

# Cabinet

3 SEPTEMBER 2012

**LEADER**

*Councillor Nicholas  
Botterill*

**EARLS COURT REDEVELOPMENT AND  
STATUTORY AND WIDER CONSULTATION**

**Wards:  
North End  
Fulham  
Broadway**

This report sets out the structure of the Conditional Land Sale Agreement (CLSA), an agreement which would grant an option to the Capital and Counties Properties plc group of Companies (Capco) to include Council owned land including the West Kensington and Gibbs Green Estates (the Estates) in a comprehensive redevelopment scheme.

The report also includes an analysis of the statutory and wider consultation on the Council's proposal to enter into the CLSA with Capco.

**CONTRIBUTORS**

Executive Director of  
Housing and  
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DLDS  
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**HAS AN EIA BEEN  
COMPLETED?  
YES**

**HAS THE REPORT  
CONTENT BEEN  
RISK ASSESSED?  
YES**

**Recommendations:**

- 1. That the Cabinet note and consider the Analysis of Consultation Responses (Appendix 5) regarding the recent statutory and wider consultation.**
- 2. That the Cabinet note and consider the Equalities Impact Assessment (Appendix 12) prepared in respect of the proposed decisions which are the subject of this report.**
- 3. In light of the Analysis of Consultation Responses and the Equalities Impact Assessment and having regard to the regeneration benefits summarised in this report, that the Cabinet should agree that it is willing to enter into a Conditional Land Sale Agreement (CLSA) and relevant associated documents as set out in paragraph 6.12 of this report, with EC Properties LP, part of the Capital and Counties Properties plc group of companies (referred to as Capco within**

**the report) to include the West Kensington and Gibbs Green Estates (the Estates) in the proposed comprehensive redevelopment scheme.**

- 4. That approval is given to include the Tenant and Leaseholder/Freeholder Assurances within the agreed CLSA.**
- 5. That the Council approve the disposal to EC Properties LP (Capco) of land formerly occupied by Gibbs Green School within the overall CLSA on terms set out in this report, with the disposal proceeds to be applied to a replacement educational facility.**
- 6. To approve the disposal to EC Properties LP (Capco) of land at 11 Farm Lane within the overall CLSA, as set out in the report.**
- 7. To authorise the Executive Director of Housing and Regeneration to prepare an application for the Secretary of State's consent for the necessary disposal of Housing Revenue Account (HRA) land, for submission to Full Council and appoint supporting advisors necessary to help secure such consent.**
- 8. To give delegated authority to the Executive Director of Housing and Regeneration in consultation with the Executive Director of Finance and Corporate Governance to purchase leasehold and freehold interests situated on the land (Estates), included within the CLSA, by agreement up to a cumulative value of £15m funded from the Decent Neighbourhoods Fund and appoint advisors to support these acquisitions.**
- 9. To approve the 4 year budget as set out in section 9 funded from the Decent Neighbourhoods Fund and provide the Executive Director of Housing and Regeneration with delegated approval to finalise the allocation of resources within this budget envelope.**

**10. That capital receipts arising from the CLSA are used to cover costs of disposal and those incurred in delivering the project and that the portion received in respect of land and properties currently held within the Housing Revenue Account is reinvested (so far as lawfully possible) in housing and regeneration, including:**

- **To fund capital expenditure on area-based improvements that help the Council achieve its corporate objectives;**
- **To develop or acquire new affordable housing to meet identified housing needs, including where appropriate by the extension of properties;**
- **To fund tenant incentive initiatives (qualifying as capital expenditure) that free up council housing which is in demand for those in housing need (e.g. for larger family accommodation);**
- **Subject to the Council ensuring that its statutory housing responsibilities to meet housing needs are performed, to use receipts to reduce HRA or General Fund debt where this is identified as a priority, and where repayment of the debt is of net financial benefit to the Council's HRA or General Fund;**
- **To invest in capital expenditure on planned maintenance of the Council's current housing stock until this is fully funded by the HRA revenue account.**

**11. To authorise the Executive Director of Housing and Regeneration to consult on the draft Earl's Court Local Lettings Plan and Re-housing policy.**

## **1. INTRODUCTION**

- 1.1 The proposed development of the Earls Court Exhibition Centre and Lillie Bridge Depot presents an opportunity for the Council to include the West Kensington and Gibbs Green Estates within the comprehensive redevelopment scheme, as identified in Appendix 1.
- 1.2 The Estates could be included through a CLSA between the Council and EC properties LP (referred throughout the report as Capco). Broadly speaking, land would be transferred to Capco in phases, but only when new replacement homes are built in advance, (meeting residents' needs), to replace the current 760 properties on the Estates. The Council would receive a 995 year leasehold, (a virtual freehold), in respect of the replacement homes.
- 1.3 The Cabinet considered and endorsed a report on 23<sup>rd</sup> April 2012, which outlined the provisional terms negotiated for the CLSA. Officers confirmed that those provisional terms could be recommended for acceptance, providing no new material issues arose in the final phase of the detailed negotiations. Officers have now concluded detailed negotiations and confirm that the terms of the CLSA remain ones which can be recommended.
- 1.4 This report:
- Explains the vision, policy context and background to the possible comprehensive redevelopment of the Earls Court area.
  - Reviews the timetabling of the scheme and the planning process.
  - Summarises the history of discussions and engagement with estate residents.
  - Analyses the consultation responses received during the recent Section 105, Housing Act 1985 and wider consultation (building on the interim findings included within the 23<sup>rd</sup> April 2012 report).
  - Outlines the terms of the CLSA
  - Explains officers' reasons for recommending that the Council should enter into the CLSA with Capco.

## **2.0 VISION AND POLICY CONTEXT**

### **2.1 Vision**

- 2.1.1 Officers recognise that any major regeneration scheme of this sort involves uncertainty, anxiety and disruption for current occupiers. Residents in North Fulham and West Kensington have a strong sense

of community and pride in their neighbourhood. Current social housing on the Estates adequately meets the needs of most residents.

- 2.1.2 Officers believe that the redevelopment of the Earls Court area provides a chance to build on these solid foundations by attracting a substantial amount of new investment to the neighbourhood and the Borough more generally.
- 2.1.3 That investment has the potential to increase and improve housing provision (including affordable housing) and to give rise to new shopping, leisure, educational and healthcare facilities. If planned properly, the redevelopment would create a better neighbourhood environment, and would provide local residents with new open spaces and parkland. It could bring many new job and training opportunities to help ensure that everybody living in the area has the chance to get on in life. It could ensure that the neighbourhoods around Earls Court are better connected so that people feel part of a shared community. Overall, the redevelopment provides a once-in-a-generation opportunity for residents to benefit from new housing and facilities, and for housing and employment growth.
- 2.1.4 The Council is committed to delivering a Borough of Opportunity and wants all residents in the Borough to have the same opportunities: the same opportunity to send their child to a good school, to live in a safe and pleasant neighbourhood with access to good quality healthcare and leisure facilities; the same opportunity to get on in life by taking up new or better job and training opportunities. The redevelopment offers a vital chance to advance these aims.

## **2.2 Policy Context**

- 2.2.1 The Mayor of London's London Plan sets out the planning requirements for an integrated economic, environmental, transport and social framework. The London Plan has 33 'Opportunity Areas' of which three are in the London Borough of Hammersmith and Fulham. Along with White City and Old Oak, the Earls Court West Kensington Opportunity Area is one of these Opportunity Areas. As such, it represents a key opportunity for London to accommodate new housing, commercial and other development.
- 2.2.2 The Council's vision for the Earls Court West Kensington Opportunity Area to regenerate the local economy and provide new housing is identified in the Council's Local Development Framework Core Strategy. The Earls Court West Kensington Opportunity Area is one of the Council's five key regeneration opportunity areas for growth in the Borough. The Council have also identified the Earls Court West Kensington Opportunity Area as a key theme within its Corporate Plan (October 2009) to regenerate the Borough.

2.2.3 In addition, the scheme is identified in the Council's Borough Investment Plan (December 2011) and Draft Housing Strategy (May 2012). The Council's comprehensive approach to regeneration is aimed at tackling the physical fabric of neighbourhoods, making them better places to live and work; and addressing high levels of deprivation.

### **3.0 BACKGROUND AND HISTORY**

3.1 The proposed comprehensive redevelopment scheme covers an area of approximately 73 acres<sup>1</sup> within only three principal land-holdings (shown at Appendix 1). The principal landowners are:

- Capco, leaseholders of Earls Court 1 and 2 and freehold owners of the Seagrave Road car park site.
- Transport for London (TfL), freeholder of the Lillie Bridge Depot and Earls Court 1 and 2.
- The Council, freehold owners of the West Kensington and Gibbs Green Housing Estates, including the site of the former Gibbs Green School.

3.2 The proposed comprehensive redevelopment scheme sits across the boundary of the Borough's of Hammersmith and Fulham (LBHF) and Kensington and Chelsea (RBKC).

3.3 Capco and TfL have been discussing the possibility of a redevelopment of their land holdings for some considerable time and the Council has the opportunity to sell its land to Capco creating a larger and more comprehensive development opportunity.

#### **3.4 The West Kensington and Gibbs Green Estates**

3.4.1 The Estates occupy an area of approximately 21 acres along the western length of the Earls Court buildings and the Lillie Bridge Depot. The Estates comprise 760 homes, the two tenant halls, an empty nursery building, the former Gibbs Green School and highway at Mund Street.

3.4.2 531 of the homes on the Estates are owned and rented by the Council and there are 171 properties owned by leaseholders/freeholders which were originally purchased from the Council under Right to Buy. There are also 58 social rented Housing Association (HA), properties on the estate, which have been developed piecemeal over the past 30 years, with the sites sold by the Council to the three HAs on long leases. These three HAs are Family Mosaic HA, London and Quadrant HA and Shepherds Bush HA.

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<sup>1</sup> Includes Seagrave Road Car Park Site and excluding Farm Lane

3.4.3 A breakdown of the tenure and property type of the residential properties on the Estates can be found in table 1 below:

**Table 1 – Tenure and property type table as at 23<sup>rd</sup> April 2012**

	1 Bed Flat	1 Bed House	2 Bed Flat	2 Bed House	3 Bed Flat	3 Bed House	4 Bed Flat	4 Bed House	TOTAL
Council	163	0	212	0	46	75	8	27	531
Leasehold/ Freehold	21	0	85	0	24	29	2	10	171
Housing Association	4	3	6	13	0	25	0	7	58
Total	188	3	303	13	70	128	10	45	760

3.4.4 The Estates are now between 40 and 50 years old and lie within the North Fulham area. In 2010, the area fell within the 20% most deprived areas in England, as defined by the Index of Multiple Deprivation.

**Table 2 – Table of Deprivation**

Deprivation indicator	The Estates	Borough Average
% of working age population on Jobs Seekers Allowance, Income Support, Incapacity Benefit OR Employment and Support Allowance	24.9	13.3
% of all tenants (Council and private) on Housing Benefit	63.2	27.5
Average household income of a household with a dependent child	£16,905	£22,105
Rate of ASB per 100 residents	6.6	3.5
% of tenants classified as overcrowded (based on Housing Benefit/Council Tax Benefit claimants only)	14.9	12.8

### 3.5 Transport for London and Network Rail land ownerships

3.5.1 Officers understand that, in order to deliver the comprehensive redevelopment scheme, Capco have to reach agreement with TfL for the treatment of their land ownerships and or TFL agree to bring forward their sites for redevelopment in line with the masterplan. In respect of Capco reaching agreement with TfL the Council believe that the following points will need to be addressed:

- Capco needs to agree a renegotiation of the term of their existing leases from TfL on Earls Court 1 and 2, identified in Appendix 1 in order to make the land capable of redevelopment.
- The Lillie Bridge depot currently contains an engineering depot and a train stabling facility. The engineering depot

will need to be re-located to enable the development to proceed. The train stabling facility could remain but would require a design solution.

- Officers understand that negotiations are ongoing between Capco and TfL.

3.5.2 It would also be desirable for Capco to reach agreement with Network Rail for developing over the West London Railway Line. Officers understand that negotiations are also ongoing in this regard.

### **3.6 The Planning and Masterplanning processes**

#### **3.6.1 London Plan and Core Strategy**

3.6.1.1 The potential comprehensive development area including the Earls Court buildings, Lillie Bridge Depot, the Estates and Seagrave Road car park, was identified as an Opportunity Area in the London Mayor's Replacement London Plan in 2009. The London Plan, including the Opportunity Area, was adopted by the Mayor early 2012.

3.6.1.2 As has been noted, the Council's Core Strategy also recognises the development site and includes policies encouraging its comprehensive development. The Core Strategy was adopted in October 2011.

#### **3.6.2 Supplementary Planning Document**

3.6.2.1 The Council, RBKC and the Greater London Authority commenced work on a Supplementary Planning Document (SPD) in September 2010 for the Opportunity Area. The purpose of the SPD is to explore development options for the site and produce a framework for acceptable development interpreting existing planning policy. Consultation on the SPD has been undertaken and the SPD was adopted by the Council on 19<sup>th</sup> March 2012, by RBKC on 22<sup>nd</sup> March 2012 and is with the GLA currently for consideration.

3.6.2.2 Capco have provided the Council with an indemnity against any claims for statutory blight, which might arise from the adoption of the SPD.

3.6.2.3 On or about 19<sup>th</sup> June 2012, the Council received an application for permission to apply for judicial review of the decision to adopt the SPD, brought by the tenants and residents' associations of the two Estates (the TRAs). This is being opposed and is the subject of privileged confidential legal advice; the judicial review is therefore not discussed further here.



### 3.6.3 Masterplan and Planning Applications

3.6.3.1 Capco employed Terry Farrell & Partners to prepare a masterplan for the comprehensive development site, including the Estates, in June 2010. The masterplan proposal is for a residential mixed-use scheme of 10.1m square feet above ground (excluding the Seagrave Road site). The masterplan is centred on the concept of building four new 'villages' and a new high street linking North End Road and Earls Court tube station.

3.6.3.2 The masterplan proposes approximately 7,583<sup>2</sup> new homes including 760 replacement homes and an estimated further 740 additional affordable homes, new offices and commercial activities, new education and health facilities including a new primary school, new play and recreational facilities, (including a new linear park) and a new high street with shops, cultural and community activities.

3.6.3.3 Capco submitted three planning applications in June 2011, based on the Farrell masterplan.

- Two outline applications were submitted: one to RBKC (Application 1) and one to the Council (Application 2) for the main development site, excluding the Seagrave Road site.
- A detailed planning application was also submitted to the Council for the Seagrave Road car park site. That application was recommended for approval by PAC on 16th February 2012, subject to finalising Section 106 provision and there being no contrary direction from the Mayor of London. The Section 106 agreement was completed on 30<sup>th</sup> March 2012 and planning permission issued on the same day. The judicial review period for this decision has now expired.
- It is proposed that Application 2 will be taken to LBHF's Planning Committee on 12<sup>th</sup> September and Application 1 will be taken to RBKC's Planning Committee in the near future.

## 4. **CONSIDERATION OF OPTIONS**

4.1 Since early 2009 the Council, Capco and local residents have been considering the possible inclusion of the Estates within the wider comprehensive development. This has included assessing the benefits that could be created from such inclusion, the safeguards that would

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<sup>2</sup> The current planning application is for 5,845 homes in LBHF and 930 homes in RBKC, (i.e. 6,775 homes in total), plus separate planning application for 808 homes in Seagrave road car park (i.e. 7583)

need to be secured for residents and the terms under which the Council's land and properties could be included.

