



Pinsent Masons

LONDON BOROUGH OF HARINGEY

REPORT TO CABINET ON HDV STRUCTURE AND DOCUMENTS

23 JUNE 2017

1. INTRODUCTION

1.1 This report contains an overview of the corporate structure of the HDV and a high level summary of the key Project Documents to be entered into.

2. DEFINITIONS

2.1 Capitalised terms in this report have the following meanings:-

Asset Manager means the LL Group entity appointed by InvLP to provide the strategic asset management services;

Council means the London Borough of Haringey;

Development Manager means the LL Group entity appointed by DevLLP to provide the development management services;

HDV means the Haringey Development Vehicle LLP;

HDV Party means each of the HDV, DevLLP, InvLP, the Nominee Companies and any Sub DevLLPs;

DevLLP means the development subsidiary of the HDV (established as an LLP) to develop each of the Development Sites;

Independent Verification Team means a team of independent consultants consisting, as a minimum, of a cost consultant, programme auditor and a solicitor;

Investment Portfolio means the circa 140 commercial properties owned by the Council and located throughout the borough, that will be transferred to InvLP and the value of which will be matched by LL;

InvLP means the investment subsidiary of the HDV (established as a limited partnership) to hold the Investment Portfolio;

LL means Lendlease;

LL Construction means the relevant Lendlease Group entity that will provide construction services to the HDV Parties;

LL Guarantor means the relevant Lendlease Group entity that will guarantee LL's obligations under a Project Document;

LLP means limited liability partnership;

LP means limited partnership;

Nominee Companies means each of Nominee Co 1 Ltd, Nominee Co 2 Ltd and Nominee Co 3 Ltd being wholly owned subsidiaries of the HDV established as limited companies in order to be a member of DevLLP or a partner in InvLP (these entities are required as both an LLP and an LP require more than one member/partner);

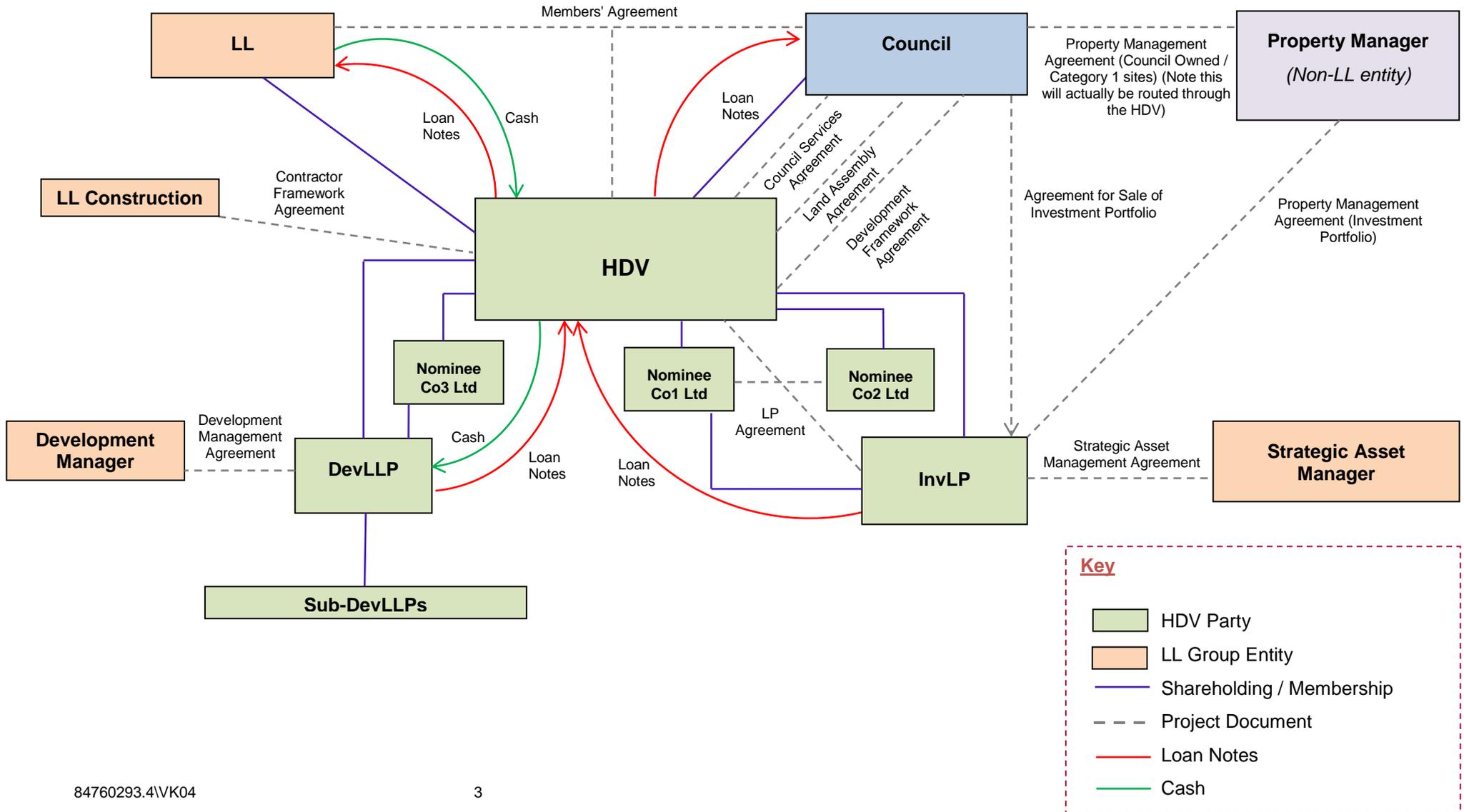
Project Documents means each of the contractual documents to be entered into as listed in column 2 of the below table;

