

Affordable Housing Capital Funding Policy

Part 1 – Introduction to the Policy

1.1 Introduction

Peterborough City Council is committed to supporting and investing in the provision of affordable housing. To assist provision, the Council has two main sources of funding:

1 – Funds Accumulated Via Right To Buy Transactions: The Council has an affordable housing capital fund which has, and continues to be, funded from resources received on an annual basis as a result of the agreement from the Large Scale Voluntary Transfer of its housing stock to Cross Keys Homes (CKH) in October 2004. The terms of that transfer agreement provide that during the first ten years of the stock transfer the Council will receive part of the sale proceeds from Preserved Right to Buy transactions (Note: Council tenants transferred to CKH retain the right-to-buy). The Council's Capital Strategy states that whilst these receipts form part of its overall corporate resources, the Council is committed to using it to pump-prime opportunities for future affordable housing schemes, in partnership with Registered Providers.

2 – Funds Received Via s.106 Agreements For Off-Site Affordable Housing Provision: In accordance with the Council's planning policy, occasionally it is agreed between the Council and a landowner/developer that rather than providing on-site affordable housing as part of a development scheme, the landowner/developer agrees to pay, via a s.106 Planning Obligation, a sum in lieu of on site affordable housing provision.

Both these capital funds are a finite (and declining) resource and the Council wishes to ensure that they are allocated fairly, transparently and in line with its strategic priorities. For the avoidance of doubt, both of the aforementioned accumulated funds are kept separate by the Council for accounting purposes, but for the purpose of agreeing when and how to release such funds, the policy set out in this paper applies equally to both funding pots unless a specific s.106 Planning Obligation has already agreed a differing arrangement for the spending of a specific contribution from a specific scheme.

1.2 Structure of Document

Part One – Introduction

Part Two – Eligibility

- Who is eligible to bid
- What is eligible for funding
- Demonstrating need
- Size (financial) of bids considered

Part Three – Bidding Process

- How to bid for funding
- Who to send Bids to
- When bids can be submitted

Part Four – Assessment of Bids

- The criteria the Council will use to assess bids
- The procedures we will follow to assess bids
- Confirming decisions
- Successful bids - Funding Agreements
- The financial arrangements for allocating funding

Part Five - Appendices

- Appendix 1 – Application Form
- Appendix 2 – Standard Terms and Conditions

Part 2 – Eligibility

2.1 Who is Eligible to bid for Affordable Housing Capital funding?

Grant applications can only be received from **not for profit** affordable housing **Registered Providers**. This reflects the Council's approach towards investment of the Affordable Housing Capital fund as set out in the Capital Strategy.

2.2 What is eligible for Affordable Housing Capital funding?

Funding must be used to either:

- (a) facilitate the provision of new build affordable housing; or
- (b) acquire stock for conversion to affordable housing.

The proposed scheme must be for a development which will take place entirely within the Peterborough City Council authority area.

Affordable Housing Capital funding must be essential to enable the delivery of the affordable housing in a scheme. This must be demonstrated as part of the bid.

2.3 How Can It Be Demonstrated That There Is A Need For The Funds?

The onus of proving that funding is needed rests with the bidder. If the Council decides that need has not been demonstrated, or is uncertain whether there is a need, then bids will be refused.

To demonstrate need, bidders should (as a minimum) undertake the following:

- (a) Clearly demonstrate which other available avenues of funding have been explored (such as external funding bodies, national funding sources and the RP's own resources) but have not, in whole or part, been successful in achieving the required level of funds needed.
- (b) A Bidder must either:
 - (i) Prior to Bidding, seek funding from the Homes and Communities Agency (HCA) (or any other superseding organisation), and have received confirmation from HCA that funding, in whole or part, is not to be awarded to the scheme (with details of the reasons for the HCA's rejection of the bid supplied with the Bid for Council funding); or
 - (ii) Where it is clearly the case that, at the point of Bidding, there is no (or not recently been or not likely to be in the near future) funding stream available from HCA for the type of affordable housing being proposed in the Bid, then part (i) above will not be required to be undertaken. However, a clear statement confirming this fact, with reasoning, is required.
- (c) Provide a completed appraisal, as per Part 3 below, which should demonstrate the need.

Please note that in the event that there are changes to the way that HCA funds schemes (as is anticipated to occur during 2011) or other changes to local or national policy on funding affordable housing, then such changes will be taken into account by the council as part of the consideration as to whether bidders have appropriately complied with the spirit of the above requirements.