#### 4.2 Collaboration Agreement

4.2.1 In October 2009, the Council signed a Collaboration Agreement with Capco and TfL to provide a framework, within which the three parties could explore the full potential of the scheme and negotiate terms, under which land agreements might be entered into. TfL is of the view that the Collaboration Agreement expired in December 2011. Although the Council accepts that the Agreement has expired, it has not needed to determine the precise date of expiry, as discussions are on-going between the parties through the Landowners Board.

#### 4.3 Exclusivity Agreement

4.3.1 In July 2011, the Council signed an Exclusivity Agreement with Capco. Capco paid £15m to the Council in return for the right to negotiate exclusively with the Council, to ascertain whether final terms of a CLSA could be concluded. £5m of this is non-refundable and £10m is refundable if the Council does not enter into the CLSA<sup>3</sup>. The original term of the agreement was for one year from 29<sup>th</sup> July 2011 and in view of the progress made with negotiations, the parties have entered into an agreement to extend this until the end of January 2013.

#### 4.4 Estate Regeneration Options Analysis

4.4.1 In order to explore fully the rationale for the redevelopment of the Estates and understand whether inclusion of the Estates offers the optimum way forward, the Council instructed Jones Lang LaSalle (JLL) and Amion Consulting to prepare an options appraisal (the Economic Appraisal).

4.4.3 The Economic Appraisal (attached at Appendix 2) considered 4 options for the Estates. These are set out in the table below

**Table 3 – Options explored in the Economic Appraisal**

<b>Option</b>	<b>Detail</b>
Option 1	Maintain the Estates as they are. This could include a transfer to a housing association, or a resident-

<sup>3</sup> If the Council does enter into the CLSA, this money will also be refundable if the Council does not comply with it's obligations under this agreement.

	controlled private registered provider.
Option 2	Continue to maintain the Estates and develop plots of land within the Estates.
Option 3	Redevelopment of the Estates only (not as part of the comprehensive redevelopment plans). The existing properties on the estate would be demolished and replaced with new housing and other supporting uses.
Option 4	Inclusion of the Estates within the Earls Court redevelopment scheme.

4.4.4 The Economic Appraisal concludes that the inclusion of the Estates within the wider redevelopment scheme is the best option in terms of benefits for residents of the Estates and for the wider area, and that it offers the prospect of bringing, among other things, the following benefits to the area:

- 7,583 new homes
- 36,033 construction jobs<sup>4</sup>
- 9,528 permanent jobs<sup>5</sup>
- £99.5m per annum of additional local expenditure

4.4.5 On 7<sup>th</sup> November 2011 the Leader of the Council and the Cabinet Member for Housing made the decision to accept provisionally and endorse the conclusions contained within the Economic Appraisal subject to the outcome of further consultation.

**4.4.6 Members should read the Economic Appraisal in full.**

4.4.7 In its analysis, the Economic Appraisal makes the assumption that the comprehensive redevelopment scheme would be realised in full. This assumption is considered in more detail in section 6.7.2. below.

#### 4.5. Housing Stock Transfer

4.5.1 On 8<sup>th</sup> December 2009, the TRAs served notice on the Council proposing that the Estates be sold to a resident-controlled private registered provider. On the same date, the TRAs wrote to the Secretary of State for Communities and Local Government inviting him to make regulations for this purpose under section 34A of the Housing Act 1985. The Council met with the TRAs in January 2010 to discuss their proposal. (As yet, no regulations have been made under section 34A.)

4.5.2 The Council decided that it could not support the TRAs' proposal at that time. The Council wrote to the TRAs to explain this on 11<sup>th</sup> January 2010. The Council wrote in similar terms to the Secretary of State. In the letters the proposed stock transfer was described as 'premature'.

<sup>4</sup> Defined as person years of construction employment in Appendix 2

<sup>5</sup> Defined as new gross direct jobs in Appendix 2

This was because the 'potential opportunity' to which the redevelopment scheme gave rise had not been fully explored and evaluated by the Council. The Council took the view that it could not decide to support the disposal of the Estates to a resident-controlled private registered provider without first obtaining a proper understanding of the potential benefits and advantages of the comprehensive redevelopment scheme.

- 4.5.3 The TRAs have since established West Kensington & Gibbs Green Community Homes (WKGGCH) and are lobbying for the ownership of the Estates to be transferred to this community organisation.

#### 4.6 Past Consultation with Residents

- 4.6.1 Over the past three years the Council has been engaging and consulting with residents of the Estates through numerous newsletters, drop-in sessions, surgeries and exhibitions about the potential inclusion of the Estates within the redevelopment scheme.
- 4.6.2 Consultation and discussion have centred around the concerns raised by residents about the impact of the proposed redevelopment scheme on them. These concerns have been addressed through the development of Tenant and Leaseholder / Freeholder guarantees. These guarantees are included within the proposed CLSA and are intended to provide clarification and assurances for local residents.
- 4.6.3 The West Kensington and Gibbs Green Steering Group was set up in order to negotiate with the Council and Capco and to secure effective safeguards and benefits for residents. The Council has funded independent legal advice for this group over the past two years to ensure that residents had proper representation and advice during the consultation process and were able to discuss issues effectively.
- 4.6.4 A chronology of the consultation process (up until the recent consultation addressed immediately below) is attached at Appendix 3.
- 4.6.5 During this time there have also been separate consultations by the Local Planning Authority with residents about the proposed development.

### 5.0 SECTION 105 AND WIDER CONSULTATION

- 5.1 From 6<sup>th</sup> January 2012 to 12<sup>th</sup> March 2012, the Council undertook a formal consultation with residents on whether the Estates should be included in the proposed comprehensive redevelopment scheme. This formal consultation also satisfied the requirements of section 105 of the Housing Act 1985 in relation to the secure tenants on the Estates.

- 5.2 A total of approximately 30,000 consultation packs were distributed to the Estates and across the wider area (defined by Hammersmith Road to the North, Fulham Palace Road, New Kings Road to the South and Warwick Road and Finborough Road to the East). The consultation pack is included at Appendix 4.
- 5.3 A progress report on the consultation and on the responses received was considered by Cabinet on 23<sup>rd</sup> April 2012. Officers have now completed a full analysis of the consultation responses, together with comments received after the 23<sup>rd</sup> April Cabinet. Officers have also commented on and responded to concerns raised where appropriate. The analysis is not summarised here. Rather, **Members are directed to Appendix 5, which Members should read in full.**

#### **5.4 The housing stock transfer option**

- 5.4.1 During the consultation on the future of the Estates, the TRAs and WKGGCH submitted their 'vision' for a housing stock transfer (first published on 8<sup>th</sup> December 2009), together with representations on the alleged advantages of this option as compared with the Council's proposal (see Section 5 of TRAs' response of 12 March 2012, attached as Annex 5 to Appendix 5, the Analysis of Consultation Responses).
- 5.4.2 In addition, 86% of those who objected to the Council's proposal in the recent consultation (575 individual consultees) supported a transfer of the housing stock to WKGGH.
- 5.4.3 Officers support some of the elements of the 'vision' and are in general supportive of the localism principles that underpin stock transfers. However, despite the support for a housing stock transfer, officers believe that the inclusion of the Estates in the redevelopment scheme is the better option overall. There are two principal reasons for this. First, officers consider that a number of the claims made in the WKGGCH 'vision' are unrealistic. Secondly, and more importantly, the Stock Transfer Option would prevent the Estates from being included in the redevelopment scheme, and officers consider that this would in turn significantly reduce the benefits that the redevelopment scheme would be likely to deliver. These two reasons are addressed in more detail below.
- 5.4.4 Overall, officers believes that the issue of a stock transfer to a body such as WKGGCH should be a consideration for the future, once the comprehensive redevelopment has been undertaken and the regeneration benefits realised. In particular, if the Estates are included in the redevelopment scheme, the Council would receive 995-year head leases for the replacement homes. The Council could transfer this interest to a body such as a WKGGCH once all of the new homes had been provided, thus allowing residents and the local area to gain the benefits of the comprehensive redevelopment scheme whilst also enabling local resident-led ownership of homes in the long term.

## 5.5 The WKGGCH 'vision'

- 5.5.1 WKGGCH make strong statements within their 'vision' about what the stock transfer option 'would' achieve. There would be 'an estate-based management and maintenance service tailored to meet individual needs' and staff 'would be out on the streets and patrolling the corridors' and 'things would be dealt with straightaway'. In addition, it is claimed that over time 'we would transform the corridors stairwells and outside spaces into safe and welcoming entrances; ... We would keep the concierge staff and give the big blocks on West Ken a facelift' and that the TRAs / WKGGCH 'would offer secure lift access for the blocks on Gibbs Green, using transparent lifts and shafts'.
- 5.5.2 As against this, the only reference to funding is the statement that '[t]here are ways of funding these and other estate-wide improvements that would avoid costs falling on leaseholders'. Officers do not agree. Officers consider that it would be very difficult to undertake such improvements without an increase to rents to service the necessary borrowing and/ or increases to service charges to tenants and leaseholders.
- 5.5.3 The Council has determined that the cost to simply to maintain these properties to the Decent Homes Standard over the next 30 years is likely to be approximately £60m. Any additional physical improvements would incur significant additional costs. For example, the cost of the type of lift, promised for the Gibbs Green estate could be in the region of £450, 000- £460, 000<sup>6</sup>, and cladding the larger blocks on the West Kensington estate would have significant cost implications.
- 5.6.4 In the past, housing stock transfers have typically been progressed by the local authority making an offer to the tenants and by the provision of a 'dowry'. However, Officers understand that in the currently constrained public sector funding climate there is unlikely to be a 'dowry' or other grant regime to support stock transfers where additional resources are required to support stock repair and improvement. Indeed it is worth noting that under the 2012 Housing Revenue Account Self Financing Determination the average debt per property across the Council was £19,988. In broad terms applying this average debt per property figure to the 531 council secure tenancies on the estates produces an indicative debt figure of circa £10 million. In the current economic climate, and with the current budgetary pressures that it is facing, it would not be feasible for the Council to provide the necessary funds and /or write off debt of this

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<sup>6</sup> This approximate costs range is taken from a feasibility study that was undertaken to understand the cost of installing a glass lift in a 5 story housing block on another estate in the Borough. Whilst the cost would of course be subject to all sorts of variables based upon the specific circumstances of the block this gives an indication of the cost range.

size, which would be needed to allow for the WKGGCH vision to be realised.

- 5.6.5 Further, Officers believe that to fund the costs of managing the Estates, WKGGCH would in all likelihood need to bring in an existing larger Registered Provider so as to allow economies of scale. This would in itself hinder the local element that WKGGCH is promoting in their 'vision'.
- 5.6.6 It is also stated in the 'vision' that WKGGCH 'would sort out overcrowding by moving existing tenants to bigger homes and by housing their grown up children – before taking in new tenants. And we would provide better choice and help for moving off the estates.'
- 5.6.7 Again, officers believe that this would be very difficult to deliver. It is not clear whether residents in larger homes that are under-occupied would be forced to move to smaller properties to allow overcrowded families to move into their homes. If this is not the case, and if WKGGCH are assuming that overcrowding can be tackled as and when void properties become available, tackling the overcrowding on the Estates (currently, 16%) may take a long time.
- 5.6.8 It is also premature for WKGGCH to state that they will be able to house the grown-up children of existing estate residents before taking in new tenants. This will depend on the 'offer' negotiated with the Council. The Council might well retain nomination rights and use void properties on the Estates to re-house priority residents on the Council's Housing Register. Officers also consider that WKGGCH cannot realistically claim that it will be able to provide better 'choice and help' for residents who are wanting to move away from the Estates when they own no other housing stock. (WKGGCH might in principle partner with a larger existing Registered Provider which might facilitate this, but as already noted this would undermine the claimed local element in the 'vision').

## 5.7 The benefits of comprehensive redevelopment

- 5.7.1 If the Council pursued the Stock Transfer Option then the Estates would not be able to be included in the redevelopment scheme.
- 5.7.2 This would mean that there would not be the provision of 760 privately-funded replacement new homes, nor would the Borough obtain all the other benefits that would flow from the comprehensive redevelopment scheme. As regards the former, the lifecycle costs of maintaining new homes would be lower than that of the (current) aging homes on the Estates.
- 5.7.3 On the assumption that the stock transfer did not give rise to any subsequent infill development on the Estates (which possibility is addressed below), and using the results of the Economic Appraisal, the

differences between the stock transfer option and the Council's proposal in terms of residential units, jobs, and employment floor space can be estimated as follows.

**Table 4 – Loss of Gross Benefits**

	<b>Option 1 Do minimum – either with or without Estate Stock Transfer</b>	<b>Option 4 Comprehensive redevelopment of Earl's Court Area</b>	<b>Difference – lost opportunity</b>
Gross direct residential units	2,868	7,583	-4,715
Gross direct construction jobs*	20,642	36,033	-15,391
Employment floor space (sq m)	30,063	201,397	-171,334
Gross direct permanent employment	1,287	9,528	-8,241

\*Persons years of employment

- 5.7.4 The Economic Appraisal estimates that, as compared with the option 1 (do minimum –either with or without Estate Stock Transfer), Option 4 (the comprehensive redevelopment scheme), would give rise to £99.5m additional local expenditure per annum (of which £40.9m would be retained in the local area). The overall net present value of a redevelopment without the Estates (Option 1) is estimated in the Economic Appraisal to be £20m, whilst the overall net present value of the comprehensive redevelopment scheme (Option 4) is estimated to be £3.8bn.
- 5.7.5 The TRAs / WKGCH argue in table 1 in Section 5 of their response that the Stock Transfer Option would lead to an increase in the supply of housing because there would be infill development. Even if there were infill development, this would not address the poor layout of the Estates. More significantly, officers consider that there would be few opportunities for infill development should the estates be transferred,
- 5.7.6 Option 2 of the Estates Regeneration Economic Appraisal assessed the opportunities for in-fill development to create additional housing and it was believed that 341 new homes could be built. This however, included larger land parcels, such as Gibbs Green School, Farm Lane and Lillie Road, which would not be transferred if a housing stock transfer were to occur.
- 5.7.7 Within Option 2, 9 smaller sites were identified, within the Estates boundary, as being capable of infill development. On the basis of 750 habitable rooms per hectare, it was determined that 57 additional units could be provided across these 9 sites. These infill sites were identified on the basis of their suitability for development by 'walking' the estate, liaison with Housing Authority and reference to the existing quality of the stock and likely planning constraints on change of use and intensification of land use.



5.7.8 The appraisal work conducted by Jones Lang LaSalle has determined that income from land disposal (capital receipt) of these infill sites could achieve circa £4m of income. The small scale of these opportunities and their in-fill nature within the existing estate does, however, mean that maybe a limited opportunity market for these sites. Outside of the financial viability issues, the small scale of this intervention means that there will be limited added value to the environment within the estates for existing residents and considerably less than the comprehensive redevelopment - it could be argued that an infill approach will reduce the living environment in the estates via increased density and reduced access to open space.

## **6. CONDITIONAL LAND SALE AGREEMENT (CLSA)**

6.1 If the Council's land is to be included within the wider comprehensive redevelopment scheme then the proposal is that the terms regulating the arrangements between Capco and the Council would be set out in the CLSA. The CLSA will set out in detail the steps that need to be undertaken in order for the land to be transferred to Capco. The Council would receive a 995 year head lease, a virtual freehold, in the properties provided as replacement homes.

