1. **Decision required**

Cabinet is requested to:

1.1 Agree to the Connaught Phases 2 and 3 Viability Test by way of a Deed of Variation (Appendix 1), which delays the Council's receipt of Phases 2 and 3 project and vacant possession costs (6.4), and to authorise the Head of Legal Services to execute (sign and/or seal) the necessary legal documents. The Deed of Variation will be entered into once the proposed appropriation for planning purposes has occurred.

1.2 Agree to grant a 300 year lease of the land at the former Connaught Estate, SE18, hatched red on the plan and attached as Appendix 2 (the “Phases 2 & 3 Land”) from the Housing Revenue Account to Lovell Partnerships Ltd.

1.3 Agree to appropriate the Phases 2 & 3 Land at the former Connaught Estate, after the 300 year lease at 1.2 has been granted, from its present housing purpose to planning purposes pursuant to Section 122 Local Government Act 1972 and subject to the powers provided by Section 203 Housing & Planning Act 2016 for the reasons set out in Section 8 of this report.
1.4 Agree to the freehold transfer of the same land pursuant to the Development Agreement (DA) between the Council and Lovell Partnerships Ltd was signed in July 2013 subject to the powers provided by Section 233 Town & Country Planning Act 1990.

1.5 The Deed of Variation of the 8th September 2016 entered into by the Council, Lovell and Morgan Sindal contains an indemnity in the Council’s favour for any claims or demands, including for compensation, as a result of rights being infringed where appropriation for planning purposes has taken place.

1.6 Agree to treat the information in Appendix 1, 3, 4 and 5 as exempt under the provisions of the Local Government Act 1972, Schedule 12A, point 3, “information relating to the financial or business affairs of any particular person (including the authority holding that information)”.

1.7 Agree that the exempt information, presented in this report is not subsequently released to the press or public.

1.8 Note that the decisions being sought in this report will allow the Council to fulfil its obligations under the Development Agreement, for Connaught Phases 2 & 3.

1.9 To note under the current scheme of delegation the Leader approves appropriations, in this case, the Leader has agreed to a variation to the scheme of delegation to enable Cabinet to make the appropriation decision.

2. **Links to the Royal Greenwich Strategy**

2.1 This report reflects and directly contributes to the Council objectives as outlined within the Greenwich Corporate Plan 2018 - 2022:

- Housing
- Ensure a healthy and safe living environment
- Support and protect children and families in need
- Social care and health
- Promote economic prosperity

2.2 Specifically, the subject matter to which this report relates will increase Royal Greenwich’s supply of affordable housing, thereby supporting the alleviation
of housing need and improving economic and health and well-being outcomes for residents.

2.3 Relating to Housing, the appropriation is a pre-requisite to the transfer of land from the Council to Lovell in recognition that the land previously formed part of the former Connaught Estate. The transfer will allow Lovell to construct up to 352 new homes, as part of the wider Woolwich Estates development and is an obligation set out in the Development Agreement between the Council & Lovell Partnerships.

3. **Purpose of Report and Executive Summary**

3.1 The DA provides for the phased transfer of land forming the Woolwich Estates Regeneration Scheme and sets out criteria that need to be met ahead of any transfer of land from the Council to the Developer. One such criterion is agreement to each phase Viability Test.

3.2 The Phase 2 and 3 Viability Test has been agreed through detailed discussions between Lovell Partnerships and Royal Borough of Greenwich (RBG) officers and its commercial advisors, PWC and cost consultants, Currie Brown. Appendix 3 sets out a report from PWC detailing the key terms of the Viability Test and the process entered into to enable it to be agreed.

3.3 The comprehensive DA between the Council and Lovell Partnerships in relation to the Woolwich Estates development requires the Council to appropriate land within the development site for planning purposes when requested to do so by the Developer.

3.4 The DA between Lovell and the Council also requires the Council to transfer land to the Developer on a phased basis, subject to agreed construction targets being met.

4. **Introduction and Background**

4.1 **Cabinet Decision**

4.1.1 This report is intended to bring Cabinet up to date on all aspects of the scheme. It is prudent therefore that Cabinet consider and endorse the key decisions outlined in section 1 to enable the project to progress to the next stage working jointly with our Development Partner, Lovell. Updates will be brought to future Cabinet meetings as necessary.
4.2 **Viability Background**

4.2.1 On 20th June 2012, Cabinet agreed to enter into a DA with Lovell Partnerships Ltd, Morgan Sindall Group PLC and Asra Housing Association (now called PA Housing) to enable the phased redevelopment of Connaught, Maryon Road and Grove and Morris Walk housing estates (hereafter known as the Woolwich Estates Regeneration Scheme).