2.4 Size of Bids and Availability of Funds

A bid must be for a minimum of £100,000 and a maximum of £2,000,000.

The council has a target allocation of £4,000,000 of funds in any single year (or limited to the amount of funds remaining available to the scheme, if less than £4,000,000). This maximum annual amount may at the discretion of the Panel (see 4.2 for details of the Panel) be reduced. The Panel will consider such a reduction when it meets for the last time in a financial year (i.e. likely to be in January). RPs are encouraged to seek advice on the budget available before commencing the bidding process.

Part 3 – Bidding Process

3.1 How to Bid for Affordable Housing Capital funding

All Bid applications must:

- (a) be made on the Affordable Housing Capital Grant Application form (see Appendix 1);
- (b) be accompanied by a completed Grimley's economic toolkit appraisal (version as currently endorsed by HCA, and currently found at: <http://www.homesandcommunities.co.uk/economic-appraisal-tool>);
- (c) be accompanied by a completed Build Cost Plan, to help justify the build costs used in the economic appraisal;
- (d) be accompanied by completed Housing Quality Indicators (HQI) forms and scoring sheet (latest versions) as located on the HCA website at the following address: <http://www.homesandcommunities.co.uk/hqi> ;
- (e) include any other information which the applicant considers the Council would find useful to determine the bid (though this should be kept to a minimum and not include material or promotional literature not directly related to the Scheme)

Items (b) and (d) are required as they form the basis of a standard, nationally agreed appraisal process and therefore should be familiar to RPs, as such should not be a burden to applicants.

Item (c) asks for a Build Cost Plan. This Plan should clearly sets out all the costs associated with delivering a proposed development, including for example initial site development costs (such as site clearance, demolition, ground remediation works), prelims, roads & sewers, services, flat/house build costs and landscaping. Usually a developer will have their own in-house QS or build manager who would prepare the Plan. Alternatively an external company of surveyors or cost consultants could prepare one.

RPs are responsible for obtaining all information necessary for the preparation and submission of their application. RPs must satisfy themselves of the accuracy of any information provided to the Council.

3.2 Who to send Bids to

Grant applications must be submitted to:

Housing Strategy Manager
Strategic Planning and Enabling Section
Peterborough City Council
Stuart House - East Wing
St John's Street
Peterborough
PE1 5DD

3.3 When to Submit Bids

Bid applications must be received by 4pm on the last working day of each quarter year, in order that a panel can assess the Bid approximately three weeks later. The earlier a bid is received will maximise the opportunity to clarify any issues prior to the Panel meeting, and therefore if possible early submission ahead of the deadline are welcomed.

For the avoidance of doubt, it is entirely the responsibility of the Bidder to submit all material by the closing date. Partial or late applications will not be accepted or considered.

Bidders are strongly encouraged to discuss draft bids with the Housing Strategy Manager well in advance of the closing date. The Housing Strategy Manager will, to the best of his/her ability and

without prejudice to the outcome of the formal assessment process by the Panel, assist the Bidder in terms of:

- (a) advising whether the appropriate material appears to be complete for a valid application;
- (b) advising whether, in his/her opinion, any aspect of the Bid could be amended to enable improvements to the bid to be made (and thus improve the Bid's resultant 'score' – see Part 4)

For 2011/12, the Panel dates are as follows:

Deadline for receipt of bids	Panel meeting date
31 March 2011	20 April 2011 (provisional – TBC)
30 June 2011	20 July 2011 (provisional – TBC)
30 September 2011	19 October 2011 (provisional – TBC)
30 December 2011	18 January 2012 (provisional – TBC)

Exceptional Cases: In the event that an RP would like a bid to be considered outside of the programmed quarterly bid assessment dates, a request for an extraordinary assessment meeting can be submitted in writing to the Housing Strategy Manager, explaining why the bid requires urgent consideration. There is a presumption against such extraordinary meetings, but each case will be considered on its merits.

Part 4 – Assessment of Bids

4.1 The bid assessment criteria

The Council, in assessing all Bids, will undertake two stages of assessment (but will only do so after it is satisfied that the Bidder has provided all the appropriate material and met the requirements of 2.3 above).

Stage One - Economic Appraisal: Each Bid will be assessed against the Grimley's Economic Appraisal toolkit. The outcome of the assessment will indicate whether the scheme is economically viable and whether the bid for funding represents value for money. Unless the scheme is determined to be economically viable and the grant level requested is demonstrated as necessary to the delivery of the scheme, it will not pass to Stage Two.