6.2 The terms of the CLSA have been agreed between officers, supported by expert professional advice. Legal advice has been obtained from SNR Denton (Dentons) and Counsel, commercial advice has been obtained from Jones Lang LaSalle (JLL) and financial advice, best consideration and due diligence advice has been obtained from PriceWaterHouseCoopers. A summary of the CLSA can be found at Appendix 6. The core terms of the CLSA are detailed below.

### **6.3 The Offer to Tenants and Leaseholders/Freeholders – Estate Residents**

#### **6.3.1 Re-provision of existing homes**

6.3.1.1 The impact and implications of the process on local residents will be regulated by the Tenant and Leaseholder / Freeholder Guarantees, which are within the terms of the CLSA. It is proposed in the CLSA that all homes currently within the Estates will be re-provided to the Council, as part of any redevelopment scheme. This enables the Council to promise that existing residents of the Estates will be offered new accommodation within the new development.

6.3.1.2 Furthermore, the Council, from the outset, has required that existing residents should not be moved away temporarily while new replacement homes are built and that they will only incur one move. Although the process will be disruptive for local residents, this condition will help to safeguard existing communities and minimise community break-up. Consequently, land phases can only be

vacated and passed over to Capco, once new homes for residents in the affected phase have been re-provided elsewhere in the development area.

- 6.3.1.3 The Seagrave Road Car Park site is important and the only realistic option in achieving the one move promise. It provides a site for the re-provision of approximately 200 existing estate properties, without the need for any demolition of existing homes. This will allow the remainder of the re-provision to take place – in phases - without residents having to move away to temporary accommodation.
- 6.3.1.4 Re-provision in this manner is time-consuming and, given the scale of the project, the full re-provision of council properties is likely to take 10-15 years.
- 6.3.1.5 All of the new homes will be allocated through the Earl's Court/West Kensington Local Lettings Policy, which will be overseen by Director of Housing Options, Economic Development & Skills. The first draft of this policy is attached at Appendix 7 – Earl's Court/West Kensington Local Lettings Plan interim statement. It is anticipated the Council will be consulting with residents later in the year on this first draft and the final re-housing policy will be brought back to Cabinet for approval following consultation.

### 6.3.2 Benefits for Tenants

- 6.3.2.1 The Guarantees within the CLSA for Tenants are as follows:
- All secure tenants will remain secure council tenants and have the offer of a new home within the development, matched to their housing need.<sup>7</sup>
  - Under-occupying tenants will be offered a new home with one additional bedroom above their need.
  - Rents will continue to be set in line with other existing council rents.
  - A home loss payment of £4,700 per household will be made by the Council to all secure tenants who have been in their home for more than one year. This amount is set by the government.
  - There will be no need for temporary accommodation – tenants will have one move only to their new home.
  - New white goods, carpets and curtains will be provided in their new homes.
  - The Council will fund all reasonable costs of moving.
  - Tenants will have a dedicated re-housing Officer to help them through the process.

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<sup>7</sup> Please note if a residents need exceeds 5 bedrooms then other re-housing options will be considered.

- An occupational therapist will be provided if requested and necessary identified adaptations will be undertaken to the new home.
- Compensation will be offered for loss of a garden or private parking space, if the new home does not have these.
- The Guarantees will be extended to existing Housing Association Assured Tenants, should they wish to become Council tenants.

### 6.3.2.2 Benefits for Leaseholders and Freeholders

#### 6.3.2.2.1 The Guarantees within the CLSA for Leaseholders / Freeholders are as follows:

- Qualifying resident homeowners will be offered a new property in the development at a discount of 10%. Resident homeowners will be offered market value, plus 10%, (subject to a maximum of £47,000 set by statute) for their existing home.
- If after receiving a discount resident homeowners still cannot afford to purchase a home in the new development then the Council will meet the difference and hold this outstanding equity, but charge no rent or interest.. Resident homeowners will not be expected to increase borrowing on their mortgage to afford a home in the new development.
- Service charges for the new leasehold properties will be capped at their existing level for 5 years. Existing freeholders will have their service charge capped at £1,000 pa for the first five years.
- Resident homeowners who wish to be bought out and leave the area will be offered the market value plus 10%, subject to a maximum of £47,000 (unless they move under the Early Purchase arrangement).
- Homeowners will be able to choose the time when they wish to be bought out and move away up until the time when their property is required for development.
- Reasonable costs of moving, valuation and legal advice will be funded by the Council.
- Compensation will be provided for Decent Homes work which had been paid for and for which the full benefit had not been enjoyed by the time the property is required for development.
- Owners who have a demonstrable need to move away before the purchase contracts are released (as per 6.5.2) can be bought out for the market value under the Early Purchase arrangement.

## 6.4 The Structure of the Agreement

### 6.4.1 The Land

6.4.1.1 The land to be transferred under the CLSA is as follows (please see Appendix 1):

- The West Kensington and Gibbs Green Estates
- The former Gibbs Green School
- 11 Farm Lane

6.4.1.2 Capco have also indicated that they may wish to include Council-owned properties on Seagrave Road and Rickett Street within the comprehensive redevelopment scheme. At present, the Council has not received any plans to include these properties. However, should Capco come forward with detailed proposals for their inclusion, the Council will undertake a statutory consultation process with the affected properties. Following consultation the Council will make a decision on whether to include these properties<sup>8</sup>.

6.4.1.3 Should these additional properties be included, the Council will receive additional replacement properties within the development area and the tenants of these properties will be entitled to the tenant contract, i.e. the Guarantees described above in 6.3.2.1.

### 6.4.2 Trigger Date

6.4.2.1 The agreement is a conditional agreement for the sale of the Council's land. From the date of the agreement Capco will have a five year option window in which to decide whether they are able to and want to go ahead. This is to give Capco the opportunity to put in place required permissions and funding to proceed with the development. Once Capco decide to proceed, they serve a Trigger Notice on the Council. The land will transfer to Capco (or its subsidiary) in phases to be agreed with the Council, over time.

6.4.2.2 It is intended that the current momentum in the project and the financial outlays that Capco will have made on signing will mean they would be in a position to proceed well before the final Trigger date. However, the five year option window described above means there could be a delay in the commencement of the project up to 5 years from signing, up to 31.12.2017, as per illustration 1 in 6.4.4.3.

6.4.2.3 On signing of the agreement, and irrespective as to whether the Trigger Notice is eventually served, Capco will be required to purchase the Gibbs Green School site (subject to the council securing appropriate consents) and 11 Farm Lane, for a combined figure of £15m.

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<sup>8</sup> The occupiers of these properties have been informed about this possibility.

6.4.2.4 The Gibbs Green School Site is currently being used as a temporary site for Queensmill School secondary provision. Queensmill School moved to this site on a temporary basis whilst proposals for a purpose built school in White City are being pursued. Capco's early purchase of the Gibbs Green School will provide much-needed funds to provide secondary provision in White City. 11 Farm Lane is the site of a closed supported hostel. The decision to close the hostel was taken in February 2011.

#### 6.4.3 Early Termination provisions

6.4.3.1 Provisions have been negotiated in the Agreement to secure project momentum.

- Capco must serve the Trigger Notice within 5 years of signing the CLSA or no later than 9 months after 150 new affordable units (out of the total of 200 required under the terms of the Seagrave Road section 106 Agreement) are completed on the Seagrave Road site. If this is not done, the Council can terminate the agreement.
- If within 10 years of signing the agreement Capco have not provided the Council with 50% of the required replacement of social rent housing, then the Council can terminate the agreement. This is conditional upon any delay not being caused by a lack of performance by the Council. There is provision allowing Capco some additional time to make this hurdle if they have nearly done so by this date.

#### 6.4.4 Payment for Council Land

6.4.4.1 There are two elements to the Council's consideration for the land. These are new replacement housing<sup>9</sup> for the housing currently occupying the Estates and a monetary consideration of £105m<sup>10</sup>. Taken together, the cash receipt and the replacement homes are considered to have a value of between £220m and £289m depending on the valuation approach used and officers, relying upon the specialist external advice of JLL and PWC, are of the view that the deal under the terms of the proposed CLSA currently represents best consideration

#### 6.4.4.2 Replacement Housing

6.4.4.2.1 It is a condition precedent to the Council delivering vacant possession of the whole of the Estates that the Council will receive 760 homes in phases in replacement for the homes currently on the Estates. The Council would receive a 995 year Head lease, a virtual freehold, in the properties provided as replacement homes. These new homes will be tailored to existing residents' housing needs.

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<sup>9</sup> This is anticipated to form part of the planning obligations to be contained within the S106 agreement

<sup>10</sup> Including £0.5m for the Seagrave Road and Ricketts Street properties

Currently there are 589 social rent properties and 171 private homes. This will ensure that there will be no loss of social rented homes from the number, which currently exists. As land may be transferred in phases, it is not a requirement that all Replacement Homes are provided before any land is transferred.

6.4.4.2.2 Qualifying resident Freeholders and Leaseholders will be offered an affordable replacement home on an equity share basis.

6.4.4.2.3 The replacement housing should be provided on land within the redevelopment area that is within the Council's boundary. Any other sites can only be used with the agreement of both parties and with the agreement of any residents being offered property.

6.4.4.2.4 The new housing will be built to the following standards:

- 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.

6.4.4.2.5 During consultation and at the Cabinet Meeting of the 23<sup>rd</sup> April 2012, residents raised concerns about the size of the replacement properties being provided. Residents wanted an understanding of how the replacement homes would compare with the Parker Morris Standards, to which most Local Authority Housing adhered to between 1961-80, as the benchmark. To demonstrate these comparable standards, a comparison table has been produced and can be found at Appendix 8.

6.4.4.2.6 The re-provision must include 75 houses, 66 house equivalent homes (ground floor duplexes). The Council has also negotiated the same ratio of parking spaces for the replacement homes that may be granted to the developer, should they receive outline planning consent. Officers believe that this will mean that the number of car parking spaces provided for the 760 replacement homes should be approximately 456 spaces.

#### 6.4.4.3 Cash Receipt

6.4.4.3.1 The cash payment will be received as follows:

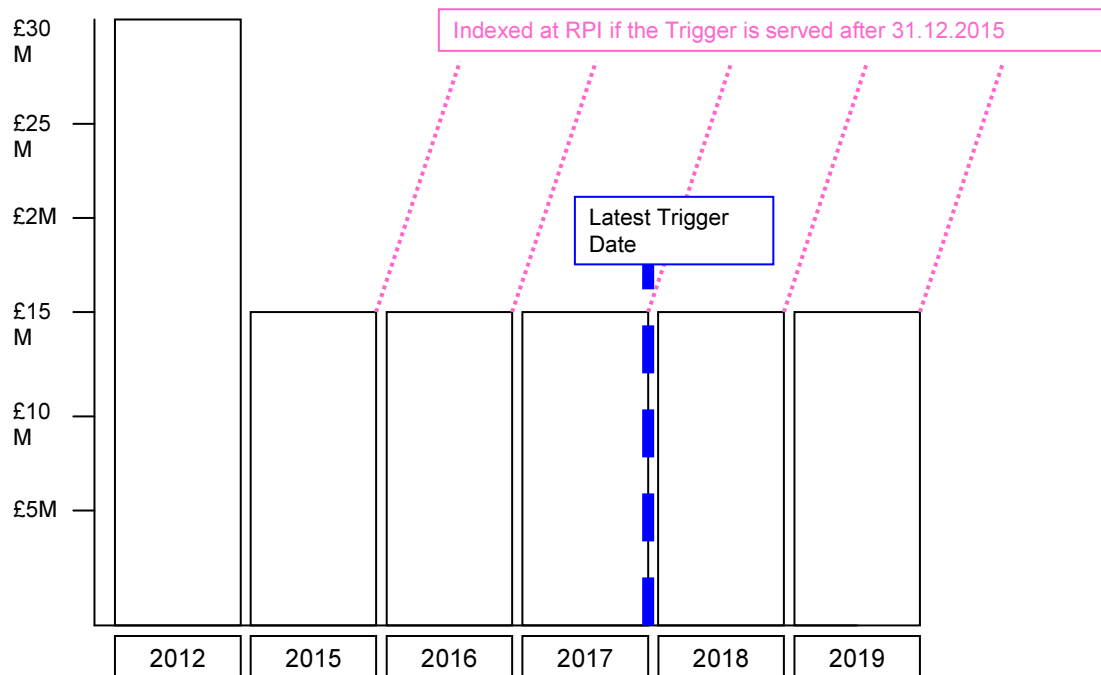
6.4.4.3.2 Exclusivity - £15m has been received in advance of signing the CLSA under the exclusivity agreement, of which £5m is non-refundable. Once Trigger is served this represents part of the cash consideration.

6.4.4.3.3 Other Sites - £15m for Gibbs Green School and 11 Farm Lane on the signing of the CLSA on the basis that the Council has complied with its disposal obligations. £12m of this will be used to construct a new educational facility at White City to which the current temporary use of the former school site will relocate.

6.4.4.3.4 Payment Schedule – Provided the Trigger Notice is exercised by Capco, the balance of the remaining £75m<sup>11</sup> is payable in 5 annual installments of £15m. If the Trigger is exercised after 31<sup>st</sup> December 2015 payments will be made and indexed by RPI from that date to ensure values are in line with that date. See illustration 1 below.

6.4.4.3.5 Overage - Overage will be payable to the Council for any consented floor space that is over 10.1m square feet.

**Illustration1- Payment Schedule**



**6.5 Capco funding assistance**

6.5.1 The Council will be required to buy back or otherwise determine existing leases and freehold interests across its own land in order to secure vacant possession.

6.5.2 The Council has agreed to buy back owners who wish to leave in the following ways:

<sup>11</sup> £74.5 million excluding the "Seagrave Houses"

- From the date of the submission of Capco's main application (June 2011) to buy back owners who have a demonstrable need to leave, for open market value.
- From the later of (i) an unchallengeable implementable planning permission on the main scheme, and (ii) satisfactory consent from the Secretary of State, to buy back all resident-owners, who wish to leave for open market value (in a 'no scheme world') plus 10% and all non-resident owners for open market value plus 7.5%.

6.5.3 Capco have agreed to make available funding for these buy backs on the following terms:

- A £7.5m facility will be made available by Capco from signing of the CLSA (to fund Early Purchase Agreements); this sum increases to £15m following the issue of secure Secretary of State consent for the sale and a secure satisfactory main scheme planning permission.
- From serving of the Trigger Notice Capco will be responsible for funding all buybacks required, if so required by the Council.

6.5.4 If these facilities are used the Council will have to refund Capco at a later date from the annual payment instalments for these purchases, as they are part of the cost of achieving vacant possession. The detailed risk analysis of these cash flows is being considered by the Executive Director of Finance and Corporate Governance and further commentary is included in the Executive Director of Finance and Corporate Governance's comments.

## 6.6 Long Stop Date

6.6.1 The final end date for the agreement is 2035. The Council will have received the cash consideration by 2020 (or 5 years after the trigger date) at the latest. If the agreement is to be terminated, then the parties will retain the properties that have been purchased.

6.6.2 There is a detailed termination procedure included within the CLSA. Where there is termination and not all the Option Land has been transferred to Capco, an overage regime will apply should the Council sell this land to a third party for more than it would have obtained from Capco (having regard to both the cash consideration and the value of the Replacement Homes). If this is the case, the Council will pay 25% of the additional consideration received. If at termination the Council owes damages to Capco for breach of its key commitments (largely relating to the process of securing vacant possession) this overage is increased to 75% until the damages are paid off.