Site(s) means the category one, two and three properties to be developed by the HDV Parties;

Sub DevLLP means the subsidiaries of DevLLP established as LLPs in order to develop individual Sites or phases of a larger Site; and

Vertical Build means buildings (including foundations and sub-structure).

HDV STRUCTURE CHART



EXPLANATION OF KEY DOCUMENTS

	DOCUMENT	PARTIES	PURPOSE
CORPORATE DOCUMENTS			
1.	Members' Agreement	(1) HDV Parties (2) Council (3) LL (4) LL Guarantor	<p>1.1 The Members' Agreement regulates the relationship between the HDV Parties, the Council and LL and outlines the governance, strategy and policies that underlie the day to day operation of the HDV including:-</p> <p>1.1.1 detailing the strategic objectives of the HDV and the method by which the HDV will achieve these objectives (i.e. through the implementation of agreed business plans);</p> <p>1.1.2 setting out the governance arrangements and decision making procedures for the HDV including:-</p> <p>(a) outlining the process for the establishment and operation of the HDV board;</p> <p>(b) specifying whether a decision is to be made at board level or reserved to the members;</p> <p>(c) providing a procedure to be followed when a member or nominee has a conflict of interest in relation to a certain decision; and</p> <p>(d) detailing the process for dealing with deadlocks and for resolving disputes;</p> <p>1.1.3 detailing the finance strategy for the HDV including:-</p> <p>(a) setting out the funding commitments of each of the members;</p> <p>(b) detailing the loan notes that will be issued by the HDV and the timings and priority of repayment; and</p> <p>(c) dictating how receipts and profits of the HDV and the HDV Parties will be used and/or distributed; and</p> <p>1.1.4 governing the process by which a member can 'exit' the joint venture (by disposing of its interest in the HDV (or an individual Site)) and the process to</p>

			<p>be followed should a HDV Party be 'wound up'.</p> <p>1.2 The Members' Agreement contains a procurement policy that sets out how goods, works and services will be procured by or on behalf of HDV other than:</p> <p>1.2.1 those set out in the Services Contracts entered into upon the establishment of the HDV (further details of which are set out below); and</p> <p>1.2.2 where the DevLLP board decides that LL Construction is to be offered the opportunity to exclusively seek the award of a contract for works and/or services pursuant to and in accordance with the Contractor Framework Agreement referred to in section 6 below.</p> <p>1.3 Given that LL is the Council's 50:50 partner in the HDV, has been chosen following a rigorous procurement process, and has a construction arm within its group of companies (namely LL Construction), then it has been agreed that LL Construction will have an opportunity in certain circumstances to exclusively seek the award of certain types of contracts for construction works and services as further detailed in Section 6 below.</p> <p>1.4 Certain 'checks and balances' have been drafted into the Members' Agreement in order to provide the HDV with an objective view on whether, amongst other things, it would be 'value for money' to offer and/or award a contract to LL Construction pursuant to the Contractor Framework Agreement. For example, the Members' Agreement provides that the HDV will appoint an Independent Verification Team to advise the HDV and the DevLLP on whether, amongst other things, a proposal by the Development Manager to offer an opportunity to LL Construction and/or ultimately award a contract to LL Construction is recommended. This team will also verify/check the basis of any such proposals as further detailed in Section 6 below. Unless and until this team is appointed, then LL Construction cannot be given the opportunity to bid for any works/services in accordance with the Contractor Framework Agreement.</p> <p>1.5 The Member's Agreement attaches a Delegation Policy which sets out at what level decisions will be made in relation to the HDV. Decisions of fundamental importance will be reserved to the members, important decisions will be made by the HDV Board and lesser decisions will be made by the Development Manager or Asset Manager.</p> <p>1.6 The Member's Agreement deals with exit from the LLP. This may be the transfer of a</p>
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			<p>Member's interest or in a partial or full termination scenario.</p> <p>1.6.1 Subject to a number of conditions, either Member can transfer its interest in the HDV internally within its Group, or in the case of the Council to another public sector body.</p> <p>1.6.2 No transfers to a third party are permitted during a 10 year lock-in period, and the identity of such third party is regulated in any event. If any such transfer is proposed, there are pre-emption rights for the other Member to first acquire the transferor's interests.</p> <p>1.6.3 The Member's Agreement deals with termination and full or partial winding up. In a winding up scenario, rather than having a fire--sale of assets to repay debts, it is agreed there will be a controlled break up of the partnership, allowing part-built assets to be completed and returns to the partners maximised.</p>
2.	Limited Agreement Partnership	<p>(1) InvLP</p> <p>(2) HDV</p> <p>(3) Nominee Co 1 Ltd</p> <p>(4) Nominee Co 2 Ltd</p>	<p>2.1 It has been agreed that the Investment SPV shall be set up as an LP rather than an LLP. Using an LP gives the HDV greater flexibility to attract future investors, should HDV decide that is appropriate, as an LP has the potential to achieve the most benefit for the partners since:- :</p> <p>2.1.1 investors tend to be more familiar with holding investment properties through an LP rather than an LLP as it is the more commonly used vehicle for such investment activities; and</p> <p>2.1.2 LPs are 'tax transparent' with no tax being incurred at LP level although members of the LP are potentially liable for tax on the distributions they receive from the LP. Certain investors however, such as pension funds and other tax exempt entities, are taxed by way of income tax according to their individual status and circumstances but not taxed on investment profits or gains. If correctly structured, an LP will not generally be regarded as carrying on a trade in its own right and, because of this, distributions made from the LP to the members will be treated as investment proceeds rather than income. Therefore no income tax liability will attach to such distributions and, consequently, tax exempt investors will have no liability to tax in respect of their returns.</p>