This approach enables us to assess each scheme on its merits without limiting our grant funding to specified rates per unit or per person.

If the appraisal tool demonstrates that the Bid does not demonstrate need or represent value for money, then the bid will be rejected. The Council may (but is not obliged) to set out reasons as to why it failed this test.

To assist in this Stage One, the Council reserves the right to appoint an independent expert to review the submitted Build Cost Plan. The bidder would be responsible for paying the associated costs (though the Council will seek approval from the bidder before incurring such expense; if approval is not given the bid will automatically fail).

Stage Two - If a scheme satisfies Stage One, it will then be evaluated against the criteria set out below.

Criteria	Details	Score (out of 10)*	Weighting	Total Score
Strategic Housing Objectives	The council wishes to ensure the delivery of mixed, balanced and sustainable communities that will meet housing need and contribute to the growth of Peterborough. When assessing bids we will examine how the scheme contributes to the ongoing affordable housing programme and meeting housing need in terms of the tenure, property type and size and scheme type. This information will be considered in the context of the existing affordable housing programme for Peterborough as well as intelligence relating to pipeline schemes. The council will use the latest Strategic Housing Market Assessment (SHMA) evidence and other council policy (such as planning policy and housing policy) to assist with this assessment.		X 4	
Deliverability	The deliverability of a scheme will be assessed in terms of whether planning permission has been granted, any potential site specific risks associated with the delivery of the scheme including confirmed ownership/interest in the land and the timescales for start on site and completion of the scheme. We will prioritise schemes where planning permission has been given and schemes that have a low risk		X 2	

	deliverability rating in terms potential barriers to development to the bidder's specified timescales. This information will be ascertained through questions asked in the grant application form.			
Quality	<p>Quality will be evaluated by using the Housing Quality Indicators system. HQIs are recognised and understood by RPs as part of the process for applying for HCA funding to assess the quality of housing schemes.</p> <p>The council requires that RPs submit completed HQI forms and a scoring spreadsheet based on the information provided for the HQI forms with each bid.</p> <p>Please note that, unlike HCA requirements in the past, there is no minimum set requirement bidders must reach in terms of issues raised in the HQIs, such as specific levels of the Code for Sustainable Homes, Lifetime Homes and/or Building for Life. However, in determining a score out of 10 for 'quality' under this criterion, an important consideration will be to what degree the scheme achieves those various standards. Minimal or low provision of such standards will result in a low score under this criterion.</p>		X 2	
Added Value / Cost / Value for Money	Each bid will be assessed to determine whether the grant awarded represents the good value use of the Council's funds. Whilst not being prescriptive in this regard, issues considered will be average grant requested per unit and per person (taking account the location of the scheme, the type of property provided and the needs of the people the property will cater for), any wider neighbourhood benefits being provided by the scheme as a whole and any other special circumstance which is not considered by the other scoring criteria above.		X2	
			Total	

**score out of 10, with 1 being low and 10 being high*

4.2 Assessment Process

Assessment Process Part 1:

The Affordable Housing Capital Funding panel will assess bids in accordance with the specified criteria in section 4.1.

The panel will be quorate when:

(a) a representative from each of the following council services participates in the assessment of each bid:

- Housing Strategy
- Legal Services
- Finance Services
- Planning Development Implementation

(b) plus at least one of the following participates:

- Planning Services
- Strategic Projects
- Planning Policy

The Panel will determine the application based on the following:

- (a) If the Bid fails Stage One in 4.1 above, the Bid will automatically be recommended by the Panel for rejection.
- (b) If the Bid fails to achieve a minimum of 5 out of 10 in all the Stage Two Criteria, the Bid will automatically be recommended by the Panel for rejection.
- (c) If (a) and (b) are passed, a Bid which achieves at least 80 (out of the maximum 100) points will automatically be recommended by the Panel for approval. Bids less than 60 points will automatically be recommended by the Panel for rejection. Bids between 60-80 points will be at the discretion of the panel as to whether it recommends approval or rejection.

Assessment Part 2:

Panel Recommend Rejection: If the panel recommend rejection of a bid, the appropriate Director will be advised of the Panel's decision, together with brief reasons for the rejection. The Director has delegated authority by the Council to confirm to the Housing Strategy Manager one of the following:

- (i) that he/she has no objections to the Panel's decision (in which case the decision to reject stands and is final);
- (ii) that he/she rejects the panel's decision, and asks for a formal CMDN to be prepared for approval of the Bid if required by the council's constitution.