6.7 Key Obligation on the Council – Securing Vacant Possession

6.7.1 Once the Trigger Notice is served Capco is entitled to serve notices on the Council requiring phases of land on the Estates to be vacated. The Council will only be expected to vacate and handover any phase of land after the replacement housing has been built to meet the needs (subject to limits based on the needs, as predicted at the date the CLSA is signed) of secure social rented existing residents, and to meet the entitlement of the resident leaseholders and freeholders in that phase.

6.7.2 Phasing Process

6.7.2.1 The draft CLSA explains in detail the process to secure vacant possession and transfer title in phases. As explained previously, it is anticipated that Capco will use the Seagrave Road site to enable the first phased re-provision. An indicative phasing plan has been included within the CLSA and is attached at Appendix 9. This plan is only indicative and the Council will be engaging with residents as the phasing plan develops. Capco are not restricted as to which phases are brought forward in what order, although a reasoned explanation for changes is required. Any proposal must always provide replacement housing in advance for the residents of a phase, before any land is transferred.

6.7.2.2 Capco will propose the phases on the Estates that they wish to acquire. When Capco propose a phase for development, they will have to produce a Phase Impact Assessment. This assessment will include a number of strategies that outline how the estate will continue to function as a place to live while that phase is developed. This will include how services will be maintained and how vehicular and pedestrian access will be maintained. The Council will not agree to the proposed transfer phase, unless they have agreed to the Phase Impact Assessment.

6.7.2.3 The CLSA does not require Capco to proceed with each phase. As already noted, the Economic Appraisal proceeded on the basis that Capco would in fact proceed with all the phases of the comprehensive redevelopment scheme. Opponents of the scheme have correctly pointed out that this is an assumption in the Economic Appraisal.

6.7.2.4 In deciding whether to enter into the CLSA, Cabinet members will need to evaluate carefully the risk of Capco being unable or unwilling to proceed with the comprehensive redevelopment scheme to its conclusion, e.g. because of financial difficulties, or a collapse in property values. Officers recognise that in a changing economy there is no such thing as absolute certainty and that the

risk of the project being jeopardised by a major change in the economic landscape in the coming years cannot be ruled out.

- 6.7.2.5 However, whilst the Council cannot require Capco to proceed with each phase, Capco's financial model is based on the comprehensive redevelopment being completed in full. Further, once Capco serves the Trigger Notice, it will be required under the CLSA to pay all the cash consideration (totalling £105m) in line with the profile outlined above.
- 6.7.2.6 If Capco does not proceed with each phase it will in all likelihood forego significant future profit from the delivery of the full masterplan and it would only in limited circumstances be entitled to a proportional refund of the consideration for the land. The cost to Capco in delivering the new homes is also likely to remain relatively small in comparison to the anticipated long-term development returns that Capco should achieve from delivery of the full masterplan.
- 6.7.2.7 The Council is also protected in that a phase of land cannot be transferred to Capco unless Capco has first provided the replacement homes for residents in that phase.
- 6.7.2.8 In addition to these commercial incentives the Council has negotiated non-performance termination clauses to protect residents and encourage Capco to develop all phases. These are detailed above in paragraph 6.4.3. Additionally, the CLSA gives the Council redress in the event that Capco does not achieve the halfway point condition, as per 6.4.3.1 in the relation to the development and phase drawdowns.
- 6.7.2.9 The risk of Capco being unable to complete the development cannot be entirely discounted. However, overall, and given the above, it is thought highly likely that once the building works on the Estates are commenced, Capco will have a considerable financial incentive to complete the comprehensive development in full.

### 6.7.3 Floor space Ceiling

- 6.7.3.1 The overall development needs to return 760 homes to the Council. The Council has agreed with Capco a ceiling floor space that reasonably represents 760 properties built to the size standards in the London Mayor's new Design Guidelines. In terms of agreeing a proposed phase the Council may ask for up to ten per cent additional replacement floor space within that individual phase to meet the identified need, but must stay within the overall allocation across the whole development.

#### 6.7.4 Provision of Houses

6.7.4.1 The re-provided dwellings in each new proposed phase must contain at least 60% of the number of council for rent houses in the phase to be decanted. If Capco cannot achieve this and no other acceptable solution can be found then the council can veto the phase. Additionally each replacement phase should include 40% of the number of existing council for rent houses as house equivalent homes (ground floor duplexes) with front doors to the street and gardens. Both these provisions are subject to the ceiling amounts of 75 replacement houses and 66 ground floor duplexes.

#### 6.7.5 Buy-back of existing Leasehold and Freehold Interests

6.7.5.1 To achieve vacant possession, the Council would seek to enter into contracts with owners under which they can either require the Council to buy their homes or to provide them with Replacement Homes. As explained previously, Capco (subject to certain triggers and qualifications) can be required to provide the Council with funding (at a cost) to meet these acquisition costs. This funding if utilised is then deducted from the annual payment instalments (as a cost of securing vacant possession).

#### 6.7.6 Registered Provider (Housing Association) Ownerships

6.7.6.1 The Council will need to complete negotiations for relocation of the three Housing Associations (HAs) who have long leases and properties on the Estates. Assured tenants of the HAs will be offered the right to become council tenants and stay within the new development, under the terms of the Secure Tenant Contract. The Council may agree to provide alternative sites within the Borough or to compensate the HAs for their land interests. Potential sites being considered include Maclise Road and Fulham Cross.

#### 6.7.7 Compulsory Purchase

6.7.7.1 Ultimately if agreement cannot be reached with existing tenants and owners the Council will need to utilise (subject to it being an appropriate use of such powers at the time) its compulsory purchase powers (CPO) to secure vacant possession. Importantly, the agreement does not and cannot impose an obligation to make and promote a CPO; it regulates the process by which appropriate authority within the Council is sought and (once received) progressed.

6.7.7.2 Once a phase has been agreed, Capco can serve the Council with a CPO Start Notice. This notice will trigger the Council's obligation to prepare the necessary documentation to take a report to full Council seeking a decision as to whether to seek a CPO for that phase.

6.7.7.3 As well as regulating the process for delivering 'clean' land by use of CPOs, the CLSA also sets out mechanisms for seeking authority to use appropriation and stopping up and closure orders.

6.7.7.4 The use of CPO and related powers will inevitably involve costs, both in connection with the costs of the process itself (e.g. legal and administrative). Because of the liability for compensation, the Council will be entitled to recover these costs from Capco, but (except in relation to land not owned by the Council) any recovered costs will be deducted from the consideration payable.

#### 6.7.8 Damages and Liabilities

6.7.8.1 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 identified key dates, due to matters within its control, then the Council will be liable for damages to Capco. The amount of damages that the Council will be required to pay is capped at £10m. If the damages exceed £10m they are only payable out of the overage referred to above. Officers are satisfied that the performance dates are reasonable and achievable.

#### 6.8 Best Consideration

6.8.1 Given the complexity of this regeneration scheme, JLL and PWC have been appointed to advise the Council in respect of negotiations and for the offer to the Council. A residual land value model has been used to arrive at a valuation for the land; this is based on the Council transferring each phase of the site with vacant possession; therefore the Council will have to incur the costs of achieving this. This model has been adapted to reflect the potential transaction and the scheme as they have evolved. The model has been the subject of extensive review by the Council's advisors. This has included:

- Advising on the commercial aspects of the potential transaction.
- Reviewing the financial model prepared by CBRE on behalf of Capco.
- Assessing the potential transaction for Best Consideration and value for money.
- A financial model audit conducted by Mazars.

6.8.2 Letters from JLL and PWC are attached at Appendices 10 and 11. Based on these the Executive Director for Finance and Corporate Governance is of the view that the CLSA currently offers best consideration.

## 6.9 Indemnity and Covenant

6.9.1 Capco have provided the Council with a separate indemnity against any blight claims up to £50m from the date of adoption of the SPD. The CLSA provides for the continuation of this indemnity and provides the Council with an initial £50m guarantee, based on a net asset value test, an initial £30m of which is secured as a first charge against specific assets. These provisions within the CLSA are released as payments are made to the Council following the trigger date.

6.9.2 The Council has undertaken financial due diligence on the assets in EC Properties LP and Earls Court Ltd to ensure they are adequate. This work has been undertaken by PWC on the Council's behalf. This work will be reconfirmed just prior to the CLSA being signed and will be reassessed every six months. The CLSA also allows the Council to do an interim assessment, should circumstances arise, which raise concerns regarding the value of the assets, as well as the ability for the Council to terminate, should the asset provisions not be complied with. Capco can also trigger an intermediate assessment if there has been a beneficial change in circumstances. Capco will provide a first fixed charge over £30m of assets to secure its liabilities under the CLSA. It should be noted however that it is only in certain circumstances that there is likely to be a material liability owed by Capco to the Council in the event of a Termination.

6.9.3 The delivery of Seagrave Road car park site assists in the early implementation of the scheme. Capco currently own 100% of the Seagrave Road car park site, they have entered into a conditional joint venture contract to sell a 50% share to private interests of family trusts related to the Kwok Family. Officers are aware that Thomas Kwok and Raymond Kwok were arrested by the Hong Kong authorities in March 2012 in relation to Sun Hung Kai properties, a Hong Kong public listed company in which the Kwok family are shareholders. The Council have sought assurances from CapCo as to their ability to redevelop the Seagrave Road car park site. CapCo have advised that their conditional joint venture agreement remains in place and that they have been assured by the Kwok Family trust that the above matters will have no bearing on the Family Trust's involvement in the Seagrave Road car park redevelopment. However, in the event that the arrangements between CapCo and the Kwok Family Trust do not complete, then CapCo will undertake the development directly.

## 6.10 Project Delivery Group

6.10.1 It is a requirement within the CLSA that the Council and Capco will establish a joint Project Delivery Group. The functions of the Project Delivery Group will be to act as a co-operative body between the

Council and Capco, to monitor and assist with the delivery of the Project in line with the CLSA and as the initial body for resolving any disagreements.

#### 6. 11 Right to Buy applications

6.11.1 The Council's 'offer' to resident homeowners within the redevelopment area applies to those who were resident and submitted a Right to Buy application prior to June 2011, the date of Capco's three planning applications based on the Farrell masterplan. Those residents who submitted a RTB application after this date are currently not eligible for the full resident homeowner 'offer', which includes an offer of a new home in the development area.

6.11.2 The Government increased the Right to Buy discount for secure tenants to a maximum of £75,000 in April 2012, and the Council has seen an increase in RTB applications since this date. The Council has noted a significant increase in RTB applications from the West Kensington Estate since the change in the maximum discount level. The Council will be monitoring this situation and will be developing a policy for dealing with RTB applications. The Council may consider serving a Demolition Notice (under the Housing Act 1985), which suspends the RTB obligations during a regeneration scheme, should the Cabinet decide to proceed with the comprehensive redevelopment.

#### 6.12 Associated documents

6.12.1 In order to facilitate the operation of the CLSA, the Council has agreed with Capco to enter into a number of supporting documents. These include the releasing by the Council at the appropriate time of rights currently held in relation to firstly the Seagrave Road site and later the Estates.

6.12.2 The Council has also agreed with Capco to enter into a Compulsory Purchase and Closure Order Costs and Compensation Agreement and part of the effect of this document will be to supersede the terms of the blight indemnity agreement dated the 16th March 2012.

### 7. **SECRETARY OF STATE CONSENT**

7.1 If and when a decision is made to sign the CLSA, the Council would need to apply for Secretary of State's Consent to dispose of the housing land it intends to sell within 5 months of signing the CLSA. The decision to apply for consent needs to be confirmed by a Full Council meeting. If consent cannot be obtained (either without conditions or to both parties' satisfaction) or if deadlines are not adhered to by the Council then the agreement will be terminated. In

this case the Council will need to re-pay £10m of the £15m received under the Exclusivity Agreement.

7.2 Assuming a satisfactory Secretary of State Consent is secured, then should the Trigger Notice not be served in the five year period, the agreement will be terminated. In that event the Council will retain £15m paid to it under the Exclusivity Agreement and the £15m payments made for Gibbs Green School and 11 Farm Lane, provided the Council has satisfied its disposal obligations under the terms of the CLSA.

7.3 Gibbs Green School and 11 Farm Lane are subject to an overage agreement, to ensure that the Council still receives best value for the sale if the development does not proceed.

7.4 In the event that the Trigger Notice has been served, Gibbs Green School will form part of the Overage Land (for the purposes of Scheme Overage) and no overage will be payable other than Scheme Overage. If Termination occurs before service of the Trigger Notice then the Council will be entitled to buy back Gibbs Green School and Farm Lane at the price for which they were acquired, plus indexation and some agreed costs. If the Council rejects this opportunity, the entitlement to overage falls away. If material development has taken place then overage will be payable (at the rate of 25% of profit over a 20% IRR).

7.5 It is not necessary for the Council to obtain formal consent from the Secretary of State for the disposal of land, because a “self award” has been made under the general consents to dispose of the site (which does constitute a school playing area) under paragraph 8 of the schedule to the school Playing Fields General Disposal and Change of use Consent (no 3) 2004. This self award was acknowledged by the Partnership for Schools (Department for Education) in September 2011. It is the officer’s opinion that the Council has the necessary consent to dispose, but should any additional consent be required, this will be obtained.

7.6 Furthermore, the Council has self awarded itself consent under the Academies Act 2010 since the land is wholly or mainly used as a school and its area is less than 8,000 square metres. This is following advice provided by the Department for Education and is in accordance with paragraph 4 of the schedule to the Academies General Disposal and Appropriation Consent (no.1) 2003 Order.

## **8.0 DECISION MAKING PROCESS**

8.1 If the Council enters into the CLSA, a number of key decisions will or may follow. These are detailed in the table below.

**Table 6 – Decision making timetable**

<b>Decision</b>	<b>Governance</b>	<b>Timing</b>
To apply to the Secretary of State for Consent to dispose of Housing Land	Full Council	March 2013 This needs to take place within 5 months from signing the CLSA.
To seek approval to commence a Compulsory Purchase Order if appropriate.	Cabinet	This will be on a phased basis over the duration of the project. It is not anticipated that this process will commence until 2013.

## **9. RESOURCES AND PROFESSIONAL ADVICE**

9.1 In addition to work on the project carried out by Officers who form part of the currently budgeted establishment Cabinet have to date approved the following additional resources for the project prior to the agreement of the CLSA:

**Table 7 – Cabinet approvals and professional fees to date**

<b>Cabinet Approvals for external advisors</b>	<b>JLL</b>	<b>Denton</b>	<b>Ashford<sup>12</sup></b>	<b>PWC</b>	<b>D Johnson<sup>13</sup></b>	<b>Total</b>
<b>Jul-09</b>	150,000	150,000				300,000
<b>Jun-10</b>			20,000			20,000
<b>Jul-11</b>	60,000	120,000	50,000	110,000		340,000
<b>Apr-12</b>	150,000	750,000	20,000	150,000		1,070,000
<b>Nov-11</b>					71,710 <sup>14</sup>	71,710
<b>Total</b>	<b>360,000</b>	<b>1,020,000</b>	<b>90,000</b>	<b>260,000</b>	<b>71,710</b>	<b>1,801,710</b>

9.2 This is a complex project and officers have undertaken a review of the resources that will be required after the agreement has been approved by Cabinet. The level of resources required will vary throughout the project, with the exact timing of detailed resource requirements depending on a large number of factors including the

<sup>12</sup> Ashfords have been providing the Residents Steering Group with legal advice to develop the tenant and leaseholder/freeholder assurances and subsequent contracts.

<sup>13</sup> Davies Johnson Ltd worked exclusively on negotiating the CLSA. Prior to this, Davies Johnson Ltd advised the Council on other matters and his time/costs spent negotiating the CLSA can not be differentiated.