			<p>2.2 As both an LP and an LLP are forms of partnership they require at least two members to validly exist. For this reason Nominee Co 1 has been established to hold a nominal interest in InvLP and Nominee Co 3 has been established to hold a nominal interest in DevLLP. Different nominees act as the relevant second members so that the ownership of DevLLP and InvLP are ring fenced as far as possible.</p> <p>2.3 As an LP does not have legal personality and cannot hold property itself, Nominee Co 1 will also act as 'general partner' of InvLP and have responsibility for carrying out its day to day business. In addition to this, Nominee Co 1 will hold the legal title to the commercial property on trust for InvLP with Nominee Co 2's role being to act as second trustee of the legal title. Two entities are required to act as trustees in this way due to a legal rule that transactions entered into by two trustees cannot be declared invalid by the beneficiary. This allows future funders and purchasers of any part of the commercial portfolio to be certain that they have given proper receipt and removes any concerns that their purchases may subsequently be held to be invalid.</p> <p>2.4 The LP agreement is the constitutional document required to establish InvLP as an LP. It will contain the governance arrangements and terms on which InvLP shall operate which shall (as far as is applicable) mirror the Members' Agreement.</p>
PROPERTY DOCUMENTS			
3.	Agreement for Sale of Investment Portfolio	(1) Council (2) InvLP	<p>3.1 The Agreement for Sale governs the transfer (by way of the grant of a lease for a term of up to 250 years of each property) of the Council's Investment Portfolio (approximately 150 commercial properties). Where there are residential elements occupied by Council tenants, these parts of the properties will be excluded from the sale.</p> <p>3.2 The value of the portfolio was assumed as part of Lendlease's bid to be £45m, subject to detailed due diligence being undertaken at 'Preferred Bidder' stage. It has been agreed that this £45m figure will be retained, but is subject to the properties meeting certain standards before they are transferred to HDV (see paragraph 3.6 below). This value will form the Council's equity within HDV and Lendlease will (as set out in the HDV Finances section below), match that amount with cash, as and when required by HDV.</p> <p>3.3 Where there are some parts of a property retained by the Council, the Council will retain responsibility for the structure of the building and the lease granted to HDV will</p>