Panel Recommend Approval: If the Panel recommend approval of a Bid, the appropriate Director will be advised of the Panel's decision, together with brief reasons for the approval. The Director has delegated authority by the Council to confirm to the Housing Strategy Manager one of the following:

- (i) that he/she has no objections to the Panel's decision;
- (ii) that he/she rejects the panel's decision, and rejects the Bid (in which case, the Bid is rejected and does not proceed any further)

In either case, the Director will make his/her decision as soon as possible, with a target date of 10 working days following receipt of the Panel's decision.

Assessment Part 3:

If the Director approves the bid (in accordance with or contrary to the advice of the Panel), then where required by the council's constitution, the appropriate Cabinet Member will be advised of the Panel and Director's decision, together with brief reasons for the approval. The Cabinet Member will be asked to confirm approval of the bid via the council's Cabinet Member Decision Notice (CMDN) approval process. The Cabinet Member will then decide whether to formally approve the Bid.

For the avoidance of doubt, the final decision to approve a bid rests with either the Director or the appropriate Cabinet Member in accordance with the Council's constitution.

4.3 Confirming the Decision to the Bidder

The RP may contact the Housing Strategy Manager to seek clarification on the progress of the Bid.

The Housing Strategy Manager will notify the RP of the Cabinet Member's decision as soon as is reasonably practical, and will do so in writing (which could be by email).

The decision of the Council is final. There is no right of appeal. However, if a bid is rejected, a revised bid may be submitted and will be considered in accordance with this policy document

(though, at the discretion of the Housing Strategy Manager, if it is obvious that a resubmitted bid does not significantly differ from an earlier rejected bid, then he/she can refuse to accept the resubmitted bid and it will not be considered further).

4.4 Successful Bids – Funding Agreements

Where a Bid has been awarded funding, the successful Bidder will be required to enter into a funding agreement with the Council. To assist Bidders, standard terms and conditions will usually apply though these may be amended/supplemented on a case by case basis - see appendix 2 for standard terms and conditions.

4.5 The financial arrangements for allocating funding

Payment of approved grants will be paid to RPs in accordance with a specific funding agreement for the successful scheme. This is likely to include staged payments (eg 50% of the total grant paid upon commencement of the scheme, with the remaining 50% paid upon practical completion). Other terms and conditions relating to the grant will be including in the funding agreement.

The Council will need to notify the RP of the bank account details required to facilitate direct payment into the RP's bank account on confirmation that the grant application has been approved.

Appendix 1 - Affordable Housing Capital Funds Application Form (v.1.1.11)

Section 1 – Key Information	Scheme Details														
	Scheme Name														
	Address														
	Postcode														
	Applicant Details (RP)														
	Organisation														
	Address														
	Contact Name														
	Contact Telephone/email address														
	Application Details														
	Amount of grant sought from PCC														
	Total number of homes proposed														
	Number of affordable homes proposed														
	Expected start on site date														
Expected practical completion date															

Section 2 – Summary of unit information	Details of New Homes																			
	Social Rent					S/Ownership			Intermediate Rent			'Affordable Rent'			Other Tenures					
															Type:					
	Flats	1 bed				Flats	1 bed				Flats	1 bed				Flats	1 bed			
		2 bed					2 bed					2 bed					2 bed			
	B/lows	1 bed				B/lows	1 bed				B/lows	1 bed				B/lows	1 bed			
		2 bed					2 bed					2 bed					2 bed			
	Houses	1 bed				Houses	1 bed				Houses	1 bed				Houses	1 bed			
		2 bed					2 bed					2 bed					2 bed			
		3 bed					3 bed					3 bed					3 bed			
		4 bed					4 bed					4 bed					4 bed			
		5 bed					5 bed					5 bed					5 bed			
	<i>Other – State type and # of bedrooms</i>					<i>Other – State type and # of bedrooms</i>			<i>Other – State type and # of bedrooms</i>			<i>Other – State type and # of bedrooms</i>			<i>Other – State type and # of bedrooms</i>					
	Unit Type	Size	units			Unit Type	Size	units		Unit Type	Size	units		Unit Type	Size	units				