<sup>14</sup> £71,710 was approved in November 2011, but actual payments made were £67,450



service of the trigger notice by Capco and the number of Leaseholders / Freeholders who opt to be bought out.

9.3 Following formal agreement of the CLSA officers will require additional resources to ensure a full project team can be put in place to enable successful delivery of the project. Officers have therefore set out below a proposed budget to 31<sup>st</sup> March 2013 (excluding the already approved costs of negotiating the CLSA prior to Cabinet approval) and for the subsequent three years. These projected resources have been factored into the indicative cash flows forecasts summarised in paragraph 12.11.3 of this report. The council will undertake a regular review of the resources in order to ensure they reflect the needs of the project throughout its lifetime and are fit for purpose. Expenditure will be reported on and budgets updated via the quarterly capital monitor, the corporate revenue monitor and via the Councils annual estimates process. The initial proposed costs are all expected to be of a capital nature and will be funded from the Decent Neighbourhoods Fund.

**Table 8 - Proposed capital budget for to 31<sup>st</sup> March 2013<sup>15</sup> and for the subsequent three years.**

Costs	2013	2014	2015	2016
	£	£	£	£
Project Team Costs (includes staff already approved in previous reports and transfer of relevant establishment posts – see analysis below)	627,648	643,339	659,423	675,908
Additional costs not covered by existing approvals of CLSA to signing post cabinet approval	99,000			
Ongoing project costs, including; - Local Office set-up and running costs - Communications, engagement, publicity, printing etc - Internal recharges - external advisors	300,000	205,000	210,125	215,378
Occupational Therapist Assessments	20,394	41,808	21,426	
Legal Fees post signing of the CLSA; includes allowance for defending challenges	120,000	1,160,813	1,189,833	1,219,579
CPO Costs	0	704,688	722,305	740,362
Stopping Up Inquiries		51,250	52,531	53,845
Financial Advice	25,000	25,625	26,266	26,922
<b>Total</b>	<b>2,993,042</b>	<b>2,832,522</b>	<b>2,881,909</b>	<b>2,931,994</b>

9.4 It should be noted that this budget excludes the direct costs of leaseholder buybacks. As noted these are hard to predict and a

<sup>15</sup> Excludes costs of CLSA to date as these are covered by existing approvals

separate recommendation has been included in this report to authorise an initial £15m tranche of funds from the Decent Neighbourhoods Fund for this purpose. This is commented on further in paragraph 12.10.7.

- 9.5 Cabinet has already approved £284,000 p.a for the current project team. As follows:

18<sup>th</sup> July 2011 - £168, 000  
23<sup>rd</sup> April 2012 - £116, 000

- 9.6 To ensure the successful delivery of the project and meet the Council's obligations under the CLSA, additional project team members will be required as identified in table 9 below, these costs are included in Table 8 above.

**Table 9 – Project Team costs**

Posts	Employment Status	Date of approval
Head of Area Regeneration/Project Director	Full Time	Part of Current Budget Establishment
Project Manager	Full Time	
Re- housing Officer	Full Time	18 <sup>th</sup> July 2011
Housing Officer	Full Time	18 <sup>th</sup> July 2011
Principal Finance Officer	Full Time	
Buy Backs Officer	Full Time	18 <sup>th</sup> July 2011
Re-housing Officer	Full Time	23 <sup>rd</sup> April 2012
Principal Legal Officer	Full Time	23 <sup>rd</sup> April 2012 <sup>16</sup>
Communications Officer	Full Time	23 <sup>rd</sup> April 2012
Regeneration Officer	Full Time	
Community Engagement Officer	Full Time	
Project Officer	Full Time	
<b>Total: 627,648</b>		

- 9.7 Due to the complexity of the project and obligations under the CLSA, external professional advice will be required to support delivery of the project, such as but not exclusively, specialist legal and property CPO advice, the initial costs of which are included in the above budget at Table 8. Such appointments will be commissioned in line with the

<sup>16</sup> The approval in April 2012 was for a Principal Legal Officer on a part time basis.

Council's procurement standing orders and will be specific appointments to meet key delivery requirements. These will be managed by the project team and reviewed to reflect the needs of the project throughout the project lifetime to ensure fit for purpose.

## **10. EQUALITY IMPLICATIONS**

- 10.1 As part of the recent consultation process the council invited residents to comment on the draft Equalities Impact Assessment (EqIA). The Council has updated the EqIA to reflect the comments received as part of this consultation process.
- 10.2 The EqIA is attached as Appendix 12 to this report. Section 149 of the Equalities Act 2010 requires the decision maker, i.e. the Council acting through its Cabinet, to have due regard to the goals in the Act as set out in section 149. Members will therefore need to consider carefully and evaluate the points made in the EqIA before deciding whether to proceed with the CLSA.
- 10.3 The EqIA describes the proposals; identifies the impacts on the "protected groups", i.e. those with protected characteristics under the legislation (age, sex, ethnic origin, sexual orientation, disability, etc); and explains how those impacts which are negative (for example, the need for disabled and old people to move home) can be mitigated, where this is possible.
- 10.4 To the extent that it is not possible for negative impacts on the protected groups to be mitigated, members must weigh the negative impacts against the positive ones, and must weigh in the overall balance those impacts which are negative against the benefits ('countervailing factors') sought to be obtained from proceeding with the CLSA. Subject to the decision being rational and lawful overall, it is for Cabinet members to decide what weight should be given to the countervailing factors.
- 10.5 In this case, the EqIA is quite a lengthy and complex document. Officers have devoted considerable time and attention to compiling it, and in doing so have addressed the points made by consultees during the consultation exercise on the impact of the Council's proposals on those with the protected characteristics under the 2010 Act.
- 10.6 The countervailing factors which members will need to weigh in the balance against the negative impacts identified in the EqIA are those identified in this report, namely the anticipated beneficial effects on the community as a whole of proceeding with the CLSA: the creation of new jobs, the benefit to the local economy, the construction of better quality housing with lower maintenance costs, and so forth. Those countervailing factors have already been discussed.

## 11. SUMMARY

- 11.1 As set out above in Section 5 above, the Council has consulted with local residents to seek their views on the Council's proposal to include the Estates within the redevelopment scheme. For secure council tenants on the Estates, this consultation also satisfied the requirements of section 105 of the Housing Act 1985. In reaching their conclusions on the recommendations within this report Members must carefully consider the Analysis of Consultation Responses (Appendix 5) that officers have prepared.
- 11.2 The consultation revealed that, on the Estates, a significant majority of consultees are opposed to the Council's proposal. When all Estates residents' views are considered there was a ratio of opposition to support of 4:1; when just secure tenants views are considered the ratio falls to 2:1.
- 11.3 As against this, a significant majority of consultees in the wider area supported the scheme (with a 7:1 ratio of support to opposition). Residents in the wider area were consulted as they will also be affected by the redevelopment, for example in terms of community facilities, public space, the potential for new jobs and disruption during construction. When the views of all consultees are considered, the proportion against the proposal (47%) is not much greater than the proportion in favour (45%).
- 11.4 Members must have careful regard to the views expressed by secure tenants when making the decision. Members should also consider the views of the other consultees on the Estates, and residents in the wider area. Despite the levels of opposition amongst secure tenants and on the Estates more generally, it remains open to Members to decide to enter into the CLSA if Members conclude that, overall, this is the best option. The Council conducted a consultation rather than a referendum. Whilst Members must carefully consider all the views expressed, Members are ultimately responsible for deciding what is the best overall for residents of the Estates, future secure tenants, other residents in the Borough and the Borough more generally. For the reasons summarised below officers have concluded that the comprehensive redevelopment scheme is the best option.
- 11.5 After the Council's proposal of including the Estates in the redevelopment scheme, the option that received the most support from consultees was the housing stock transfer option. As noted above Officers do not consider that this is an option that Members should consider pursuing at this time, primarily due to the fact that a housing stock transfer would significantly reduce the benefits that the redevelopment would be able to provide to the local area, the Borough and London as a whole.

- 11.6 One resident criticised the CLSA on the alleged basis that the Council is getting bad value, and indeed should not be treating with Capco at all. The bad value criticism needs to be considered in the light of the fact that the Council has used independent advisors of high repute to re-assure itself on the price that Capco will be paying. The criticism that the Council should not be dealing with Capco is perhaps more fundamental. Capco do not currently have the land interests that they need in order to realise the masterplan. In theory, an alternative masterplan for the area could have been realised by TfL and the Council acting in concert and seeking a development partner, with the necessary CPO powers available to be used to buy out Capco's interests. However, this option presupposes that TfL and the Council would have been willing to incur the tens of millions of pounds of development costs needed to commission their own masterplan and cover all other preliminary matters, entirely at their own risk. Officers consider that in practice this was unlikely to be a viable approach. Officers recommend treating with Capco because this is the most effective way of realising comprehensive redevelopment, without the Council risking significant public funds and becoming a lead developer.
- 11.7 Officers also believe that many (although not all) of the issues and concerns raised by residents on the Estates concerning the tenant and leaseholder / freeholder offers, the need to move home, and the new housing that will be provided can be addressed through further consultation and engagement. The recent consultation has shown a lack of understanding amongst individual residents about what will happen to them and what will be offered to them if the Estates are included in the redevelopment scheme. Officers would aim to tackle this through one-to-one meetings with estate residents to address individual concerns and ensure that residents fully understand how the comprehensive redevelopment will affect them.
- 11.8 In addition, Members need to bear in mind that the Council is offering Capco an *option* to purchase the Estates. Officers cannot guarantee that Capco will take up the option, and also cannot guarantee that Capco will build all of the permitted homes, and proceed with all the phases of the comprehensive redevelopment. However, as explained in section 6.7.2 of this report, officers believe that there is a considerable commercial incentive for Capco to proceed with and complete the comprehensive redevelopment scheme in full. The CLSA also gives the Council redress in the event that Capco does not proceed expeditiously with redevelopment phases.
- 11.9 Against this background, officers consider that Members can reasonably proceed on the basis that the comprehensive redevelopment scheme will in all likelihood be realised in full. The Economic Appraisal at Appendix 2 has assessed the benefits of this, and the amount of new housing (including affordable housing), jobs and economic development that would be likely to follow. Although the

TRAs criticised the Economic Appraisal during the consultation, officers consider that the Economic Appraisal can properly be used to assess the potential economic benefits of the comprehensive redevelopment scheme. Overall, the significant benefits identified in the Economic Appraisal provide powerful reasons to proceed with the CLSA. The current economic climate only serves to heighten the importance of measures that will stimulate the local economy and promote job growth.

- 11.10 In addition to the significant benefits identified in the Economic Appraisal, the consideration paid by Capco will provide much-needed funds to be reinvested into the Borough. Again, the current economic climate makes the receipt of such additional public funds particularly valuable. Whilst the exact net amount of cash available for reinvestment will depend on a number of factors, (including: the value and volume of leaseholder buybacks; the volume and value of sales of replacement "buyback" properties; and the final level of costs associated with the transaction), the current modelling gives an indicative range of net cash receipts after costs between £34million and £88million, assuming the trigger is served and no termination events occur. This provides a benefit of circa £5 to £13 million<sup>17</sup> to the general fund and circa £29million to £75million to the Housing Revenue Account<sup>18</sup>. The net funds received by the Housing Revenue Account will be reinvested for Housing and Regeneration purposes including the repayment of Housing Revenue Account debt. It will also be used to develop or acquire new affordable housing to meet housing need, as outlined in recommendation 10.
- 11.11 Not least given the above benefits, officers consider that the inclusion of the Estates in the redevelopment scheme would help to achieve a number of strategic aims for London, the Borough and RBKC.
- 11.12 Within the Mayor's London Plan (2011) the Earl's Court and West Kensington Opportunity Area has been identified as one of London's most important development opportunities. This is due to its potential ability to contribute significantly to achieving housing and job growth targets over the next 20-30 years. Both the Core Strategies for the Council and for RBKC contain planning policies specific to development in the Opportunity Area.
- 11.13 Officers consider that the comprehensive redevelopment of the Opportunity Area would contribute significantly towards meeting the over-arching vision of the Council's Community Strategy *Creating a borough of opportunity for all*, enabling local people to have a real stake in the area and share in its growing prosperity.

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<sup>17</sup> This is net of costs of £12m built into the model for funding a replacement school

<sup>18</sup> It should be noted that these are indicative figures produced as a result of a forecasting exercise and should not be taken as final confirmation of the value or timing of receipts

- 11.14 Officers also believe that the comprehensive redevelopment of the Opportunity Area significantly contributes towards meeting the vision and objectives detailed in the Draft Housing Strategy (2012). These include:
- Building a Housing Ladder of Opportunity
  - Deliver Major Economic and Housing Growth within our Opportunity Areas
  - Tackle Economic and Social Polarisation through the creation of more mixed and balanced communities where no one tenure predominates.
- 11.15 Members must also consider whether the terms of the CLSA are acceptable. The terms of the CLSA were reviewed at the 23<sup>rd</sup> April 2012 Cabinet Meeting. They are essentially unchanged. Members should nevertheless ensure that they fully understand the terms of the CLSA and the obligations on the Council as outlined in sections 6 and 7 of this report.
- 11.16 Finally, and as stated in section 10 of this report, Members will need to carefully consider and evaluate the points made in the EqIA before deciding whether to proceed with the CLSA. To the extent that the EqIA identifies negative impacts on protected groups that cannot be fully mitigated, members must weigh the negative impacts against the positive ones that the EqIA also identifies, and must weigh in the overall balance those impacts which are negative against the benefits ('countervailing factors') sought to be obtained from proceeding with the CLSA. Subject to the decision being rational and lawful overall, it is for Cabinet members to decide what weight should be given to the countervailing factors.
- 11.17 The ultimate responsibility for this weighing exercise lies with Members. For their part, officers consider that the benefits of proceeding with the CLSA outweigh the negative impacts, and that overall this represents the best option. On this basis, officers make the recommendations set out in this report.

## **12. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND CORPORATE GOVERNANCE**

### **12.1 Valuation of Earls Court Consideration and Valuation of site**

- 12.1.1 JLL and PWC have been involved, as the Council's advisors, in considering and negotiating the terms of this transaction. Signed letters from the Council's advisors are attached to this cabinet report in Appendixes 10 and 11.<sup>19</sup> Based on the figures, the Executive Director for Finance and Corporate Governance is currently of the view that the terms offer best consideration. The letters include a

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<sup>19</sup> The JLL letter is a "final draft", a further final letter will be issued when the CLSA is actually signed.

number of caveats / issues, the key ones are listed below in table 10, together with the actions that have been taken:

**Table 10 - caveats**

<b>Caveat / Issue</b>	<b>Action taken</b>
Duty of care letters over all input costs and revenues within the residual land value that have been provided by Capco's technical consultants including the valuation of the replacement properties for leaseholders (the intermediate units).	Letter received from CBRE and EC Harris  Lambert Smith Hampton have provided indicative open market sales values for the Councils replacement properties, a prudent approach has been taken and the lower, older Savills values as provided via Capco have been used where open market value is appropriate for valuing consideration <sup>20</sup> . JLL as part of their work on best consideration have also confirmed that the private housing sales rates used in the residual land value model are fair and reasonable.
Detailed model audit	Mazars have completed this work and concluded that the model meets its objectives and is capable of running the required sensitivities
Valuation of equity held in replacement leaseholder properties	The valuation of the equity held in the Leaseholder properties has been discounted in the indicative consideration figures below based on sales turnover on the Gibbs Green and West Kensington Estates over the last ten years.

