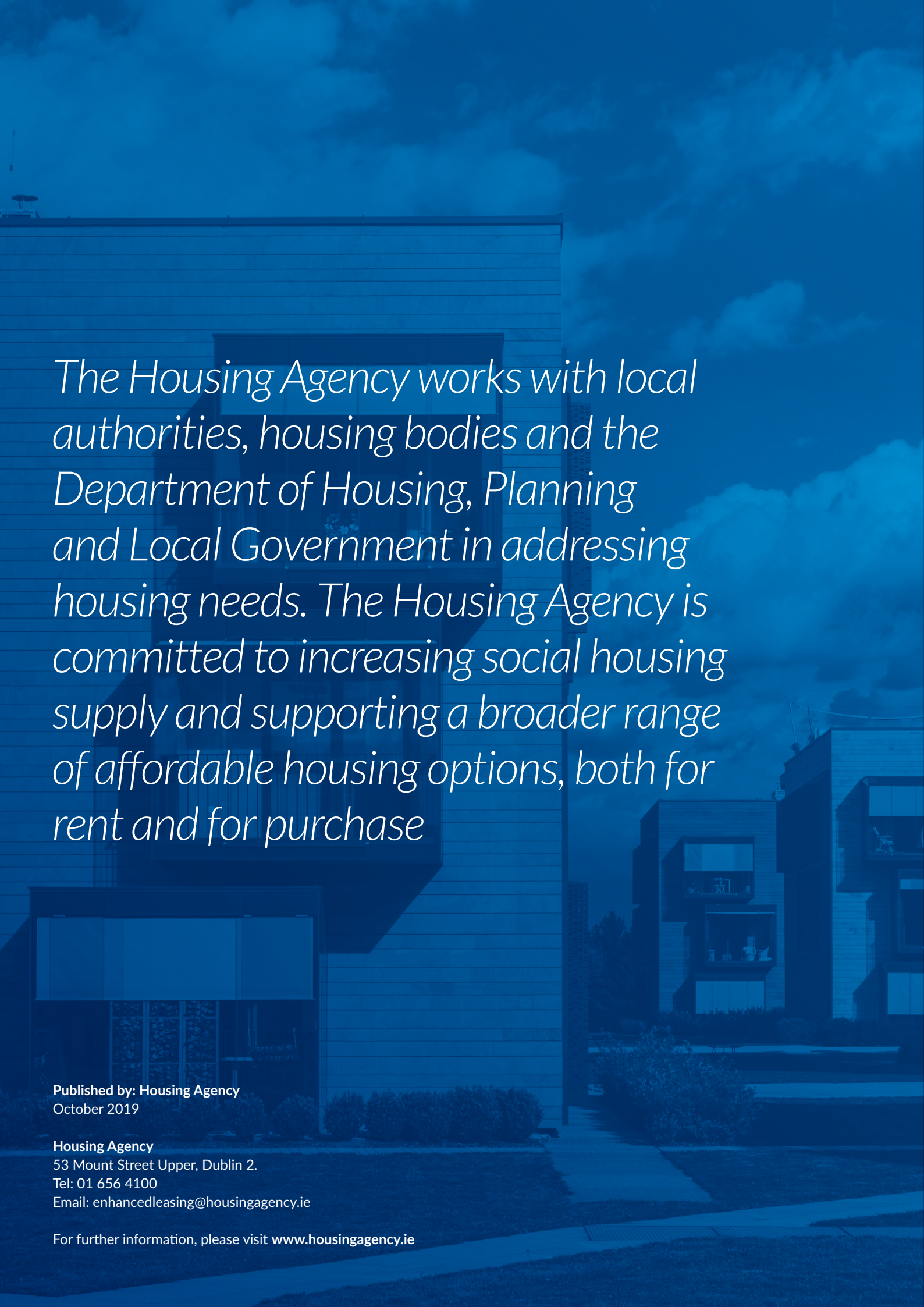




Rialtas na hÉireann  
Government of Ireland

# Enhanced Long Term Social Housing Leasing Scheme

*Prepared by the Housing Agency and the Department  
of Housing, Planning and Local Government*



*The Housing Agency works with local authorities, housing bodies and the Department of Housing, Planning and Local Government in addressing housing needs. The Housing Agency is committed to increasing social housing supply and supporting a broader range of affordable housing options, both for rent and for purchase*

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**Housing Agency**  
53 Mount Street Upper, Dublin 2.  
Tel: 01 656 4100  
Email: [enhancedleasing@housingagency.ie](mailto:enhancedleasing@housingagency.ie)

For further information, please visit [www.housingagency.ie](http://www.housingagency.ie)

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The following documents are available as part of a Book of Appendices on the Housing Agency's website: [www.housingagency.ie](http://www.housingagency.ie) and these should be read in conjunction with this document.