Section 3 – Detailed Development Information	Developer Partner Details (where applicable)					
	Developers Name					
	Address					
	Contact Name					
	Contact Telephone Number					
	Scheme Type (Please tick appropriate)					
	Acquisition and tenure conversion	<input type="checkbox"/>	New-build	<input type="checkbox"/>	Acquisition without works ('Off the shelf')	<input type="checkbox"/>
	Delivery Risk Rating (Please tick appropriate)					
	High	<input type="checkbox"/>	Medium	<input type="checkbox"/>	Low	<input type="checkbox"/>
	Please provide an explanation for your risk rating:					
	Planning Status (Please tick appropriate – more than one if relevant)					
Not yet applied for	<input type="checkbox"/>	Pre-application stage	<input type="checkbox"/>	Outline planning consent submitted	<input type="checkbox"/>	
Outline planning consent approved	<input type="checkbox"/>	Detailed planning consent submitted	<input type="checkbox"/>	Detailed planning consent approved	<input type="checkbox"/>	
Please provide any further relevant information regarding the scheme's planning status:						
Ownership/Interest in the land for the proposed scheme						
Please provide ownership/interest status in terms of the land for the scheme:						

Section 4 – Scheme cost info	Acquisition Costs						
	Acquisition Costs	£		Works Costs	£		
	On Costs	£		Total Scheme Costs:	£		
	Grant Calculations						
			Total		Grant per unit		Grant per person
	Social rented units		£		£		£
	Intermediate rent units		£		£		£
	New-build Home Buy units		£		£		£
	'Affordable rent' units		£		£		£
	Total		£		£		£
4 con	Other public subsidy						
	Recycled capital grant	£					

Other grant	£	HCA Grant	£
Please confirm which other funding sources have been considered and/or explored:			
Please confirm the current level of Recycled Capital Grant Fund within your organisation which is currently uncommitted		£	

Section 5 – Supporting Information	Please set out any special circumstances which are relevant to this project, including justification of high/low grant rates, added value, community benefits, scheme abnormalities:		
	The council wishes to ensure the delivery of mixed, balanced and sustainable communities that will meet housing need and contribute to the growth of Peterborough. Please set out how this scheme will contribute towards this objective:		
Documents attached (Please tick appropriate)			
Economic appraisal toolkit	<input type="checkbox"/>	HQI Form	<input type="checkbox"/>
Build Cost Plan	<input type="checkbox"/>	HQI scoring spreadsheet	<input type="checkbox"/>

Please return completed form to: Housing Strategy Manager, Stuart House East Wing, St Johns Street, Peterborough PE1 5DD or housing.strategy@peterborough.gov.uk

"Environmental Information Regulations" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them;

"Event of Default" means any of the events set out in Clause 6;

"First Award Date" means the date on which the Council transfers the First Grant to the Bank Account;

"First Grant" means the sum of [£xxxx] ([xxx]);

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to it;

"Force Majeure" means any event or occurrence which is outside the reasonable control of the Company and which is not attributable to any act or failure to take preventative action by the Company, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any industrial action occurring within the Company's organisation;

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Deed or defrauding or attempting to defraud or conspiring to defraud the Crown;

"Grants" means the First Grant and the Second Grant;

"Information" has the meaning given under section 84 of the FOIA;

"Law" means any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21 (1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Company is bound to comply;

"Party" means a party to the Deed;

"Request for Information" shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply); and

"Second Award Date" means the date on which the Council transfers the Second Grant to the Bank Account;

"Second Grant" means the sum of £[1xxxx] ([xxxx]); and

"Units" means [xxx].

1.2 In the Deed except where the context otherwise requires:

1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2 reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.2.3 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.5 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.6 headings are included in the Deed for ease of reference only and shall not affect the interpretation or construction of the Deed.

2 Entire Deed

- 2.1 The Deed constitutes the entire Deed between the Parties relating to the subject matter of the Deed. The Deed supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 2 shall not exclude liability in respect of any fraudulent misrepresentation.
- 2.2 If and only to the extent of any conflict between the body of the Deed and other documents referred to in the Deed, the conflict shall be resolved in accordance with the following order of precedence:
 - 2.2.1 the body of the Deed; and
 - 2.2.2 any other document referred to in the Deed.
- 2.3 The Deed may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

3 Payment of the Grant

- 3.1 The Council shall pay the First Grant to the Bank Account in accordance with Clause 4 on the terms and subject to the conditions of this Deed.