<sup>20</sup> For the 171 replacement leaseholder / freeholder properties



<b>Caveat / Issue</b>	<b>Action taken</b>
<p>Clarify if any legal restrictions may be placed upon the re-sale of the intermediate homes, such as whether they can be sold as private homes on the open market.</p>	<p>There are no current restraints that would prevent this from happening. It should be noted that for properties held within the Housing Revenue Account the Council would require the receipt to be reinvested for Housing and Regeneration purposes or used for the repayment of HRA debt to prevent the monies having to be paid over to Central Government.</p>
<p>Capco should confirm that they will bear the risk on the completeness of the planning, site clearance costs and the costs associated with the continuity of occupation. The residual land value determined should not subsequently be revised to compensate.</p> <p>The parties accept that further design and cost plan development will continue until and beyond the submission of detailed planning applications for development phases and this will affect the programme, costs and values currently reflected in the financial model.</p> <p>Negotiations are still ongoing regarding the Section 106 obligations required by the scheme</p>	<p>There is no ability within the CLSA for Capco to transfer these risks or subsequently revise the consideration as a result of changes to these costs.</p> <p>It should be noted however that the CLSA does contain overage payable to the Council should the final consented gross internal area exceed that agreed as part of the master plan proposal.</p> <p>Likewise, there is an overage clause in place for Gibbs Green and Farm Lane, should the Trigger Notice not be served.</p>
<p>Notes 3,4 and 6 in PWC's letter refer to adjustments required to the residual land value as generated by the model</p>	<p>See paragraph 12.7.2 below, JLL have specified the cumulative impact of these amendments to the model in their letter. PWC have also considered the changes they have recommended when arriving at their opinion.</p>

12.1.3 It is important that the Council receives best consideration via the CLSA and there are a number of different approaches which can be taken to valuing the consideration we are receiving. Having given due consideration to the complexity of this regeneration scheme and following a workshop run by our advisors, JLL and PWC,

exploring the range of possible methods of valuing both the site and the consideration payable we have arrived - based on their advice - at the approach set out below.

- 12.1.4 It must be remembered throughout that the land valuation against which the consideration is being compared is based on the land being transferred to Capco with vacant possession. It should be noted that the figures detailed below are the result of a forecasting exercise and therefore should not be taken as confirmation of the final value or timing of the receipts.

## 12.2 Approach used to assess the Consideration

### 12.2.1 Cash consideration received under the Conditional Land Sale Agreement of £105m

- 12.2.1.1 £15m has already been received on the signing of the exclusivity agreement, on signing of the Conditional Land Sale Agreement this becomes part of the consideration for the land. A further £15m for Gibbs Green School and 11 Farm Lane will be received on signing of the Conditional Land Sale Agreement. The balance of the cash consideration is received in 5 equal annual instalments, the first being received on 31<sup>st</sup> December 2015 if the Trigger Notice is served on or before this date.

- 12.2.1.2 If the Trigger Notice is served after 31<sup>st</sup> December 2015 the first payment is due on service of the Trigger Notice with the four subsequent payments due on the anniversaries of the trigger date. If this happens the payments are indexed using RPI for the period between the month of December in the year in which the relevant advance payment would have been received as per paragraph 12.2.1.1 above and the index figure for the calendar month before the calendar month in which the payment is actually due as a result of the later service of the Trigger Notice.

- 12.2.1.3 The cash consideration received should therefore be discounted to allow for the time value of money between now and the projected date of receipts. A 6.6%<sup>21</sup> discount rate yields a discounted value for the cash consideration of £82m. A 9% discount rate would yield a value of £77m, this more prudent assumption has been used in the core scenario illustrated below.

## 12.3 Valuation of replacement social housing provided under the CLSA including replacements for homes belonging to registered providers

- 12.3.1 In order to obtain vacant possession of the land the Council has an obligation to re-provide the social housing.

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<sup>21</sup> Treasury nominal discount rate (with an allowance for inflation at 3%) based on a risk free return.

- 12.3.2 The Council would, in order to be able to provide vacant possession, have to meet the cost of building replacement homes.
- 12.3.3 Therefore the cost of the re-provision of the social housing has been used to value this element of the consideration as this is the bill the Council would have to pay.
- 12.3.4 It is important to note that this is different to the income assumed from the sale of social housing that has been added to the financial model when arriving at the residual land valuation of £226m as detailed in paragraph 12.7.2 The income added to the residual land value model is based on an “Existing Use-Social House Valuation” as this is what the scheme would make from the social housing if it was sold to another buyer due to the Council having re-provided the housing elsewhere, say by using the theoretical cash that would be paid to the Council instead of the replacement homes should they not be being provided on the scheme.
- 12.4 Valuation of the replacement leaseholder / ex freeholder properties in which the Council retains an equity share.
- 12.4.1 If the leaseholders / freeholders were not taking on a replacement property then the Council would have to buy back their current properties in order to gain vacant possession of the land. As the leaseholder / ex-freeholder has taken a share in a replacement property the Council has not had to pay the leaseholder / ex-freeholder cash for this cost of vacant possession.
- 12.4.2 This cost would be equivalent to the share of market value the leaseholder receives in a new property. Therefore the market value of the leaseholder / ex-freeholder share has been used to value this element.
- 12.4.3 The equity share retained by the Council is ultimately tradable at market value when the leaseholder chooses to sell the property as properties would be sold outright on the open market. This element has therefore been valued at market value. However this element is not fully liquid, hence the value has been discounted as, although properties change hands over time, some will be held by the same owner for a very long period of time. A discount of 35.9% has been applied to the Council’s equity share based on the turnover of properties on the Estates based on an average turnover excluding re-sales of 5 properties per annum over a period of 15 years<sup>22</sup>.

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<sup>22</sup> The Council’s equity share in the Leasehold properties has been discounted by 35.9%. The annual sales volumes have been based on the volume of sales of leaseholder properties in 1999-2011 on the West Kensington and Gibbs Green Estates. Average sales as per the Land registry were 5.92 per annum, after excluding properties that sold several times in the period the average turnover was 5 properties per annum. There are 117 resident leaseholders and freeholders currently on the estate. At the historic sales rate all these properties would be sold at some point in 23 years. Over 15 years, based on historic data it is likely that 75 of the 117 resident leaseholder and freeholder properties would be sold, realising 64.1% of the equity. Given that the development period is anticipated to be at

12.5 Valuation of replacement “leaseholder” properties which are owned by the Council as the leaseholder / freeholder has opted to be bought out.

12.5.1 These will be 100% owned by the Council. Therefore they have been valued at market value.

12.5.2 It should be noted that the Council will provide replacement properties for all tenants as per the Guarantees. There is a risk that should there be net overcrowding across the Estates, the gross internal floor area specified in the agreement would be insufficient to provide all the replacement homes. Therefore for the Council to keep its promises, there is a risk that some of the replacement “leaseholder” properties currently allocated for sale would potentially need to be used to house tenants. However the financial impact of this could be mitigated by selling other properties as they become void whilst maintaining the same volume of social housing. Given this mitigation a significant financial impact is unlikely to crystallise, the value of the consideration would be protected and the promises to tenants that they would receive new homes within the development would be kept.

12.6 Summary of consideration received when valued using the above methodology:

12.6.1 The approach used above yields a range of valuations for the consideration from £275m to £284m, the exact number depends on the number of leaseholders / freeholders who opt to be bought out as follows in table 11:

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least 10 years and that transactions will occur throughout this period this is considered by officers to be a reasonable assumption.

**Table 11 – Buy back sensitivities**

	<b>Illustrative Gross Consideration assuming all Leaseholders bought back (i.e. before costs)</b>	<b>Illustrative Gross Consideration assuming only non resident leaseholders are bought back (i.e. before costs)</b>
Cash Consideration: £105m discounted at 9% to allow for the phasing of payments <sup>23</sup>	£77m <sup>24</sup>	£77m
Non Cash Consideration:		
589 Replacement Social Homes <sup>25</sup> : property received	£103m <sup>26</sup>	£103m
Replacement leasehold / Freehold properties for 54 non residents <sup>27</sup> : property received	£32m	£32m
Replacement leasehold / freehold properties: all 117 resident: Leaseholders bought back. Note this also impacts on costs as shown in section 12.9 <sup>28</sup> : property received	£72m <sup>29</sup>	N/A
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties: resident: Leaseholder share <sup>30</sup> : see footnote	N/A	£48m
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties for residents: Council Equity Share in property	N/A	£24m
Discount Councils Equity share of Leaseholder buy backs <sup>31</sup>	N/A	(£9m)
<b>Total (Excluding costs)</b>	<b>£284m</b>	<b>£275m</b>

<sup>23</sup> These figures assume the inclusion of the additional properties on “Seagrave Road”, see PWC Letter in Appendix 11 for derivation of number

<sup>24</sup> A 6.6% discount rate would yield a value of £82m, this would increase the range of consideration to between £289m and £280m. Both calculations are based from May 2012 as per the April 2012 Cabinet report, changing the basis to September 2012 would increase both figures, so the more prudent approach has been adopted.

<sup>25</sup> Based on EC Harris costs used in residual land value model. The cost of replacing the social homes has been used as there is an obligation on the Council to provide replacement properties in order to be able to provide the site with vacant possession. Capco by providing the properties are effectively relieving the council of this obligation and are therefore paying the cost of these properties on behalf of the Council.

<sup>26</sup> Comprising £92.61m for the Council's 531 replacement social rented properties and £10.12m for the 58 replacement properties provided for the Housing Associations (Registered Providers) as per the Jones Lang LaSalle letter in Appendix 10.

<sup>27</sup> Currently valued at market value based on values provided by Savills via Capco, reviewed by JLL as part of their consideration advice and reviewed by Lambert Smith Hampton.

<sup>28</sup> Currently valued at market value based on values provided by Savills via Capco, reviewed by JLL as part of their consideration advice and reviewed by Lambert Smith Hampton.

<sup>29</sup> These leaseholders / freeholders would have to be bought out at a cost of circa £59m, this has been allowed for in the worst case cash flow scenario modelled later on in this note.

<sup>30</sup> Provision of these properties means that the Council does not have to fund the buyback of these leaseholders properties from the consideration. Therefore this forms part of the consideration as the land value is based on delivering the land with vacant possession and this would otherwise form a cost of achieving vacant possession.

<sup>31</sup> The Council's equity share in the Leasehold properties has been discounted by 35.9%. The annual sales volumes have been based on the volume of sales of leaseholder properties in 1999-2011 on the West Kensington and Gibbs Green Estate. Average sales as per the Land registry were 5.92 per annum, after excluding properties that sold several times in the period the average turnover was 5 properties per annum. There are 117 resident leaseholders and freeholders currently on the estate. At the historic sales rate all these properties would be sold at some point in the 23 years. Over 15 years, based on historic data it is likely that 75 of the 117 resident leaseholder and freeholder properties would be sold, realising 64.1% of the equity. Given that the development period is anticipated to be at least 10 years and that transactions will occur throughout this period this is considered by officers to be a reasonable assumption.

## 12.7 Valuing the land with vacant possession

12.7.1 A residual land value model has been used to arrive at a valuation for the land; this is based on the Council transferring each phase of the site with vacant possession therefore the Council will have to incur the costs of achieving this. This model has been adapted to reflect the deal and the scheme as they have evolved. The model has been subject of extensive review by the Council's advisors. This has included:

- Advising on the commercial aspects of the deal.
- Reviewing the financial model prepared by Capco.
- Assessing the deal for Best Consideration and value for money.
- A detailed model audit by Mazars and who have concluded that the model meets its objectives and is capable of running the required sensitivities.

12.7.2 The current residual land valuation model generates a valuation of £182m. However JLL have identified a number of items which they consider require adjustment.<sup>32</sup> These are detailed in JLL's letter in Appendix 10. After adjusting for these items JLL have proposed a base valuation of £226m. It is possible to make these adjustments in a number of different ways taking into account sensitivity analysis and variables, which again yield a range of values up to a maximum of circa £247m based on a 20% developers profit on the private for sale units in the model.

12.7.3 Farm Lane is not included within the residual land value model. Farm Lane enables the Council to meet its promises regarding replacement houses as well as enabling the main site to be decanted and built out over a shorter time frame. It can be argued that without this site the residual land value of the main site would decrease by more than the difference between the highest possible open market value of Farm Lane and the £5.7 million being received for Farm Lane as part of the overall consideration. Should the trigger not be served then the overage clause contained within both the Farm Lane and Gibbs Green former school site sale agreements is designed to ensure best consideration is in any event achieved, this includes an option for the Council to repurchase the sites from Capco at par<sup>33</sup>. Commentary on the consideration paid for Farm Lane is contained within Appendix 1 of the JLL letter contained in Appendix 10 of this report.

12.7.4 Additionally, Capco is also seeking to reach agreement on TfL's land holding in the development area. The Council understands that the commercial terms and risk transfer inherent in the proposed deal are different to the Council's proposed transaction. The

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<sup>32</sup> These are also referred to in notes 3, 4 and 6 in PWC's letter

<sup>33</sup> The Council would also be liable for Stamp Duty Land Tax if either Farm Land or Gibbs Green School was repurchased under the CLSA

Council's current understanding is that the terms of the TfL transaction are now not comparable to the Council's deal. It should be noted that it is likely that the CLSA will be signed before the TfL deal is concluded.

12.8 *Range of values generated by other methods of valuing consideration*

12.8.1 Taking into account sensitivity analysis and variables the consideration can be valued in a number of different ways giving a range of available values. We believe we have used the most appropriate method but other possible methods are expanded on here to illustrate sensitivities.

12.8.2 In addition to the approach used above it is possible to:

a. value all the properties at existing use<sup>34</sup>.

b. to value both the replacement social homes and the leaseholder equity in the resident leaseholder / freeholder replacement homes at cost.

12.8.3 These alternative approaches give a range of values as set out on the next page. All examples shown assume all current resident leaseholders choose to remain on the estate as this gives the lowest possible range for consideration.

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<sup>34</sup> Replacement homes for non resident leaseholders are valued at market value in both scenarios as the council would in either example be able to sell these properties on the open market as there is no commitment to provide replacement properties for non resident leaseholders and the intention is to buy back all such properties.

**Table 12 –range of values**

	Alternative methods of valuing consideration		Base Illustrative Gross Consideration assuming only non resident leaseholders are bought back (i.e. before costs) as per paragraph 12.6.1 above
	Using valuation throughout (a. in paragraph 12.8.2)	Valuing replacement leaseholder equity at cost of provision. (b. in paragraph 12.8.2)	
Cash Consideration: £105m discounted at 9% to allow for the phasing of payments	£77m	£77m	£77m
Non Cash Consideration:			
589 Replacement Social Homes: property received	£48m <sup>35</sup>	£103m	£103m
Replacement leasehold / Freehold properties for 54 non residents: property received	£32m	£32m	£32m
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties: resident: Leaseholder share:	£48m	£22m	£48m
Leaseholder / freeholder elects to stay: 117 replacement leasehold / freehold properties for residents: Council Equity Share in property	£24m	£24m	£24m
Discount Councils Equity share of Leaseholder buy backs.	(£9m)	(£9m)	(£9m)
<b>Total (Excluding costs)</b>	<b>£220m</b>	<b>£249m</b>	<b>£275m</b>

12.8.4 This gives a maximum indicative range of values for consideration between £220 million and £289 million<sup>36</sup>, compared to land values ranging from £188.2million to £253.2 million<sup>37</sup>.