4.2.2 The DA sets out the conditions precedent to be fulfilled prior to each phase of the scheme going live. This includes a condition precedent that the Phase Viability Condition is satisfied for each relevant phase.

4.2.3 The Deed of Variation (DOV) sets out that post Viability, conditions required to be satisfied are to appropriate and to transfer the land.

4.3 **Appropriation Background**

4.3.1 The DA between the Council and Lovell Partnerships in regard to the Woolwich Estates development requires the Council to appropriate land within the development site for planning purposes when requested to do so by the Developer.

5. **The Phase Viability Condition**

5.1 The Phase Viability Condition is met if at the time the Viability Test Model is produced for a phase / subsequent phases, it delivers a positive residual land value and demonstrates a Return on Capital Employed (ROCE) to Lovell as stated in Appendix 4. The ROCE is a measure of the profitability of the Viability Test Model taking into account the amount of capital (equity and debt) invested by Lovells. Note that the Phase Viability Condition is satisfied so long as there is a positive residual land value: there is no minimum amount.

6. **Connaught Phases 2 and 3 Viability Test Outputs**

6.1 The DA establishes that in order for the phase viability condition to be met, the financial model must demonstrate a ROCE to Lovell as stated in Appendix 4. The ROCE for phases 2+3 falls below the test level. Lovell has however confirmed that they will accept this ROCE in the spirit of partnership working to enable progression of these phases of the scheme.

6.2 The primary reasons for the lower than required ROCE relate to changes to the phasing of construction and sales. The build programme was
unfortunately not representative in terms of work in progress; the sales profile was unrealistic due to the overlap of Phases 2 and 3.

6.3 The Deed of Variation will have no impact on the land values and payments will be due as contractually stated in the Development Agreement.

6.4 The Phase 2 and 3 ROCE Appendix 4 is based on RBG agreeing to delay its project costs and vacant possession costs for phases 2 and 3 (outline of changes below). In not delaying the project and vacant possession costs, the ROCE would fall to a level that would mean the scheme was not viable for Lovell to continue with the programme.

**Connaught Phase 2:**

- Vacant possession costs of £2m delayed from November 2019 to January 2021
- Project Costs of £285,000 delayed from between September 2019 and September 2020 to all being paid in January 2021

**Connaught Phase 3:**

- Vacant possession costs of £2.3m delayed from December 2020 to November 2022
- Project Costs of £900,000 delayed from between August 2018 and June 2020 to all being paid in November 2022

6.5 As indicated in the report, the consortium has developed a financial model for the project, which may be considered as broadly viable and as a basis for taking the project forward at this stage. This is a dynamic model, whereby agreed factors will vary as the Development proceeds, which will be subject to future viability tests to determine the timing of and extent to which the Royal Borough will receive any reimbursement of re-housing and buy back costs and any future overage payments.

6.6 The definition of Phase Viability Condition is any Phase for which the Viability Test Model applies (except in circumstances where this Agreement was terminated), delivering a positive residual land value (even if that is different from that delivered when the Project Viability Condition was passed in respect of the Project Conditions) and that the ROCE at the time the Viability Test Model is produced calculated across all Phases (other than any in respect of which this Agreement has terminated) is not less than that stated in Appendix 4.
7. **The Financial Model**

7.1 The details of how the model works are contained within Schedule 8 of the DA. Appendix 5 (Connaught Phases 2 and 3 Viability – Financial Model Report) sets out the process which has been followed to establish the Viability Test for Phases 2 and 3 of Connaught.

8 **Appropriation**

8.1 The Development Agreement between Lovell Partnerships and the Council requires the Council to appropriate land for planning purposes when requested by the Developer. Section 122 Local Government Act (1972) gives Local Authority’s the powers to appropriate land for any purpose once the original use of the land has ended. In this instance it is proposed to appropriate land for planning purposes to enable the continued redevelopment of the former Connaught Estate in line with existing planning permission.