- **Appendix 1** Proposal Checklist
- **Appendix 2** Minimum Requirements and Declaration
- **Appendix 3** Proposal Form
- **Appendix 4** Funder Support Letters (Templates)
- **Appendix 5** Step-By-Step Process Guidelines
- **Appendix 6** Committed Financing
- **Appendix 7** Business Plan & Financial Model

The following documents are available:

- **Appendix 8** Agreement for Lease
- **Appendix 9** Lease
- **Appendix 10** Sample Fifth Schedule
- **Appendix 11** Speciman Tenancy Agreement

*The Government aims to increase social housing supply across the country as set out in Rebuilding Ireland: An Action Plan for Housing and Homelessness.*

# 01 Overview of the Scheme

The Government’s ambition to increase social housing supply across the country in the period to 2021 is articulated in the detailed annual targets that have been set out in *Rebuilding Ireland: An Action Plan for Housing and Homelessness*. The achievement of these targets requires a blended approach to delivery utilising new build arrangements, acquisitions as well as long-term leasing.

In recognition of the value for money that can be derived by local authorities by securing high quality rental properties under refined enhanced long-term social housing leasing arrangements, and the contribution these arrangements can make to the delivery of social housing, the Department of Housing, Planning and Local Government (“DHPLG”) has introduced the Enhanced Long Term Social Housing Leasing scheme (the “Scheme”) in order to:

- Ramp-up the scale of delivery under the leasing delivery mechanism
- Target newly built or yet to be built houses and apartments for leasing to minimise competition with existing housing stock
- Target property developers and investors who are in a position to deliver housing at a reasonable scale, and
- Provide for lease terms that require the property owner to provide day to day maintenance of the properties under a schedule of Management Services. The expanded scope of requirements to be performed by the property owner will be compensated by an increase in the proportion of the market rent payable under the enhanced lease to a maximum of 95%.

The Scheme is being made available to property owners who can deliver properties at scale and provide the requisite property maintenance services under the terms of the lease. It is in addition to existing long-term leasing arrangements that continue to be available and are an option for property owners who wish to lease properties to local authorities without the relevant property maintenance services.

The Housing Agency is the national coordinator for the Scheme on behalf of the local authorities

and the DHPLG and

- Manages and administers all proposals for the Scheme
- Oversees the administration of the leasing arrangements including the drafting of the Agreement for Lease (“AFL”) and Lease (“Lease”)
- Manages the liaison between the Local Authority and the Proposer including managing the due diligence on each proposal up until the signing of the AFL and Lease between a Local Authority and a Proposer
- Will have a specific role within the AFL if a dispute arises regarding certifying completion of properties, and
- Will have an ongoing role over the term of the Lease as a resource for Local Authorities and will provide guidance on good practice in lease administration and related matters.

Properties proposed for the Scheme must:

- Meet all statutory requirements and the Housing (Standards for Rented Houses) Regulations 2019 (S.I. 137/2019)
- Must have planning permission in place, and
- Must be provided with all furniture and appliances including white goods. The Proposer will only have responsibility for such furniture and appliances for a sixty-day period from the commencement of the lease.

For those developments that have not yet secured planning permission, parties may wish to avail of the pre-planning enquiry facility with the Housing Agency<sup>1</sup>.

The scheme is operated using template contracts for both AFL and Lease. The counterparty to the Lease is the relevant Local Authority. Amendments to the form of AFL and Lease by Proposers will not be accepted.