4 Conditions Precedent

- 4.1 The Council shall pay the First Grant to the Company within 30 Business Days of completion of the following conditions:
 - 4.1.1 delivery to the Council of the Deed duly executed by the Company;
 - 4.1.2 the award of detailed planning permission for the Development;
 - 4.1.3 the provision of evidence satisfactory to the Council of its contract with the Partner for the building of the Units; and
 - 4.1.4 the commencement of building works for the Units at the Development.
- 4.2 The Council shall pay the Second Grant to the Company following the award of a practical completion certificate for all of the Units.

5 Repayment of the Grants

- 5.1 The Company acknowledges that the Council has awarded the Grants to the Company to enable the Units to be built.
- 5.2 The Company further acknowledges that the Council has awarded the Grants because it wishes to secure long term affordable housing in Peterborough.

- 5.3 Subject to Clause 7, if there is an Event of Default, the Council may at any time thereafter by notice in writing to the Company require repayment of a reasonable proportion of either the First Grant (if only the First Grant has been paid to the Company) or the Grants (if both the First Grant and the Second Grant have been paid to the Company) ("**Repayment**").
- 5.4 The "reasonable proportion" referred to in Clause 5.3 hereof is to be calculated based on the extent to which the objectives in Clauses 5.1 and 5.2 have not been materially achieved.
- 5.5 If there is an Event of Default and the Council requires Repayment, the Company shall reimburse the Council for all reasonable costs and expenses (including legal fees) incurred in or in connection with the Repayment or the enforcement of any of its rights under this Deed.
- 5.6 The Company shall make any payment due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Company has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Company.

6 Events of Default

- 6.1 Each of the following events shall constitute an Event of Default:
- 6.1.1 the Company ceases the building of the Units;
 - 6.1.2 the Units are not built in accordance with the Council's specification;
 - 6.1.3 any representation or statement made by the Company in or pursuant to this Deed or in any notice or certificate, statement or other document delivered by it pursuant to this Deed or in connection with this Deed is or proves to have been incorrect or misleading in any material respect or there is any Fraud in relation to this Deed;
 - 6.1.4 the Company takes any corporate action or other steps are taken or legal proceedings are started for its winding-up, dissolution or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its revenue and assets;
 - 6.1.5 the Company formally repudiates this Deed;
 - 6.1.6 any material adverse change occurs in relation to the Company or any other circumstances arise which means that the Company cannot perform or comply with its obligations under this Deed;
 - 6.1.7 the Company or anyone employed by the Company engages in conduct prohibited by Clauses 8.1 or 8.2;
 - 6.1.8 the Company takes any action whatsoever which it knows or ought to know will result in the Units no longer being available for occupation as affordable housing; or
 - 6.1.9 the Company does not acquire good legal title in the Units.

7 Modification of Repayment Terms

- 7.1 Repayment shall be reduced by 100% if the Events of Default set out in Clauses 6.1.4 and 6.1.6 occur after the fifth anniversary of the Second Award Date.

8 Prevention of Corruption

- 8.1 The Company shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining of the Grant or execution of the Deed or

any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Grant, the Deed or any such contract.

- 8.2 The Company warrants that it has not paid commission or agreed to pay any commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Grant or the Deed.

9 The Contracts (Rights of Third Parties) Act 1999

- 9.1 No person who is not a Party to the Deed (including without limitation any employee, officer, agent or representative of either the Council or the Company) shall have any right to enforce any term of the Deed, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 9. This Clause 9 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

10 Fraud

- 10.1 The Company shall take all reasonable steps to prevent any Fraud by the Company (including its shareholders, members, directors) in connection with the award of the Grant. The Company shall notify the Council immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.
- 10.2 Notwithstanding the terms of Clause 7, if the Company commits any Fraud in relation to this Deed or any other agreement with the Crown (including the Council) the Council may at any time:
- 10.2.1 recover in full the Grant; and
 - 10.2.2 recover in full from the Company any other loss sustained by the Council in consequence of any breach of this Clause 10.

11 Freedom of Information

- 11.1 The Company acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with these Information disclosure requirements.
- 11.2 The Company shall:
- 11.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable after receipt and in any event within 2 Business Days of receiving a Request for Information;
 - 11.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 Business Days (or such other period as the Council may specify) of the Council's request; and
 - 11.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 11.3 The Council shall be responsible for determining at its absolute discretion and notwithstanding any other provision in this Deed or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 11.4 In no event shall the Company respond directly to a Request for Information unless expressly authorised to do so by the Council.