			<p>be an internal demise of the relevant unit only. The Council will then need to operate a service charge for these properties and collect a proportion of the costs for maintaining the structure from HDV.</p> <p>3.4 Michelmores were appointed jointly by the Council and by Lendlease to undertake a detailed review of the title and the occupational interests all of the properties within the Council's Investment Portfolio so that the detailed documents transferring the Properties into HDV can be prepared.</p> <p>3.5 Lendlease have been undertaking physical surveys and inspections of the properties and reviews of the statutory and other information available.</p> <p>3.6 Lendlease have required that the properties must meet certain standards (including payment arrangements, environmental, statutory and health & safety compliance) before they are purchased by HDV. Lendlease will manage the process of bringing the properties up to the required standard (but the costs will be taken into account in the valuation, or paid by HDV).</p> <p>3.7 It has been agreed for practical reasons and because not all of the Properties will be ready to be transferred at the same time, that leases will be granted in tranches, on the quarter days, with an initial long stop date of 30 September 2019. The HDV can extend the long stop date by up to 12 months at its election. It was decided that the leases should be granted on quarter days, to minimise the need for apportionments of rent and service charge income between HDV and the Council.</p> <p>3.8 As a result of the exercise referred to at paragraph 3.4 and 3.5 above (which is not yet complete) a number of properties have been identified which it is considered may not meet the required standards (see paragraph 3.6 above) on or before financial close of the JV. It may be that some actions can be taken immediately after financial close, so those properties can form part of the later tranches of leases to be granted.</p> <p>3.9 It has not yet been agreed what will happen to the properties (if any), which cannot be brought up to the required standard, or where the cost of compliance with such standards outweighs the value or benefit of the property. It may be that these properties could be sold at auction by the Council and the proceeds of such sale would be invested into HDV as equity. The Agreement provides that by the long stop date (as extended if applicable – see paragraph 3.7 above), either party can terminate the Agreement in respect of the properties (if any) which have not been transferred by that date. HDV does confirm in the Agreement that it expects that substantially all of</p>
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			<p>the properties can be brought up to the required standards, cost being the main consideration.</p> <p>3.10 Michelmores are also preparing the forms of leases to be granted for each individual property. Where the Council owns the freehold, a 250 year lease will be granted to HDV. For some properties, the Council has previously entered into a 'sale and leaseback arrangement' where the Council owns the freehold, which is subject to a long lease to a third party and then the Council also owns a shorter leasehold interest. The lease granted to HDV will only be for the length of the Council's shorter lease (minus three days). An agreement would need to be reached with the third party at a later stage if HDV wanted to buy their interest or otherwise redevelop the property.</p> <p>3.11 The Council has agreed that responsibility for any arrears prior to the grant of the lease to HDV shall not be transferred to HDV and it will be for the Council to collect such sums (if and how it chooses to do so).</p> <p>3.12 Following the grant of all of the leases to HDV, the Council will be entitled to a payment of £3million per year from HDV in lieu of income from the Investment Portfolio for at least the first 5 years of the project. This assumes that all properties will be transferred. If they are not (and in any event during the tranche transfer period, this figure will be pro-rated to reflect the actual properties (by value) which have transferred).</p>
4.	Development Framework Agreement ("DFA")	(1) Council (2) HDV	<p>4.1 The Development Framework Agreement is a conditional option agreement which allows the HDV to draw down from the Council a 250 year lease of the various Sites (or phases thereof) once the conditions have been satisfied.</p> <p>4.2 The properties which are the subject of the DFA are: Northumberland Park, Cranwood and Wood Green. However, the option does not apply to Northumberland Park or Cranwood until the Council has undertaken the necessary consultations and taken a decision that the property should be disposed of to HDV.</p> <p>4.3 In addition, for HRA properties, the option for HDV to acquire the properties does not arise unless and until any consent required from the Secretary of State pursuant to the Housing Act 1985 has been obtained.</p> <p>4.4 The conditions include:- 4.4.1 obtaining satisfactory planning permission;</p>

			<p>4.4.2 agreeing a development business plan;</p> <p>4.4.3 achieving vacant possession;</p> <p>4.4.4 obtaining funding and satisfying viability; and</p> <p>4.4.5 agreeing the form of lease.</p> <p>4.5 Once the option conditions have been satisfied, HDV has a period of 6 months (or such longer period (not exceeding 12 months) until detailed planning consent has been obtained, if it has not been obtained already) to serve a 'drawdown notice' on the Council. The lease will be completed on the first working day 14 days after the service of a 'drawdown notice'.</p> <p>4.6 The option lapses in respect of a particular property if the relevant ultimate long stop date is reached without outline planning permission having been obtained by HDV. In addition, HDV cannot draw down any further sites if particular circumstances exist :</p> <p>4.6.1 there is a HDV or any HDV Subsidiary is in material and continuing breach of its obligations under a Lease entitling the Council to terminate the Lease;</p> <p>4.6.2 a PSP Default Event (as defined in the Members' Agreement) exists;</p> <p>4.6.3 the Council has ceased to be a member of HDV;</p> <p>4.6.4 where a Deadlock Event applies which is so fundamental that more than one HDV Party or the whole HDV Group can no longer continue to operate in accordance with respective Objectives and any relevant Business Plans</p> <p>4.6.5 within 18 months (or such other period as set out in the Business Plan or Development Business Plan) after the later of:</p> <p>(a) the date on which the first planning application is submitted in respect of Wood Green ; and</p> <p>(b) the Council making a decision to bring Northumberland Park within the ambit of the option.</p> <p>a hybrid planning application with detail in respect of the first phase has not been submitted in respect of Northumberland Park.</p> <p>4.7 When the land is drawn down, the Council receives the base value of the land (which will be fixed at financial close) represented by 'A' Loan Notes (see the HDV Finances</p>
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			<p>section below).</p> <p>4.8 The Council will also receive 30% of the benefit of any uplift above the base value of the land (which arises principally as a result of a planning consent being obtained and other HDV activities). However, this is not paid out until all of the site-wide costs (including affordable housing) have been paid (see the HDV Finances Section below for further details). The remaining 70% of the uplift above the base value is paid to HDV in the same way. The definition of 'site-wide costs' is very broad, but as member of HDV, the Council will have control over the design and other elements of the Site which will influence these costs.</p> <p>4.9 The Council's uplift (see the HDV Finances section below) will be paid by the HDV to the Council upon the relevant phase completion (i.e. 10 working days after HDV has disposed of the phase or property to a third party, or if it is selling the units itself, where 95% of the units have been sold).</p> <p>4.10 There are further properties not yet committed to HDV (i.e. category 2 and category 3 Sites) but there is a process for bringing them in to the HDV, if the parties so agree. Such process is still subject to the Council's duty to consult and obtain consent from the Secretary of State (where applicable).</p>
5.	Land Assembly Agreement ("LAA")	(1) Council (2) HDV	<p>5.1 The Land Assembly Agreement sets out the basis on which the HDV will interface with the Council to agree the procedures and steps for acquiring any land interests that are not currently owned by the Council (including CPO costs), and the strategy for decanting and rehousing any residents.</p> <p>5.2 HDV must assist with the necessary statutory consultations and engagement with residents and any needs assessment.</p> <p>5.3 As a general principle, HDV must comply with and implement the Council's policies in relation to rehousing and redevelopment. However, it was agreed that some elements of the Business Plans being approved as part of the current Cabinet decision do not fully meet the Council's proposed Estate Renewal and Re-Housing Payments Policy ("ERRPP") (which has been approved by Cabinet for consultation with residents). As such it was agreed that HDV will comply with the ERRPP subject to certain exclusions (as set out in paragraph 5.4 below) in respect of those Category 1 Properties as at the date of the LAA.</p>