8.2 Carrying out works on land which has been acquired or appropriated by a local authority for planning purposes is authorised if it is done in accordance with planning permission, even though it involves interference with a third party interest, or the breach of a restriction as to the user of land arising by virtue of a contract. The interests and rights to which this applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support. In this instance, Phases 2 & 3 of the redevelopment of the former Connaught Estate scheme received approval from Planning Board on 11th September 2017.

8.3 An individual who believes that a development will cause interference to their rights is entitled to object to the appropriation. However, in the event of a successful claim the claimant will not be able to delay or disrupt the construction process. Instead, compensation is payable where loss has been suffered as a result of the interference with any such third party interests or restrictions, assessed on the basis of the loss in value of the claimant's land as a consequence of the interference or breach.

8.4 Assessments of the impact of the Connaught Phases 2 & 3 development on sunlight and daylight formed part of the planning application. The impact of the development on the surrounding properties was considered using BRE guidelines and based on the findings in the assessment it was considered that the proposed development would have a negligible impact in regards to the levels of daylight & sunlight that would be seen at neighbouring properties.
8.5 Cabinet originally agreed to the appropriation of land for planning purposes across the Woolwich Estates Programme Area in June 2012 with the appropriation taking place once the land in question is no longer required for its original purpose. The legal basis for this decision at the time was Section 237 Town & Country Planning Act 1990. However, this legislation has subsequently been repealed and the power to override easements and other rights is contained within Section 203 Housing & Planning Act 2016. As a result, it is considered that the original Cabinet approval is no longer valid and the latest Cabinet is now being requested to take this decision.

8.6 Section 203 Housing & Planning Act 2016 gives the Council powers to appropriate land thereby overriding easements and other rights. Section 233 Town & Country Planning Act allows for a future disposal of land where the land has been appropriated for planning purposes. In this instance the Development Agreement between the Council and Lovell Partnerships requires the Council to transfer the land that is to benefit from the proposed appropriation to Lovell to enable the construction of up to 352 new homes that form Phases 2 & 3 of the Connaught redevelopment.

9. **Options**

9.1 There are two available options:

   a) To take no further action; or
   b) To agree to sign off the viability test, delaying Vacant Possession and Project Cost payments as detailed above by way of DOV and agree to grant a 300 year lease, appropriation and freehold transfer.

**Option A – Take No Further Action**

This is not recommended as it will result in the regeneration of the Woolwich Estates not progressing through the existing partnership arrangements as set out within the DA. It would also delay or prevent the Council from responding to the chronic housing demand and thereby delivery of the much needed new affordable housing that would benefit the borough.

The requirement to appropriate and subsequently transfer the land in question is set out in the Legal Agreements between Lovell Partnerships and the Council. Any option that did not result in the appropriation and transfer taking place would see the Council in breach of its Legal undertakings to the
Developer and at risk of a claim for any losses arising from the Council’s failure to fulfil its obligations.

**Option B – Proceed with the agreement of the Connaught Phases 2 and 3 Viability Test**

It is recommended that the Viability Test is agreed and the regeneration programme for Connaught Phases 2 and 3 progresses.

10. **Preferred Option and Reasons for Recommendations**

10.1 Option B would be the preferred option, to ensure that the scheme can progress.

10.2 Appropriation of the land in question for planning purposes will remove the potential for an individual to delay construction of Phase 2 by claiming the development will result in a loss of previously enjoyed interests or rights. Instead of delaying the construction process an individual can claim compensation for the loss of such interests and rights. Failure to undertake this procedure would leave the Council open to a claim for any losses suffered by the Developer that arose from the Council’s breach of the Development Agreement.

10.3 A failure to transfer the land in question once appropriation is in place would also see the Council in breach of its obligations as set out in the Development Agreement. Under this scenario Lovell would not be able to construct the 166 new homes that currently have planning approval and the Council would be susceptible to a claim for damages relating to any losses incurred by the Developer.

10.4 Failure to undertake either the appropriation or subsequent transfer would leave the Council in breach of its obligations in the Development Agreement, and at risk of facing legal action to recover losses caused to the Developer.

11. **Consultation Results**

11.1 Consultation took place with Members about the principles of the overall programme and delayed payment.

11.2 The intention to appropriate and transfer the land has been advertised in two consecutive editions of Greenwich Weekender, in line with statutory
requirements for the disposal of land containing an element of open space. No responses have been received following the placing of the Notices.