## 12.9 Costs

12.9.1 As noted above the consideration under the possible CLSA is paid on the basis that the Council transfer the land with vacant possession. The amount and the timing of costs will vary depending on the volume of resident leaseholders who opt to leave the Estates,

<sup>35</sup> Uses the lowest valuation provided by JLL to take a prudent approach, 427 of these properties are valued in the current residual land value model at £41.9m – equating to a value of £58m for the 589 properties.

<sup>36</sup> Assuming all leaseholders opt to be bought out and using the 6.6% treasury discount rate to value the cash element of the consideration

<sup>37</sup> £247m as per paragraph 12.7,2 above plus £5.7m for Farm Lane and £0.5m (and additional replacement properties) for the "Seagrave houses"



more details on this, the principal cost, are given in paragraph 12.10 below. They will also vary according to when the Trigger Notice is served and the speed of the development. Appendix 13 shows the likely indicative range of costs involved at current values (i.e. with no allowance for inflation). Section 9 of this report, comments on the initial budgetary requirements, which are anticipated to all be of a capital nature and which will be funded from the Decent Neighbourhoods Fund.

## 12.10 Buying Back Owners on the Estates

12.10.1 The Council will be required to buy back or otherwise determine existing leases and freehold interests across its own land in order to secure vacant possession.

12.10.2 The Council has agreed to buy back owners who wish to leave in the following ways:

- From the date on which Capco submitted the planning application for the main site, 23<sup>rd</sup> June 2011, buy back owners who have an identified need to leave, for open market value.
- From the later of an unchallengeable planning permission on the main scheme; a signed CLSA; and Consent from the Secretary of State, to buy back all owners who wish to leave for open market value (in a no scheme world) plus 10%<sup>38</sup>.

12.10.3 There are two ways in which each of the individual buybacks could be funded:

- 1) The Council can buy back the properties directly from the leaseholders and freeholders. It can fund this in three ways by either:
  - using capital receipts, the most likely source of which is those generated by the expensive voids sales programme
  - borrow funds within the Housing Revenue Account (HRA) using the £37m of headroom that remains following the implementation of self financing subject to the comments in the 2012 budget statement. This uses the existing HRA asset base to increase gearing within the HRA.
  - borrow if there was the appetite via the general fund.

Income would be received from letting the properties purchased which would as a minimum partially, if not wholly, offset the borrowing costs.

- 2) By Capco, subject to the payment of holding costs, as follows:
  - Capco have made available a facility of £15m.

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<sup>38</sup> 7.5% for non resident Leaseholders/ Freeholders

- From serving of the Trigger Notice (exercise of the option) Capco will be responsible for funding all buybacks if required to do so by the Council.
- 12.10.4 It is important to note that, should the Council opt for Capco to buy back the Leaseholders / Freeholders, the Council will have to pay Capco at a later date for these purchases as they are part of the cost of achieving vacant possession unless the agreement is terminated. On termination Capco simply retain the properties. This means that potentially on termination this could leave a developer with a high level of 'pepper-potted' ownership on the Estates.
- 12.10.5 The Council will also have to pay for the net holding costs incurred on any properties purchased by Capco until Capco take transfer of the land containing the property or until the agreement is terminated. These costs have to be paid to Capco as follows:
- Revenue costs to Capco of holding the properties need to be re-paid annually from the trigger date. Capco have a duty to maximize rent from properties, which will need to be deducted from costs.
  - Capital costs will be deducted from the payment installments received following the trigger. This can only be up to a maximum of 50% of the payment tranche. Capco will charge a holding cost on any money advanced to contribute to its costs of providing this finance. This has been agreed at flat rate of 6.5% over 6 month Libor.
  - Capco can fund the buybacks as above but the Council can pay off some or all of the capital debt at any point and gain a secure charge over the property. This option reduces or eliminates the capital holding cost. Revenue costs would still be payable to Capco as set out above.
- 12.10.6 The Capco funds are a useful facility, however they are available at rates substantially greater than the Public Works Loan Board. There is also a significant risk attached to them purchasing a large volume of properties on the Estates in that should for some reason the agreement terminate or the trigger never be served the Council would have Estates where potentially a large proportion of leaseholds / freeholds were held by the same developer. This could potentially render future regeneration on the estate more difficult following any termination event.
- 12.10.7 The Council can borrow at a lower rate than can be provided by Capco, has funds in the Decent Neighbourhoods Fund available and has a likely future stream of capital receipts within the HRA which could potentially be utilised to fund leaseholder buybacks. Prior to the Localism Act 2011 and HRA reform the Council could only easily let a buy back as an Assured Shorthold Tenancy at full market rent via the General Fund. It is now possible to utilise the

new Fixed Term tenancies created under the Localism Act and let at 80% of market rents within the HRA subject to obtaining Homes and Communities Agency permission and provided the Council can easily regain vacant possession at the end of the fixed term tenancy. The Director of Housing Options, Skills and Economic Development and his team are currently finalising proposals to this effect. This means it will be more financially advantageous for the Council to buyback properties directly from owners and the cash flow presented later in this note assumes this approach is used. This report proposes that the ability to buy back properties is delegated to the Executive Director of Housing and Regeneration in consultation with the Executive Director of Finance and Corporate Governance up to an initial cumulative value of £15m funded from the decent neighbourhoods pot. It should be appreciated that the Decent Neighbourhoods Fund does not currently contain this level of capital receipts but projections show that they will be generated by the current expensive void sales programme. The viability of each buyback and the availability of funds will be formally considered as part of each decision approving the buy back of properties from Leaseholders / Freeholders.

- 12.10.8 A regular six monthly assessment of the viability of each method will be carried out by officers and a further report will be bought back to Cabinet when 80% of the initial £15m funding tranche has been utilised or should the level of receipts from expensive void sales not be at anticipated levels.

12.11 Cash flows and sensitivities

- 12.11.1 Summarised below is an indicative cash flow assuming the Trigger is served. This assumes:

- the Council fund all the leaseholder buybacks as this results in the highest peak cash out flow. Sensitivities showing the impact of using different funding methods for buybacks on the peak cash outflow and the cash position at 2030 are shown below.
- all non resident leaseholders / freeholders are bought back and 25% of the resident leaseholders / freeholders are bought back. Sensitivities showing the impact of differing levels of buybacks on the peak cash outflow and the cash position at 2030 are shown below.
- buy backs occur in the first two years, in practice it is likely that buybacks will occur over the life of the scheme.
- the trigger is not served until the end of the 5 year period.
- it is based on indicative phasing received from Capco and an indicative fastest possible development time line has been used. Sensitivities showing the impact of a longer development period on the peak cash outflow and the cash position at 2030 are shown below.

- RPI of 2.5% and HRA loans pool borrowing at 5.6%. Sensitivities showing the impact of differing levels of RPI and the HRA loans pool rate on the peak cash outflow and the cash position at 2030 are shown below.
- that we are unable to protect the Council from Stamp Duty Land Tax on the replacement properties via the section 106. We will endeavour to use the Section 106 agreements to do this. This adds a significant cost of circa £23m<sup>39</sup> which is included within this cash flow.
- Property inflation is the same as RPI, the receipts from Capco are indexed as per the proposed agreement to allow for late payment. Sensitivities showing the impact of differing levels of property inflation on the peak cash outflow and the cash position at 2030 are shown below.
- A contingency on non buy back costs of 20%

12.11.2 The table shows the position if none of the replacement Leaseholder /Freeholder properties owned by the Council as a result of the buy backs are sold / generate a cash receipt, and the position if this mitigating action is taken. It also shows the net present value of the cash flows to the Council.

12.11.3 The indicative cash flow forecast can be summarised as:

**Table 13 – indicative cash flow**

<b>Base Case: Council Funds all buybacks, buybacks let at 80% market rent</b>	<b>Cash in / (out) £,000</b>
Peak Cash requirement excluding receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	(41,500)
Peak Cash requirement including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	(36,555)
Cash Requirement at 2030 including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	54,067
Net present value of cash flows to 2030 at a 6.6% discount rate including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	<b>22,597</b>
Net present value of cash flows to 2030 at a 9% discount rate including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and receipts from letting of those properties bought back	<b>16,020</b>
	<b>Year of peak cash out flow</b>
Year of peak cash outflow including buyback sales	2018

<sup>39</sup> Including indexation

12.11.4 Due to the nature of the CLSA ongoing forecasting will be required as the exact timing of events becomes clear.

12.11.5 It is important that during the course of the development that sufficient funds are held to enable the buying back of properties and to manage other risks. It is therefore recommended that until the volume of buy back requests on the Estates becomes apparent that sufficient funds are ring fenced within projected receipts to enable all leaseholders to be bought back if required.

**Table 14 – Buyback sensitivities and cashflow**

<b>Sensitivity modelled</b>	<b>Impact on Peak Cash requirement including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and income on letting them</b>	<b>Impact on 2030 Cumulative Cash requirement including receipts from the sale of properties received to replace the ex-leasehold / freehold properties which the council has bought back and income on letting them</b>
<b>Sensitivities which increase peak cash requirements</b>	£'000	£'000
100% buybacks, Council funds	(36,869)	34,044
Capco fund all buybacks, 100% Buybacks , use of Capco Facility Maximised	(23,766)	18,966
Plus 10% on all costs (includes 10% House Price Inflation in 2012)	(8,193)	(7,036)
House Price Inflation: 10% Increase in house prices in 2012, 20% decrease in house prices in 2020	(4,207)	(7,909)
Plus 10% on non buyback costs	(3,976)	(7,218)
1% Increase in Stamp Duty	(1,338)	(6,228)
Libor: 1% Increase and 1% increase in loans pool rate	(1,224)	(1,781)
RPI: 1% Increase	(1,211)	(470)
Extra £500 increase per property in maintenance costs	(58)	(404)
<b>Sensitivities which decrease peak cash requirements</b>	£'000	£'000
Slower development: all later phases delayed by 2 years	0	3,316
Council Terminates as only Seagrave Developed and does not manage corresponding costs down	1,460	(61,476)
House Price Inflation 10% decrease in house prices in 2012	4,172	(197)
Trigger not served	7,052	(55,936)
Maximum Capco funding used for buybacks, all non resident and 25% of resident leaseholders bought back	12,262	(11,811)

## 12.12 Impact on 30 year Housing Revenue Account (HRA) business plan

- 12.12.1 The CLSA will have a significant impact on the 30 year HRA business plan. It should be appreciated that as this is a conditional agreement there is a level of uncertainty at this point in time in terms of the timing of cash flows and officers will continue to work on this on an ongoing basis.
- 12.12.2 The initial business plan and forecasting will develop as certainty increases concerning the serving of the Trigger Notice, the detailed phasing and the volume of leaseholder buy backs. The principal impacts of the CLSA on the 30 year HRA business plan are:
- Significant stability on maintenance costs as a result of receiving high quality new build properties to replace properties which currently have a significant long term maintenance requirement.
  - A short-term contained increase in service costs.
  - Costs arising from holding the properties bought back from leaseholders if these are not fully covered by rental income.
  - Potential repayment of a significant amount of HRA debt in the longer term and / or additional funds available for investment in Housing and Regeneration.
  - A possible short term funding requirement if there is a significant demand for leaseholder buybacks if as anticipated the Council opts to buy back properties direct from Leaseholders / Freeholders ( this depends on the net holding cost, see section 12.10 above).
  - A short-term call on HRA reserves to fund costs which are not capitalisable under CIPFA guidance e.g. security costs.
  - A possible call on HRA reserves if damages arise if vacant possession is not achieved in line with the timescales proscribed within the HRA. This is capped at £10m. It should be noted that this is more than the amount currently held within reserves and this potential exposure should be taken into account when setting target reserves balances for planning purposes.
  - Costs arising from legal challenges.

## 12.13 Financial Risks

- 12.13.1 The principal financial risks and their mitigating factors can be summarised as:
- Interest rates:
    - If the Council buys back the properties directly this can be mitigated by using the receipts from the Decent Neighbourhoods Fund (i.e. by not using funds to repay existing debt or to invest in new initiatives) and by the Council's ability to borrow fixed rate funds at a competitive

rate via the PWLB. There is however an opportunity cost that arises as these funds could have potentially been used for other purposes.

- If the Council use the Capco funding facility the Council is exposed to a level of interest rate risk as this facility is totally variable. This risk could be partially mitigated by paying off the capital debt with Capco early using funds as above. As noted in paragraph 12.10.7 above it is likely that the Council would instead buy back the properties directly from leaseholders / freeholders.
- The sensitivity of cash flows to interest rates is illustrated in paragraph 12.11.5 above.
- Inflation. This would increase costs which would be offset to some extent by additional income. The sensitivity to inflation is illustrated in paragraph 12.11.5 above.
- House Price Inflation (HPI): high levels of HPI would increase the cost of Leaseholder / Freeholder buy backs. However unless there was a later dip in the Housing Market this would result in the replacement properties received by the Council having a higher value. Should property prices decrease after the leaseholders / freeholders have been bought out but prior to the Council receiving the replacement properties the Council would have the ability to hold the properties in the longer term until the Housing Market cycle reversed subject to careful monitoring of the HRA 30 year business plan.
- Holding costs of properties in the event of a termination occurring.
  - Should the Council have opted to use Capco to fund the buybacks this could result in a significant cost to the Council with no return. Capco
  - Should the Council opt to buy back properties directly from the leaseholders / freeholders it is anticipated that following the Localism Act 2011 the rental income stream from the properties would cover the bulk of the holding costs of the properties as well as providing additional affordable accommodation. Should the CLSA then terminate the Council would be able to sell the properties purchased from leaseholders / freeholders if desired, recover the capital costs and benefit from any capital gain.
- Running costs for replacement properties, a sensitivity has been modelled for this in paragraph 12.11.5.
- Stamp Duty Land Tax (SDLT): if the agreement is incorrectly structured or there is a change in legislation there is a risk that the transfer of the social rented properties would attract SDLT based on their full market value. The cash flows modelled above assume this SDLT is payable. However as SDLT would be payable on the open market value of the replacement homes these figures should be viewed as indicative as the amount will depend on the property market at the time the homes are given

to the Council and on SDLT rates then in force. A sensitivity has been modelled for this in paragraph 12.11.5, a regime which places caps on service charges and some maintenance costs has been agreed via the Head lease and will be included in s106 agreements.

- Replacement properties; The Council will as promised provide replacement properties for all tenants. There is a risk that should there be net overcrowding across the estate that the gross internal floor area specified in the agreement would be insufficient to provide all the replacement homes required. This would mean that some of the replacement properties currently allocated for sale would need to be used to house tenants. However other properties could be sold as they became void thereby mitigating the financial impact. Given this mitigation this risk is unlikely to crystallise.
- Risk of challenge costs: Allowance has been made for these costs within the cash flow forecasts based on estimates provided by officers in our legal department however there is a risk that additional funds may be required.
- Damages, especially for failure to give vacant possession. The agreement caps these at £10m however it should be noted that it also contains an overage clause applicable to the Council that allows for additional damages to be paid via this overage clause should the agreement be terminated and should the Council sell the land to another developer within 5 years of termination

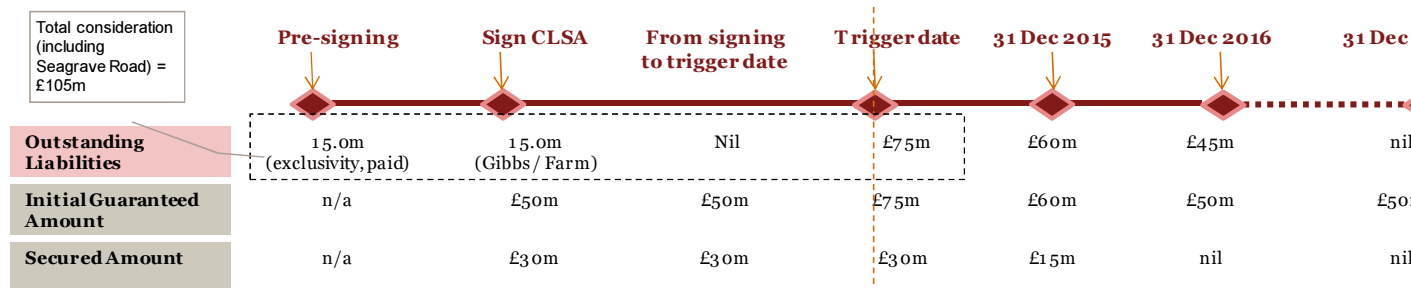
#### 12.14 Indemnity and Capco covenant package

12.14.1 The Council has undertaken financial due diligence on the assets in EC Properties LP and Earls Court Ltd to ensure they are adequate. This work has been undertaken by PWC on the Council's behalf. Capco have provided the Council with a separate indemnity against any blight claims up to £50m from the date of adoption of the SPD. The CLSA provides for the continuation of this indemnity and provides the council until the trigger date with an initial guaranteed amount of £50m.