<sup>1</sup> Information can be obtained by contacting the Housing Agency at [enhancedleasing@housingagency.ie](mailto:enhancedleasing@housingagency.ie)

# 02 General Principles

There are a number of general principles of scheme and these are:



**2.1** Proposers submit a proposal to the Housing Agency to Lease to a Local Authority on a long-term basis of **up to 25 years a minimum of 20 properties** in that Local Authority area.



**2.5** The Proposer will be responsible for the **management and maintenance of the properties**, as set out in the Lease. This is a performance-based contract where penalties will apply if the management services requirements are not adequately performed (see Section 4). The Proposer will remain responsible for the upkeep and maintenance of the property, including responsibility for any structural defaults with the property.



**2.2** The Local Authority will make **rental payments** (see Section 10) of up to 95% of the agreed Market Rent to the Proposer for the provision of the properties.



**2.3** Rent reviews will be based on the Harmonised Index of Consumer Prices ("HICP") and reviews will be at 3-year intervals.



**2.6** The lease **protects the leasehold interest** as there is no provision of break clauses during the term of the lease.



**2.4** The Local Authority will **sub-let the property to a tenant** (see Appendix 11 of the Book of Appendices<sup>2</sup> for Specimen Tenancy Agreement). Tenants will be nominated by the relevant Local Authority in accordance with their Scheme of Letting Priorities. Tenants will enter into tenancy agreement with the relevant Local Authority, acting as the landlord. The Local Authority will have responsibility for managing the tenancy under the terms of



**2.7** The proposer will be required to provide the **financial information** to the Housing Agency during the due diligence stage of the process (see Section 12). This information will assist the Housing Agency in determining the financial robustness of the submission.

<sup>2</sup> Information can be obtained by contacting the Housing Agency at [enhancedleasing@housingagency.ie](mailto:enhancedleasing@housingagency.ie)

## 03

# Agreement for Lease and Lease

The Agreement for Lease and Lease are template documents managed by the Housing Agency on behalf of the Local Authority. The introduction of the AFL allows Lessors to enter into an agreement with a Local Authority that may allow the Proposer to draw down their required funding.

The AFL is a binding document that gives both the Lessor and the Lessee comfort that, if the conditions of the AFL are met, each is contracted to lease the property.

Amendments to the form of Agreement for Lease and Lease by Proposers will not be accepted, however, non-material amendments will be considered by the Housing Agency, in consultation with its legal advisors, at its absolute discretion and where appropriate, to reflect the specific circumstances of the arrangement proposed.

The AFL and Lease are signed at the same time and the Lease is held in Escrow by the Proposer's solicitor until such time as the Local Authority agree that all of the conditions of the AFL have been satisfied.

The forms of Agreement for Lease (AFL) and Lease are appended in Appendix 8 and 9 respectively of the Book of Appendices located on the Housing Agency's website<sup>3</sup>.

A short high-level summary is provided below.

### Agreement for Lease (AFL)

The AFL is a standard form template document, if the conditions of the agreement are met then the Local Authority will Lease the properties from the Proposer. If the conditions of the AFL are not met, then the agreement ceases and there is no obligation on the Local Authority to Lease the properties. The agreement sets out:

- The conditions and timescales for the delivery of the proposed properties, and
- The Rent (Proposed Rent) that will be inserted into the form of Lease appended to the AFL.

### Lease

The Lease is a standard form template document that is entered into by the Local Authority and the Proposer. The main features of the standard form Lease are as follows:

- The term of the Lease will be up to 25 years
- Rent (Proposed Rent) will be indexed using HICP from the date the rents are formally agreed
- Rent review will be based on the HICP and reviews will be at 3-year intervals
- Local Authority will make regular monthly rent payments to the Proposer in accordance with the agreed Lease
- Rental payments will be subject to specified performance requirements regarding the maintenance services for the properties in accordance with the requirements of the Lease. Penalties may be applied where the Proposer fails to provide the management services in accordance with the requirements of the Lease
- Risk-sharing between the Lessor and the Lessee is provided for in respect of certain 'Qualifying Sub-Tenant and Third-Party Damage, and
- The Lessor is responsible for the payment of all taxes and charges including Local Property Tax.

<sup>3</sup> [www.housingagency.ie](http://www.housingagency.ie)

# 04 Management and Maintenance of the Property

The Proposer will be responsible for all structural repairs and structural maintenance of the Property and the Unit and the repairing, maintaining, inspecting, cleaning, renewing, installing and replacing any Conduits or Utilities within and servicing the Property.