			<p>5.4 It is agreed that the HDV Business Plans:</p> <p>5.4.1 prioritise a single move for residents rather than Right of Return;</p> <p>5.4.2 do not allow for rehousing of housing association tenants. Any private treaty/CPO compensation negotiation will be agreed with the housing association. Additional commitments to rehousing housing association/registered social landlord tenants will be a matter for the Council;</p> <p>5.4.3 commit to re-provision of residential property calculated by reference to number of habitable rooms (rather than occupants). The Council is committed to Right of Return and if needed will work with HDV in this regard recognising that this might involve a requirement for additional subsidy;</p> <p>5.4.4 provide for rehousing within the Category 1 Properties and do not provide for rehousing across the borough outside of the Category 1 Properties which is a matter for the Council. This applies to tenants, resident leaseholders and resident freeholders;</p> <p>5.4.5 allow for standard social rented tenancy terms and rents;</p> <p>5.4.6 provide that both resident leaseholders and resident freeholders of Category 1 Properties who have purchased through Right To Buy will be offered a shared equity product. These properties are assumed in the HDV Business Plans for Category 1 Properties to be within the 40% affordable housing provision. The shared equity offer is based on a habitable room like for like commitment; and</p> <p>5.4.7 allow for two disturbance payments but HDV will seek to minimise this necessity.</p> <p>5.5 It is agreed that once the final version of the ERRPP has been adopted by the Council, the parties will review the adopted policy. If there are no material changes, HDV will comply with the ERRPP as so adopted subject to the exclusions set out at Paragraph 5.4 above (in respect of those Properties that fall within Category 1 as at</p>
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			<p>the date of the LAA only)</p> <p>5.6 If there are material changes in the ERRPP as adopted, then the parties shall (both acting reasonably) seek to agree any changes to the project agreements and the Business Plans with the principles set out in the then adopted ERRPP. This is subject always to the intent of the exclusions set out at Paragraph 5.4 above, which will still apply to those Properties that fall within Category 1 as at the date of the LAA only. This process will be repeated for any successor or replacement policy to the ERRPP.</p> <p>5.7 It is agreed that the Council shall have no obligation to acquire any interests pursuant to the LAA. The parties may agree that for any acquisition, HDV may assist LBH with LBH's borrowing costs (net of any income actually received by LBH) from the date of acquisition by LBH until the date of land drawdown.</p> <p>5.8 The parties have agreed the following principles in respect of the relocation of secure council tenants:</p> <p>5.8.1 Every secure tenant in any demolition phase, or who is otherwise required by the Council to move for the purposes of the development, shall have a 'right to return'. This shall be the right to an assured tenancy (not a secure tenancy), in a property within the development site as a whole, not the particular phase which they were moved from. The right ceases to apply if the tenant elects to remain in the alternative accommodation provided to them.</p> <p>5.8.2 The Council may offer alternative accommodation anywhere in the borough, which the secure tenant is free (in its absolute discretion) to accept.</p> <p>5.8.3 HDV shall use reasonable endeavours to ensure all residents move only once, where this can reasonably be achieved.</p> <p>5.9 HDV agrees:</p> <p>5.9.1 to grant tenancies on terms and conditions as similar as possible to those enjoyed by the Council's secure tenants, as amended from time to time,</p>
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			<p>save that the 'right to buy' shall be excluded;</p> <p>5.9.2 to ensure that the rents charged throughout the tenancy are equivalent to rent set by the Council, from time to time for secure tenants;</p> <p>5.9.3 not to use Ground 8 of schedule 2 of the Housing Act 1988 (as amended by the Housing Act 1996) (which allows mandatory eviction after 8 weeks rent arrears) to enforce any rent arrears; and</p> <p>5.9.4 for properties allocated for use by existing or future Secure Tenants or Introductory Tenants, the Council will in perpetuity have the right to nominate the tenant to whom the property will be let and these properties will be made available by HDV or its successor in title in perpetuity to the Council for such tenants as are nominated by the Council.</p> <p>5.10 Where HDV has acquired any property interests itself, then it shall be obliged to transfer the interest acquired to the Council, where:</p> <p>5.10.1 the DFA is terminated;</p> <p>5.10.2 the Long Stop Date in the DFA for the property or phase of which the interest forms part is reached;</p> <p>5.10.3 a default applies under the Members Agreement.</p> <p>5.11 Such transfer will be at the current book value for the interest, as specified in HDV's accounts (which must have been updated in the three months prior to the transfer).</p> <p>5.12 The Council can be asked, (but is not required), to consider undertaking a CPO, if the following conditions have been met:</p> <p>5.12.1 HDV considers and has confirmed to the Council that it considers that a CPO is likely to be required in order to achieve the development business plan;</p> <p>5.12.2 the Council has brought the relevant property into the HDV arrangements</p>
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			(see paragraph 4.4 above); and
		5.13	Once those conditions are satisfied, the parties must agree a CPO programme, land assembly costs, the boundaries for any CPO, and phasing of CPOs where there may be more than one. The LAA sets out responsibilities for negotiations with different parties to acquire land interests, with the Council retaining control over negotiations with its tenants and leaseholders.
		5.14	The Council retains discretion as to whether to make a CPO, taking into account relevant statutory and policy considerations. Once a CPO is confirmed (and free from legal challenge) HDV can request that the Council implements it.
		5.15	The LAA sets out the process for HDV and the Council to:
		5.15.1	assess and agree the estimated compensation (which shall be updated from time to time);
		5.15.2	carry out land references and surveys;
		5.15.3	negotiate and acquire land interests;
		5.15.4	draft and make and enforce the CPO (including dealing with any challenges thereto).
		5.16	The LAA sets out which of the Council's costs of assembling the land are to be repaid, including in broad terms the costs of acquiring the land and process costs involved in doing so (such as to run a CPO).
		5.17	The 'Relevant Expenses' of the CPO process (i.e. process and consultants costs) are paid by HDV to the Council on a quarterly basis.
		5.18	The HDV will provide an invoice to the Council for the 'CPO Costs' (which is widely defined to include the acquisition costs and the costs payable to residents for home loss and disturbance) upon drawdown of the land under the DFA (see Section 4 above). Such invoice will include any capital interest which HDV has agreed to bear up to the time of drawdown of the land but in any event interest at the agreed rate