12.14.2 Following the trigger date the guaranteed amount increases to £75m, being the total value of advance payments that are outstanding under the agreement, falling to £60m following the payment of the first advance payment and £50m after the second. These amounts are then further adjusted in accordance with the CPO liabilities as specified in the CLSA. Subsequent to the payment of the second advance payment the amount guaranteed is then reduced as payments are made and CPO liabilities reduce. It should be noted however, that it is only in certain circumstances that there is likely to be a material liability owed by Capco to the Council in the event of a termination.



12.14.3 £30m of the guaranteed amount is secured as a first charge against specific assets with the remainder being covered by a net asset value (NAV) test which requires coverage of 120% in EC Properties LP and Earls Court Ltd. The NAV test is re-performed at 6 monthly intervals following the signing of the CLSA. The security on the assets is released following the receipt of the first two advance payments with subsequent guaranteed amounts being provided using the NAV test. This can be summarised by the following diagram<sup>40, 41</sup>.



The above assumes the trigger date is before 31 December 2015. If it is later than this the first instalment becomes due on the trigger date, and subsequent instalments are due on the four subsequent anniversaries. Each instalment in this case will be adjusted by the retail price index between 31 December 2015 and the trigger date

12.14.4 If the financial test is failed then Capco is required to undertake actions such as acquiring or transferring from elsewhere within the Capco group additional assets, reducing liabilities, substituting the guarantor, providing additional guarantees or suitable security. If these remedial actions are not taken the Council is entitled to terminate the CLSA

12.14.5 Initial assessment of the guarantee and compliance with the NAV test has been undertaken by PWC. The CLSA also contains the ability for the Council to do an interim assessment should circumstances arise which give cause for concern around the availability of the assets as well as the ability for the Council to terminate should the asset provisions not be complied with.

12.15 Accounting Treatment

12.15.1 The land proposed to be sold by the Council is held partly in the General Fund and partly in the HRA. The total consideration will need to be apportioned between the two funds based on the acreage of land. Any receipts apportioned to the HRA will potentially be caught by capital pooling regulations. In order to avoid pooling the Council will have to ensure that all the monies pertaining to the HRA, both those received directly from Capco and those from the sale of properties are reinvested in Affordable Housing and Regeneration. This includes the repayment of HRA

<sup>40</sup> In addition to the amounts shown below there is a blight indemnity agreement in place until the signing of the CLSA for £50m.

<sup>41</sup> Note the initial exclusivity payment forms part of the first £15m of consideration on signing of the CLSA.

debt and funding the cost of any buybacks. It is anticipated that with planning it should be possible to retain the full receipt.

- 12.15.2 As the cash receipts do not follow the land transfers, the accounting treatment is fairly complex.
- 12.15.3 The accounting treatment for each phase will need to be agreed with the external auditors and it should be recognised that the precise treatment may deviate from that set out below as the rules governing it are likely to change over the life of this project. One key issue will be how we hold the replacement properties for leaseholders, both those in which we retain an equity share and those which we own outright where the leaseholder has opted to be bought out. The table of costs set out in Appendix 13 gives an indication of the accounting treatment for costs based on current rules.
- 12.15.4 An initial £15m has already been paid to the Council on signing the Exclusivity Agreement. £10m of this is refundable if the CLSA is not entered into or Secretary of State's consent is not obtained for the overall disposal, £5m is not refundable. The £5m is currently treated as a capital receipt in advance and will become a capital receipt on the signing of the CLSA. The £10m is retained as a long term liability pending the granting of consent by the Secretary of State. Following the granting of a satisfactory Secretary of State consent the £10m can be retained by the Council in the event of termination because Capco have not served the Trigger Notice. Therefore following granting of Secretary of State consent this amount will become a capital receipt.
- 12.15.5 The £15m to be received for the sale of 11 Farm Lane and Gibbs Green School will form part of the total consideration. Title will transfer on receipt of consideration for Farm Lane and this will be treated as a general fund capital receipt. Gibbs Green School will exchange on transfer with completion occurring when the school site is vacated. The proportion of the receipt pertaining to Gibbs Green School will therefore be held as a capital receipt in advance and the funds will not be able to be used for capital purposes until completion occurs. Officers' initial cash flow forecasting indicates that this can be accommodated within the general fund capital programme, however it should be noted that if for some reason other receipts failed to crystallise there is a risk that a temporary general fund borrowing requirement would arise in order to fund works on the proposed new off site school.
- 12.15.6 The £75m cash consideration would, unless attributable to a land transfer, be refundable if at the point of termination the Council had failed to comply with certain conditions or if the Council served a termination notice as a result of the non completion of 50% of the social rented properties by the deadline given in the CLSA.

Therefore the remaining £75m cash consideration is also retained on the balance sheet as a long term liability and is released over time as land is transferred. As each land transfer occurs a reconciliation will need to be carried out

12.16 Service Charges

12.16.2 As far as possible the Council wants to minimise service charge costs for its own tenants. A detailed service charge agreement regime has been agreed which places caps on the level of service charges the Council will pay for the tenanted properties as part of the Head Lease and will be included in the s106 agreements.

12.17 Taxation

12.17.2 PWC have been appointed to advise on the taxation aspects of this scheme and have worked with us to ensure our structure is tax efficient. Their report is included in Appendix 14 and the tax implications are summarised below.

12.18 Stamp Duty Land Tax (SDLT)

12.18.1 SDLT is the principal area of concern and it will be important to ensure that the replacement properties being transferred to the Council are seen as affordable housing for SDLT purposes to ensure no SDLT charge arises on the transfer. It is understood that the easiest way to achieve this is to ensure they are specified as such in the S106. Should the S106 not specify this, or the land transactions not take place in the 5 years, following the planning obligation, then a very large SDLT liability could arise.

12.18.2 There is however a risk that even with the properties recognised as affordable within the Section 106 that HMRC will consider that the obligation to provide the properties is in the CLSA rather than within the Section 106 agreement and will consider that SDLT should be payable. The structure of the CLSA offers some protection against this but can not offer full protection unless all reference to the replacement properties is removed from it, this is not commercially practical as it would create other significant risks. Therefore all the cash flows presented in this report assume the Council incurs full SDLT based on open market value on the replacement properties as well as on the acquisition of the leaseholder buy backs, i.e. the cash flows include the large potential liability referred to in PWC's report, including those which might arise if Capco acquired properties from leaseholders / freeholders on the Council's behalf.

12.18.3 It should also be noted that if land is acquired under a CPO then, as detailed in the report, additional SDLT relief is possible and where possible the conditions for this should be satisfied. Again the cash

flows included above adopt a prudent position and assume no SDLT relief arises for the properties on the estates.

12.19 VAT

12.19.1 The grant of any interest in land by the Council will be, prima facie, exempt from VAT as no option to tax is being made. As a result, there is no VAT to charge on the consideration received from Capco.

12.19.2 Generally speaking, a local authority can recover VAT in full on its costs, provided it remains within its partial exemption 5% de minimis limit. This is calculated as 5% of the total VAT it incurs annually. A council is required to assess all of the VAT it incurs in respect of its exempt activity across the authority and where this is less than 5% of all of the VAT it incurs in total, the Council can reclaim VAT in full. However, where the Council exceeds the 5% limit, then all of the VAT the Council has incurred which relates to exempt activity is irrecoverable.

12.19.3 Therefore the Council has estimated the level of VAT to be incurred in respect of this transaction. Current cash flows indicate that amount of exempt input tax can be accommodated in the partial exemption de minimis limit with careful management, especially if the seven year rolling average is used. This will need to be reviewed on an ongoing basis as the CLSA contains a warranty which states that the Council will not opt to tax the land transfers..

12.20 Corporation tax

12.20.1 The Council will not incur any corporation tax as a local authority in the UK is not liable to corporation tax or income tax.

**13. COMMENTS OF THE DIRECTOR FOR LEGAL AND DEMOCRATIC SERVICES**

13.1 The Council is exercising a range of powers to participate in the scheme and secure the redevelopment and regeneration of the area. The principal powers to be exercised by Cabinet are set out below.

13.2 Section 123 of the Local Government Act 1972 allows the Council to dispose of non-housing land on such terms as it considers appropriate. Freehold disposals require the Council to obtain the best consideration reasonably obtainable (or the Secretary of State's consent to disposal at less than best consideration). The Council is entitled to rely on professional valuation advice as to whether best consideration (which is money or money's worth) has been achieved.

- 13.3 The Council holds the Estates under Part II of the Housing Act 1985 and has the power to dispose under section 32 of the Act with the consent of the Secretary of State at DCLG. An application for consent to dispose of more than 500 or more properties to a person under the Leasehold Reform Housing and Urban Development Act 1993 or the Housing Act must be approved by Full Council under Article 4 of the Constitution.
- 13.4 As stated in paragraph 5 above the Council, as landlord, has carried out a formal consultation with tenants of the Estates which has satisfied the requirements of section 105 of the Housing Act 1985.
- 13.5 Council tenants whose accommodation is required for the redevelopment will be offered secure tenancies in the replacement accommodation. It is anticipated that this will be acceptable to many. Any occupiers who are secure tenants cannot be decanted against their will without either a court order under the Housing Act 1985 or the Council exercising its powers to acquire the secure tenancies under section 226 of the Town and Country Planning Act 1990. If agreement cannot be reached with tenants then the Council will consider the use CPO powers under section 226 and that the process will be triggered by the service of a CPO Start Notice. A rehousing strategy which took into account the needs of the social housing tenants would be developed before the Council was asked to consider further which power would be more appropriate to enable the Council to achieve the objective of a comprehensive redevelopment of the area. At that stage, the Council would need to consider fully any Human Rights Act issues and might need to undertake a further Equalities Impact Assessment or revisit and update aspects of the existing one, at Appendix 12.
- 13.6 Tenants who do not have an interest to sell to the Council may be entitled to a fixed home loss payment of (currently) £4,700 per unit. Tenants may be entitled to exercise their Right to Buy although there is a procedure under schedule 5A to the Housing Act 1985 where this can be avoided by the service of a demolition notice.
- 13.8 Existing leaseholders and any freeholders will need to have their interest acquired. As well as receiving market value, resident owners occupying as their main residence and who have lived in the premises for at least one year may be entitled to a home loss payment of 10% of market value up to a current maximum of £47,000 plus compensation for disturbance and reimbursement of legal and other expenses (on both the sale and also on acquiring a replacement property).
- 13.9 Section 120 of the Local Government Act 1972 Act allows the Council, for the purposes of any enactment or for the benefit,

improvement or development of their area, to acquire by agreement any land inside or outside its area. The redeveloped properties will be acquired by the Council for the purposes of its housing functions under the Housing Act 1985. Should the Council be required to exercise its compulsory purchase powers then this will be addressed in a further report to Cabinet.

13.10 Section 2 of the Local Government Act 2000 has been repealed and replaced in England by the general power of competence enacted in the Localism Act 2011. Section 1 of the 2011 Act gives the Council “power to do anything that individuals generally may do”. This is subject to restrictions but it is not considered that there is any *vires* problem with the proposed project which is the subject of this report.

13.11 Finally, section 111 of the Local Government Act 1972 allows the Council to do anything (whether or not involving the expenditure, borrowing or lending money or the acquisition or disposal of any property rights) which is calculated to facilitate or which is conducive or incidental to the discharge of any of its functions. The Council has various housing law functions to the discharge of which the proposed CLSA is considered conducive and incidental.

13.12 The Council therefore has the necessary powers to adopt the recommendations set out in the report. It is noted that the Council may seek to acquire land compulsorily at a future stage. The Council has the ability to do this provided the tests set out within section 226 of the Town and Country Planning Act 1990 are satisfied.

13.13 *The Public Sector Equality Duty*

13.13.1 The public sector equality duty provisions of the Equality Act 2010 came into force on 5<sup>th</sup> April 2011 and widened the general equalities duties with which a local authority has to comply. Given its importance to the decision, this legal aspect has already given separate consideration in section 10 of this report, above.

13.14 *Procurement*

13.14.1 The risk of challenge has been mitigated as far as possible in two ways. Advice from leading counsel has been received in this regard, the contents of which are protected by legal professional privilege. On the basis of leading counsel’s advice it is considered that the CLSA is not a public works contract to which the Public Contract Regulations 2006 apply.

### 13.15 Blight

13.15.1 The adoption of the Supplementary Planning document might give rise to attempted blight claims. An indemnity is in place from CapCo concerning this. Blight can also arise in the circumstances outlined in schedule 13 to the Town and Country Planning Act 1990 and one of these is the making of a compulsory purchase order. Accordingly, it will be necessary to ensure that there is a valid indemnity in force from a company which has a sufficient net asset value to cover the potential liabilities. This indemnity has already been addressed in this report.

## 14.0 COMMENTS OF CORPORATE RISK

14.1 The context of risk is attached in the risk log at Appendix 15 which highlight the risks associated with the project. As new risks emerge they will be added to the register as necessary and the corporate risk register will be amended to reflect any changes in the nature of risk.

## 15.0 Schedule of Appendices

Appendix 1	Land Ownership Plan
Appendix 2	Estate Regeneration economic appraisal
Appendix 3	Consultation History
Appendix 4	Consultation Information Pack
Appendix 5	Analysis of Responses to Consultation
Appendix 6	Summary of CLSA terms prepared by SNR Denton
Appendix 7	Earl's Court/West Kensington Local Lettings Plan Interim Statement
Appendix 8	London Design Guide Standards Comparison
Appendix 9	Initial Phasing Plan
Appendix 10	JLL Best Consideration Letter
Appendix 11	PWC Best Consideration Letter
Appendix 12	Equalities Impact Assessment
Appendix 13	Financial Cost Range
Appendix 14	PWC Tax Report
Appendix 15	Risk Assessment

**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Cabinet Report - 18 <sup>th</sup> July 2011 (Open Report)	Sarah Lovell X5571	Housing and Regeneration
2.	Cabinet Members Decision – Estate Regeneration economic appraisal- 7 <sup>th</sup> November 2011	Sarah Lovell X5571	Housing and Regeneration
3.	Cabinet Report – 23 <sup>rd</sup> April 2012 (Open Report)	Sarah Lovell X5571	Housing and Regeneration
<b>CONTACT OFFICER: Sarah Lovell &amp; Tomasz Kozlowski</b>		<b>EXT: 5571 / 4532</b>	