Under the terms of the Lease, the Proposer will be responsible for the provision of management services in respect of the Property and the Unit, including the maintenance of the property for the duration of the lease.

The Proposer will be responsible for all structural repairs and structural maintenance of the Property and the Unit and the repairing, maintaining, inspecting, cleaning, renewing, installing and replacing any Conduits or Utilities within and servicing the Property.

The Proposer will be responsible for carrying out repairs to the interior and exterior of the Property (fair wear and tear excepted) and all repairs as are, from time to time, necessary so that that interior, exterior and internal décor<sup>4</sup> are maintained in, at least, the condition in which it was at the commencement of

the tenancy and in compliance with Housing (Standards for Rented Houses) Regulations S.I. 137 of 2019. As part of the initial fit out white goods must be provided and the lessor will be responsible for these goods for the first 60 days of the lease term.

## 4.1 Repair Categories

Under the Management Services, repairs are divided into three categories (see Table 1 below).

## 4.2 Repairs Notices and Penalties

The management and maintenance of the property will be done through Repairs Notices. A Lessor will have specific timeframe to respond to the Repairs Notice. The response time for resolution to the repair raised under the immediate category of repairs is 4 hours and for all other repair the response time is 24 hours.

**Table 1: Repairs categories**

Category	Response time
<b>Immediate:</b> Immediate repair is a repair which is required to ensure continued safe occupation of and/or prevent significant damage to a property. Response must effect full repair or, if full repair is not possible, significant alleviation of the required repair within the defined period.	<b>24 hours</b>
<b>Responsive:</b> Responsive repair is a repair which is required to ensure continued comfortable occupation and full use of the property and/or its facilities. Response must effect full repair or, if full repair is not possible, significant alleviation in the required repair within the defined period.	<b>5 days</b>
<b>Periodic:</b> Periodic repairs are those that are Responsive repairs, which are required to ensure continued comfortable occupation and full use of the property and/or its facilities. Response must effect full repair of the issue within the defined period.	<b>15 days</b>

<sup>4</sup> Internal painting is the responsibility of the tenant – specimen Tenancy Agreement is contained in the Book of Appendices available at [www.housingagency.ie](http://www.housingagency.ie)



Failure to resolve a repair issue within the timeframe set out in table 1 may result in the application of penalties by the Local authority. The main feature of the penalties system includes:

- i. The Lessee is entitled to apply a reduction of 12.5% for each and every breach of the service.
- ii. The maximum reduction in any one month will be 12.5% of the Rent.
- iii. In the case of the Immediate Category of Repairs the reduction will be 12.5% if the repair is not resolved within the 24-hour period allowable. In the event that the breach is not rectified within 48 hours the reduction will be increased by 1% for this and every additional 24-hour period the breach exists. As the maximum breach in any one month is 12.5% the reduction may be applied in arrears.
- iv. In the event that the Lessor fails to remedy multiple Management Services Repairs in any given month within the specified Repair Response Period, penalties for the additional Management Services Repairs will be carried forward and charged against subsequent payments of Rent.

- v. In the event of a dispute arises either party can refer the matter to a surveyor to be nominated by the President or other Senior Officer of the Society of Chartered Surveyors Ireland (the "Surveyor") as an expert and the outcome will be binding on both parties. The cost of the Surveyor will be borne by the Lessor (Clause 10.6 of the template Lease).

In the scenario below, the Lessee is entitled to apply a 12.5% penalty to the Unit Rent per month in respect of the breach. In the above scenario, the penalty would apply for one month only and, in the case where Unit Rent was €1,600, would be calculated in the following manner:

Unit Rent	€1,600
Reduction (12.5% of Unit Rent)	€200

**Rent after 12.5% penalty applied €1,400**

**Further examples are contained in Part 4 of the First Schedule of the Lease.**

#### Example of a Periodic Repair in respect of a one breach affecting one unit

A Lessor fails to remedy a **faulty heating system** within 15 Working Days.