12. **Next Steps: Communication and Implementation of the Decision**

12.1 Once Viability is signed it will trigger the Land Transfer and Appropriation.

12.2 If agreed, the decisions sought by this report will be made public via the Council’s website and will be communicated to Lovell and their legal representatives in order that the proposed transfer of land can be enacted.

13. **Cross-Cutting Issues and Implications**

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<th>Issue</th>
<th>Implications</th>
<th>Sign-off</th>
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| **Legal including Human Rights Act** | The Council has instructed Trowers & Hamlins LLP, external legal advisers, on this matter who have provided the following legal comments. The Council is entitled to rely upon the advice from Trowers & Hamlins.  

In June 2012 Cabinet agreed to enter into the development agreement with Lovell Partnerships Ltd and others for the regeneration of the Woolwich estates.  

A provision of that DA set a viability threshold of Appendix 4 Return on Capital Employed as a return/profit for the Developer. The financial report notes that this precondition has not been satisfied under the viability test. The Developer is therefore entitled, under the DA, to delay phases 2 and 3.  

The proposal is a waiver of certain provisions in the DA which means the Developer will implement phases 2 and 3 (for potentially a lower percentage return/profit than the DA entitles them to) on condition that the Council defers | John Scarborough, Head of Legal Services, 12 March 2019 |
the date it receives certain payments. The proposal does not reduce or lower the sums the Council would be entitled to receive.

The legal basis and consequences of the Council appropriating the land is set out in section 8 (above).

| **Finance** and other resources including procurement implications | Cabinet is requested to agree the Connaught Phases 2 and 3 Viability Test and associated Deed of Variation (DOV), which will delay the Council’s receipt of Phases 2 and 3 project and vacant possession costs in the amounts and dates at paragraph 6.4. The anticipated dates the Council will receive land payments will not be impacted by the DOV.

The Woolwich Estates Development Agreement provides a phase viability condition that the financial model must demonstrate a minimum Return on Capital Employed (ROCE) to Lovell to satisfy the phase conditions. The ROCE for Connaught Estate Phases 2 and 3, with the proposed DOV included, fall below the phase viability condition.

Lovell has agreed to waive this phase condition, on the agreement that the Council defer VP and project costs. If agreement to defer is not obtained, the ROCE would fall substantially lower than the phase condition and would potentially make phases 2 and 3 unviable.

The viability test for phase 2 and 3 can be considered a fair view of the current conditions of the development and may be considered as broadly viable and as a |

| Jason Coniam, Principal Accountant 19/02/2019 |
basis for taking the project forward at this stage.

In agreeing the Viability Test and DOV, this will trigger land and appropriation transfers aligning with the requirements of the Development Agreement (DA).

The granting of a 300 year lease is required to enable the Council to appropriate for planning purposes, while minimising the financial implications arising from the value of land transferred out of the Housing Revenue Account.

The appropriation is requested to ensure that the development is not open to the threat of injunctive relief arising from private rights; the Council has full indemnity for any claims or demands which minimises potential financial risk.

The Housing Revenue Account Capital Programme forward funds costs under this development, and therefore, has already incurred the costs being deferred. Prudent assumptions on the timing of reimbursements have been made within the HRA, which means the deferral proposed can be managed within current HRA cash flow projections.

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<th>Equalities</th>
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<td>Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different Deborah Dack, Development Officer 11-03-19</td>
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(iii) foster good relations between people from different groups. The decisions recommended through this paper could directly impact on end users.

14. **Report Appendices**

14.1 The following documents are to be published with and form part of the report:

- Appendix 1: Deed of Variation (DOV)
- Appendix 2: Red Line Map
- Appendix 3: Exempt PWC Report
- Appendix 4: Exempt ROCE
- Appendix 5: Exempt Schedule 8 of the DA

**Background Papers**

20th June 2012
Decision by Cabinet

Report Author: Deborah Dack, Development Officer
Tel No. 020 8921 6139
Email. Deborah.Dack@royalgreenwich.gov.uk

Reporting to: Jeremy Smalley, Assistant Director of Regeneration
Tel No. 020 8921 2244
Email. Jeremy.Smalley@royalgreenwich.gov.uk

Chief Officer: Pippa Hack, Director (Regeneration, Enterprise & Skills)
Tel No. 020 8921 5519
Email. Pippa.Hack@royalgreenwich.gov.uk