				<p>from the date of the interest until it is paid.</p> <p>5.19 The invoice will be paid on the date 20 working days following 3 months after practical completion of the relevant phase. This was agreed on the basis that this would be the length of time required to fully occupy the phase and therefore for HDV to collect sales receipts.</p> <p>5.20 Similarly, the costs for any acquisition by the Council in advance of a CPO of interests on Council owned land ("Pre-CPO Acquisition Costs") or on third party land ("Voluntary Acquisition Costs") shall be invoiced and paid in the same way.</p>
CONSTRUCTION DOCUMENTS				
6.	Contractor Agreement	Framework	<p>(1) HDV</p> <p>(2) Construction</p> <p>LL</p>	<p>6.1 The Contractor Framework Agreement sets out the terms on which LL Construction will be given an opportunity to seek the award of contracts for the carrying out of or the management of the carrying out of any construction works procured by the HDV Parties.</p> <p>6.2 The Contractor Framework Agreement provides that LL Construction will be given the opportunity to seek the award (without competition) of contracts for construction (and/or management of the construction) of up to 60% of the Vertical Build measured by gross internal area which is constructed on behalf of the HDV Parties. LL Construction is precluded from seeking the award of any of the remaining 40% unless the DevLLP board approves the same (such decision being a 'conflict matter' under the Members' Agreement, meaning that the Council makes the ultimate decision).</p> <p>6.3 The Contractor Framework Agreement provides that where the relevant HDV Party is commencing the procurement of a contract for the construction (or management of the construction) of works which <u>do not include</u> any Vertical Build (a 'Horizontal Works Contract') on a specific phase, then where LL Construction has already been awarded a contract for Vertical Build on that phase at the time of commencement of such procurement, then LL Construction will be given the opportunity to seek the award (without competition) of the relevant Horizontal Works Contract.</p> <p>6.4 The Contractor Framework Agreement includes a number of 'checks and balances' to seek to achieve transparency and objectivity in the process for awarding contracts for construction works/services to LL Construction as follows (albeit that some of these</p>