Action	Time
<b>Sub-tenant notifies Lessee about the fault.</b>	
<b>Logged Failure Time</b> Lessee issues the Repairs Notice to the Lessor specifying: a) Unit where Management Service Repairs required b) Details of the fault reported, indicating, where possible, the relevant Maintenance Response Type	Response time commences
Lessor provides Lessee with notice specifying: a) The fault requiring Management Service Repairs b) Maintenance Response type is Periodic. Remedy required within 15 Working Days c) Plans for rectifying the Management Service Repairs and estimated period	Within 24 hours
Repair Response Period lapses	After 15 working days
<b>Logged Rectification Time</b> Lessor notifies Lessee that Management Service Repair has been remedied	After 17 working days
Lessee entitled to inspect or seek confirmation from the sub-tenant	By the end of next working day following the Logged Rectification Time
<b>Fault resolved</b>	

*The purpose of seeking the information is to allow the Housing Agency, the relevant Local Authority, and their financial advisors to assess the Proposal as expeditiously as possible and to ensure that the Proposer can demonstrate that they have the capacity to deliver and maintain the properties.*

# 05 Submission Requirements and Process

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The purpose of seeking the following information is, in the first instance, to allow the Housing Agency, the relevant Local Authority, and their financial advisors to assess the Proposal(s) as expeditiously as possible and, secondly, to ensure that the Proposer can demonstrate that they have the capacity to deliver and maintain the properties over the term of the Lease. Failure on the part of the lessor to submit the necessary documentation in its complete form, will naturally inhibit the assessment of the proposal in an expeditious manner.

**5.1** A Proposer will be required to submit a signed Proposal Checklist (see Appendix 1 of the Book of Appendices) and a completed and signed Declaration (see Appendix 2 of the Book of Appendices).

**5.2** A Proposer will be required to submit a completed Proposal Form and associated documentation (see Appendix 3 of the Book of Appendices).

**5.3** A Proposer and respective proposals will be subject to due diligence by the Housing Agency and their financial advisors. Details of this is set out in Section 12.

**5.4** A Proposer is also required to submit the details specific requirements dependent on delivery method (i.e. New Build, Acquisition or Existing Portfolio) (see Section 8.7).

# 06

## Identifying a Proposal

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When considering whether a proposal is suitable for submission under the Scheme a Proposer should bear the following points in mind:

- i. A proposal can be a group of a **minimum of 20 properties** in a single development or on multiple developments/sites/locations within a single Local Authority area.
  - Multi-unit proposals from the same development can be examined as a single proposal. A proposal can include properties delivered in a single/multi location on a phased basis
  - Properties within a single development/site should be submitted together not in a phased manner
  - It is permissible to combine properties from more than one development/site in one Local Authority area in one proposal if one or more of the combined development/sites contains less than 20 properties.
- ii. Properties included in a proposal will be required to **meet all relevant and applicable statutory requirements** under the Planning and Development Acts 2000-2018, Building Control Acts 1990-2014 and any subordinate legislation made under these Acts including the payment of any levies or charges.
- iii. Properties provided must **meet the requirements of the Housing (Standards for Rented Houses) Regulations 2019** (S.I. 137/2019) or any update to such requirements applicable and be provided **with furniture and appliances including white goods**.
- iv. Where applicable, **Part V obligations must be complied with** in accordance with the Planning and Development Acts and to the satisfaction of the relevant Local Authority. The proposal must be a minimum of 20 units as set out at (6.1) above and provide **additionality** regarding the number of units above the obligations of the Part V agreement already reached with the Local Authority Housing Department.