11.5 The Company acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (the "**Code**"), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Company or the Services in certain circumstances:

11.5.1 without consulting the Company; or

11.5.2 following consultation with the Company and having taken its views into account

provided always that where Clause 11.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Company advanced notice, or failing that, to draw the disclosure to the Company's attention after any such disclosure.

11.6 The Company shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

12 Notices

12.1 Except as otherwise expressly provided within the Deed, no notice or other communication from one Party to the other shall have any validity under the Deed unless made in writing by or on behalf of the Party concerned.

12.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail (confirmed by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Business Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

12.3 Either Party may change its address for service by serving a notice in accordance with this Clause 12.

13 Publicity, Media and Official Enquiries

13.1 Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcements or publicise the Grant or the Deed or any part thereof in any way, except with the written consent of the other Party.

13.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, professional advisors and consultants comply with the provisions of Clause 13.1.

14 Assignment

14.1 The Company shall not assign or in any other way dispose of the Deed or any part of it without prior Approval.

14.2 The Council may, upon giving reasonable notice to the Company, assign, novate or otherwise dispose of its rights and obligations under this Deed or any part thereof to:

14.2.1 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or

14.2.2 any private sector body which substantially performs the functions of the Council provided that any such assignment, novation or other disposal shall not increase the burden of the Company's obligations or liabilities under this Deed.

14.3 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not affect the validity of this Deed. In such circumstances, the Deed shall bind and inure to the benefit of any successor body to the Council.

15 Waiver

15.1 The failure of either Party to insist upon strict performance of any provision of the Deed or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Deed.

15.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 12.

15.3 A waiver of any right or remedy arising from a breach of the Deed shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Deed.

16 Severability

16.1 If any provision of the Deed is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Deed shall continue in full force and effect as if the Deed had been executed with the invalid, illegal or unenforceable provision eliminated.

17 Warranties and Representations

17.1 The Company warrants and represents that:

17.1.1 it has the full capacity and authority and all necessary consents to enter into and perform its obligations under the Deed;

17.1.2 in entering the Deed it has not committed any Fraud;

17.1.3 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending and threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Deed;

17.1.4 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Deed;

17.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Company or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Company's assets or revenue;

17.1.7 no member, employee, agent or consultant of the Company has any interest in [xxx] or the Development site;

17.1.8 in the 3 years prior to the date of this Deed:

17.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with all generally accepted accounting principles that apply to it;

17.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations; and

17.1.8.3 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under this Deed.

18 Force Majeure

- 18.1 The Company shall not be liable to the Council for any failure to perform its obligations under the Deed to the extent that such delay or failure is a result of a Force Majeure event. Notwithstanding the foregoing, the Company shall use all reasonable endeavours to continue to perform its obligations under this Deed for the duration of such Force Majeure event.
- 18.2 If the Company becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure as described in Clause 18.1 it shall immediately notify the Council of the period for which it is estimated that such failure shall continue.

19 Dispute Resolution

- 19.1 If there is a dispute between the Parties, the Council or the Company shall issue a notice of the dispute to the other Party as soon as reasonably possible (a “**Dispute Notice**”).
- 19.2 Upon receipt of a Dispute Notice the Parties shall use their best endeavours by means of prompt (no more than 4 weeks) bona fide discussions at a level appropriate to the dispute to resolve the dispute unless the Parties agree in writing that some other period is appropriate to resolve the dispute.
- 19.3 If the dispute is not resolved within 4 weeks or such other agreed period then either Party may refer the matter to arbitration by the Royal Institute of Chartered Surveyors (“**RICS**”).
- 19.4 RICS shall be entitled to make such decision or award as it thinks just and equitable having regard to the circumstances then existing and the cost of such arbitration shall follow the event or if neither Party succeeds, the costs shall be apportioned between the Parties as the arbitrator in its absolute discretion deems fit.
- 19.5 Unless the Agreement has been determined by either Party or abandoned by the Company, the Company shall in every case continue to provide the Services in accordance with the Agreement.

20 Governing Law

- 20.1 This Deed shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTED as a Deed by the parties hereto:

Executed as a Deed by)
Peterborough City Council)

Authorised Signatory

Name:
Position:
In the presence of a witness: -----

Name:
Occupation:
Executed as a Deed by
[xxxx] acting by a
Director and Company
Secretary/Director

Director

Company Secretary/Director

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