			<p>are subject to refinement as referred to below):</p> <p>6.4.1 The HDV will be appointing the Independent Verification Team to act as its independent advisors in relation to the Contractor Framework Agreement.</p> <p>Unless and until this team is engaged, LL Construction is not entitled to be given the opportunity to seek the award of any contracts under the Contractor Framework Agreement.</p> <p>Although the exact scope of services of each member of this team still needs to be refined, it is intended that this team will, amongst other things, monitor LL Construction's performance under the Contractor Framework Agreement and under any contracts awarded to LL Construction and provide reports, advice and recommendations and the like to the HDV in relation to the same.</p> <p>For example, once a decision is made to allow LL Construction to seek the award of a contract under the Contractor Framework Agreement, there are protocols which LL Construction has to follow in formulating its offer for the relevant contract. In other words, it has to follow a "bid process" (albeit without competition) before the DevLLP board decides whether or not to ultimately award the relevant contract. Each step of this "bid process" will be monitored by the Development Manager and the Independent Verification Team and LL Construction has to submit sufficient information/evidence to allow all activities and outputs during this bid process to be checked and verified by such persons. The intention is for this team to, amongst other things, 'market test' the relevant offers/activities of LL Construction during each step of the bid process and report back to the HDV, if for example, the team considers that a proposed contract price from LL Construction is not providing 'value for money' and so on. By way of a further example, it is the intention that an independent solicitor will also advise the HDV on the form and terms of the proposed contract proposed to be entered into with LL Construction before any such contract is approved and signed by the relevant HDV Party.</p> <p>The HDV also has the right to add further consultants to the Independent Verification Team if it considers that it requires further verification at any</p>
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			<p>time.</p> <p>6.4.2 There are certain circumstances under the Contractor Framework Agreement in which contracts not ultimately awarded to LL Construction are deemed to have been awarded for the purposes of the exclusivity calculation.</p> <p>If the DevLLP board decides to offer LL Construction the opportunity to seek the award of a contract pursuant to the Contractor Framework Agreement, then at any time up to actual award of the relevant contract to LL Construction, the DevLLP board can decide to withdraw its offer. Subject to the below, if such a decision is made to withdraw, then HDV faces the risk that it may end up not meeting the thresholds in paragraphs 6.2 and 6.3 above and could therefore face a claim from LL Construction for failing to do so.</p> <p>Where LL Construction is given the opportunity to seek the award of a contract under the Contractor Framework Agreement but the DevLLP board then subsequently decides to withdraw from the relevant bid process and/or not to award the contract to LL Construction, then there are some circumstances in which the relevant contract is deemed to have been awarded to LL Construction for the purposes of the exclusivity calculations under paragraphs 6.2 and 6.3 above. For example, if:</p> <ul style="list-style-type: none"> (i) LL Construction fails to co-operate and liaise with the Development Manager and Independent Verification Team; and/or (ii) a member of the Independent Verification Team, in verifying a matter under the bid process for a contract, does not recommend awarding the contract to LL Construction on the basis of such matter, <p>and, on this basis, the DevLLP board withdraws from the relevant bid process or decides not to award the contract to LL Construction at the end of the bid process then the contract which has not been awarded is deemed to have been awarded to LL Construction.</p> <p>6.4.3 There will be a key performance indicator (KPI) regime to monitor the performance of LL Construction under the Contractor Framework</p>
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			<p>Agreement and contracts awarded under the Contractor Framework Agreement.</p> <p>Although the principles and drafting relating to the KPI regime and the consequences of failing to achieve KPI's are still subject to refinement, the intention is that failure by LL Construction to achieve the required level of performance against KPI's could potentially have the following effects:</p> <ul style="list-style-type: none"> (a) termination of the Contractor Framework Agreement; (b) suspension for a defined period of LL Construction's entitlements to seek the award of contracts under the Contractor Framework Agreement; and/or (c) a reduction of the 60% threshold referred to in paragraph 6.2 above.
SERVICES DOCUMENTS			
7.	Development Management Agreement	<p>(1) Dev LLP</p> <p>(2) Development Manager</p> <p>(3) LL Guarantor</p>	<p>7.1 The Development Management Agreement is a contract through which the Development Manager will provide various development services to the HDV Group.</p> <p>7.2 The Agreement will be entered into between the Development Manager and DevLLP, however it is intended that the Development Manager will also provide services to other members of the HDV Group (for example DevLLP Subsidiaries in relation to services relating to a specific Development Site or Phase). This is achieved through DevLLP acting as 'agent' for the other HDV Parties.</p> <p>7.3 The services to be provided by the Development Manager include:-</p> <p>7.3.1 Development Management Services – including preparing and maintaining the business plans and progressing each phase of each development through a detailed project appraisal and development process (including reporting on the progress of such projects);</p> <p>7.3.2 Project Management Services – including appointing and managing the professional teams, including the building contractor and the consultants responsible for formulating design specifications and ensuring each project is progressed in compliance with the relevant programme;</p> <p>7.3.3 Funding/Financial Services – comprising services in respect of any fund</p>

			<p>raising requirements of the HDV in addition to managing the financial records and other information;</p> <p>7.3.4 Governance Services – which include monitoring HDV and DevLLP's compliance with legal and regulatory requirements and carrying out the role of company secretary;</p> <p>7.3.5 Additional Services – including providing legal and tax advice and managing certain aspects of the sale/letting process in respect of properties developed.</p> <p>7.4 In consideration for carrying out these services the Development Manager receives a fee calculated by reference to the cost of carrying out the services, prior to development commencing, and as a percentage of the development costs once the development works are on-going.</p> <p>7.5 The Development Management Agreement contains a number of KPIs which the Development Manager will be required to meet. If it fails to do so there is a mechanism by which the fee can be reduced. This helps incentivise performance to ensure that DevLLP receives a high standard of service under this agreement.</p>
8.	Strategic Asset Management Agreement	(1) InvLP (2) Asset Manager	<p>8.1 The Strategic Asset Management Agreement is a services contract under which the Asset Manager, will provide services in respect of the Investment Portfolio (and potentially also any assets that are developed by DevLLP Subsidiaries and retained by InvLP as an investment asset).</p> <p>8.2 The Services to be carried out by the Asset Manager include:-</p> <p>8.2.1 reporting to the HDV on the financial performance of the Investment Portfolio;</p> <p>8.2.2 maintaining the asset management database and providing InvLP with all information or reports that it requires;</p> <p>8.2.3 coordinating repairs, improvements or modifications (including any health and safety requirements) to the properties, in conjunction with any appointed property manager;</p> <p>8.2.4 arranging for the payment of any outgoings in respect of the Investment Portfolio; and</p> <p>8.2.5 maintaining the lease documents for the Investment Portfolio and advising</p>

