise the CPO progressed within an agreed period; or
- the Council has not submitted a CPO to the Secretary of State for confirmation within 30 days of the making of the CPO; or
- in relation to any Phase the Council is able to confirm a CPO but fails to do so within two months of being enabled to do so; or
- one of the events occurs which would result in the Council abandoning a CPO; or
- the Secretary of State or any other confirming authority has either (i) decided not to confirm a Satisfactory CPO or (ii) has not within 12]months of the date on which the application was sent to the Secretary of State for such confirmation made a decision confirming the same; or
- the Council has failed within 1 month of the relevant notification of satisfaction to publish the required notices confirming the making of the CPO / General Vesting Declaration (GVD) or within 20 Wording Days to serve the relevant notice to effect entry as to third party interests or rights; or to a serve relevant notices (GVD); or
- otherwise fails to secure vacant possession of any CPO Land and to complete the Relevant Phase Transfer and the transfer of all interests and rights and New Rights by the relevant VP Date; or
- if appropriation does not go ahead according to an agreed timetable, or authority is not given, or (authority having been given) is not progressed; or
- if a Road Closure Order is necessary to enable a Phase to be developed in accordance with a Satisfactory Main Site Planning Permission and such road closure order will not be or has not been obtained (and is secure from Challenge) by the relevant VP Date; or
- the Council fails to perform its obligations in relation to the making of payments within 90 days of the same having been demanded in writing and becoming due; or
- where there is a material breach of the Council's other obligations and the Council has failed to remedy such breach within 90 days of notice.
- In the event of a valid Section 34 A application; or
- In the event of a successful challenge JR or Procurement Challenge to the Council's ability to enter into the CLSA.

The view taken is that as Capco can only terminate the whole agreement rather than a phase the breadth of the termination rights is consistent with the fact that Phases are brought forward at Capco's discretion.

In the event of termination the Council is to retain the consideration paid for Gibbs Green School and Farm Lane. It is to retain the £15m (originally paid under the Exclusivity Agreement but treated as part payment under the CLSA) save where the £10m is repayable in the circumstances set out above. All land transferred to Capco will be retained by them. All Existing Homes which have been vacated as a result of the occupant moving into a Replacement Home will be retained by Capco (and a lease granted to them as relevant). All Replacement Accommodation where a lease has been granted to the Council will be retained by the Council. The Council will retain all of the Advance Payments that proportionately relate to the Phases (land) already transferred to Capco. If Capco had acquired Existing Properties or had such properties transferred to it (as the Council can do in order to call on the indemnity but which it no longer intends to do) Capco would retain those properties but the relevant entitlement to reclaim costs relating to those properties would fall away.

If a "Refund Termination Event" (a public sector delay event) exists at the date of termination or where termination arises due to a failure to meet the Halfway Condition (failure to have built enough Replacement Homes) then the balance of the Advance Payments will be reimbursed to Capco. If there is no Refund Termination Event at the time of Termination the Council will retain whatever Advance Payments it holds.

There is also to be an audit of expenses and holding costs incurred which Capco would have been entitled to deduct from the Advance Payments (if not all made at that time).

Compensation Overage (or overage following termination):

In the event of termination and subsequent disposal by the Council of land which would have been caught by the CLSA within 5 years overage is payable where the land is sold for more than the combined cost to Capco of the attributable land payment and relevant proportion of the Replacement Home cost. This is set at a base level of 25% of the additional consideration. If the Council are liable to Capco for damages for breach but these have not been paid due to the LAD cap then the rate of overage is to be an additional 50% (in addition to the base 25%) of the excess consideration.

Longstop date

The final end date for the agreement is 2035. The Council will have received the full cash consideration (excluding any potential payments under overage arrangement) by the 10 anniversary of signature of the CLSA at the latest (subject to prior termination).

Fighting Challenges

It is recognised that there is a significant chance that a number of the decisions made by the Council on this project may be challenged. As a result we have advised you separately on such challenges. It has been agreed that such advice is outside the scope of this summary.

Independent evaluation of the commercial terms and best consideration.

Jones Lang LaSalle and PWC have been appointed to advise the Council in respect of negotiations and to provide the Council with confirmation that the overall transaction represents the best consideration that could reasonably be obtained by the Council. We are informed that a residual land value model has been used to arrive at a valuation for the land. This model has been adapted to reflect the deal and the scheme as it has evolved. We are further informed that a detailed model audit has been satisfactorily completed.

This firm and the Council's other professional advisors (in their respective capacities and as to their respective areas of expertise) have been closely involved in negotiating the terms of this transaction and have confirmed that they remain of the view that the agreement and arrangements when concluded will represent best consideration and an appropriate use of the Council's powers. A draft letter from Price Waterhouse Coopers is attached at Appendix 4. Final signed letters from advisors are to be attached to any cabinet report.

Note this is an overview and not a comprehensive report. Prominence is given to matters by reference to queries raised and to assist overall understanding rather than by reference to financial or legal importance.

SNR Denton UK LLP.