			<p>InvLP of key dates (e.g. rent review and renewal dates).</p> <p>8.3 In consideration for providing these services the Asset Manager will receive a fee calculated by reference to the costs of providing the Services.</p> <p>8.4 The Asset Manager will be subject to a number of KPIs which allow InvLP to monitor the Asset Manager's performance and to reduce the fee if the Asset Managers fails to meet the KPIs. In extreme circumstances, where there is a serious KPI failure, InvLP is entitled to terminate the agreement.</p> <p>8.5 LL have stated that they do have a sufficient understanding of the Investment Portfolio Properties to formulate a full set of detailed KPIs at this stage. This is felt to be reasonable and therefore the Asset Management Agreement contains a 12 month 'grace period' (in which no KPIs will apply) to allow LL to familiarise themselves with the portfolio. During this period InvLP and the Asset Manager will agree suitable and robust KPIs to apply going forward. These will be based on the current list of indicative KPIs contained in the agreement.</p>
FINANCE/SECURITY DOCUMENTATION			
9.	Loan Note Documentation (Overview)	(1) LL (2) Council (3) HDV Parties	<p>9.1 The financing strategy for the HDV will involve the HDV (or a DevLLP Subsidiary in the case of C or D Loan Notes) issuing loan notes to:-</p> <p>9.1.1 LL, as consideration for the cash funding provided by LL (A Loan Notes);</p> <p>9.1.2 the Council, as consideration for the transfer of the Investment Portfolio to InvLP (B Loan Notes where not matched by LL (and where matched by LL, A Loan Notes)); and</p> <p>9.1.3 the Council, as consideration for the draw down value of each Development Site (C Loan Notes from the DevLLP Subsidiary where not matched by LL (and where matched by LL, A Loan Notes via HDV));</p> <p>9.1.4 the Council, where the Council has chosen to fund the acquisition of third party land (D Loan Notes issued by the relevant DevLLP Subsidiary)</p> <p>9.2 Internal loan notes will be issued where loan notes are channelled through the HDV. This will apply to all A Loan Notes and also to B Loan Notes. C Loan Notes and D Loan Notes are issued directly by the relevant DevLLP Subsidiary, so no Internal Loan Notes are required.</p>

			<p>9.3 The anticipated loan note structure will also require the following documents be put in place:-</p> <p>9.3.1 loan note instrument(s) - to constitute and issue the relevant loan notes;</p> <p>9.3.2 security documentation (debentures) - in relation to security issued by the HDV or a relevant HDV Subsidiary) in respect of certain of the loan notes; and</p> <p>9.3.3 various inter-creditor deeds - dictating the priority of loan notes as between the security holders.</p>
10.	Loan Note Instruments		<p>10.1 A number of loan note instruments will be required in order to constitute the loan notes to be issued, the Council, LL and the HDV Parties (in respect of the internal loan notes).</p> <p>10.2 The loan note instruments will set out the class of the loan notes, the interest rate and the conditions and timings for repayment, which will follow the requirements set out in the Members' Agreement.</p> <p>10.3 The version annexed to this report is a pro-forma that will be adapted to reflect the specific details of each class of loan note to be issued.</p>
11.	Debentures		<p>11.1 All loan notes are secured and therefore a number of debentures will be granted to the Council, LL and the HDV Parties in respect of any internal loan notes to be issued. Under these debentures the relevant HDV Party will grant a fixed and floating charge over all its assets.</p> <p>11.2 The version annexed to this report is a pro-forma that will be adapted to reflect the specific security to be granted in each instance.</p>
12.	Inter-creditor Deeds		<p>12.1 As there will be a series of debentures, a number of inter-creditor deeds will need to be entered into between the security holders to set out the priority of the security and process in respect of enforcement. The terms of these agreements shall reflect the position set out in the Members' Agreement.</p> <p>12.2 The version annexed to this report is a pro-forma that will be adapted to reflect the relationship between the relevant parties which will depend on the class of loan notes issued.</p>

13.	Members' Agreement Guarantee		13.1 LL have agreed that Lendlease Corporation Limited will guarantee the proper performance by the relevant LL entity of all of its obligations under the Members' Agreement.
14.	Development Management Agreement Guarantee		14.1 LL have agreed that Lendlease Europe Holdings Limited will guarantee the proper performance by the Asset Manager of all of its obligations under the Asset management Agreement.
15.	Asset Management Agreement Guarantee		15.1 LL have agreed that Lendlease Europe Holdings Limited will guarantee the proper performance by the Development Manager of all of its obligations under the Development Management Agreement.