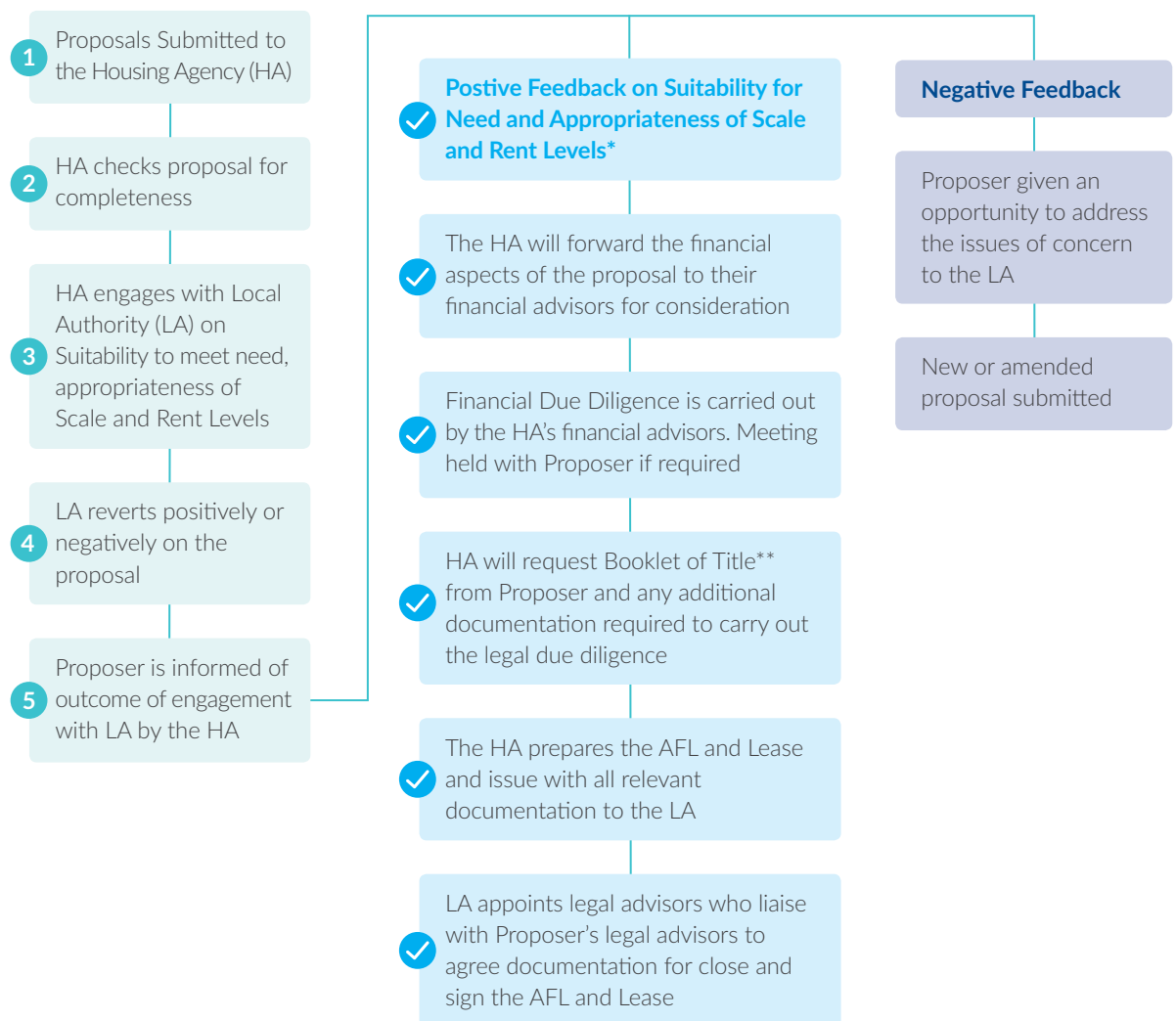
Please note that the leasing of properties to a Local Authority for social housing use does not exempt the development from the requirements set out in Section 96 of the Planning and Development Act 2000).
- v. Note that under the terms of the lease the **lessor will be responsible** for the payment of the Local Property Tax (LPT).

# 07 Assessment Process in Brief

The following is a high-level overview of the process that will be undertaken by the Housing Agency in conjunction with their financial advisors and the relevant Local Authority.

More details on the various aspects of the process are contained in the subsequent sections.

**Table 2: Overview of process**



\* Please see Section 9 for details on how the process for the agreeing of the rent payable is conducted.

\*\* More detail on the Booklet of Title is contained in Section 12.

# 08

## Making a Submission

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**8.1** The aim of the **Proposal Checklist** contained at Appendix 1 of the Book of Appendices is to act as an aide to Proposers when preparing a Submission. It should serve as a final check to ensure all required documents are included in the submission and should be signed prior to forwarding the submission to the Housing Agency.

**8.2** The completion and signing of the **Declaration** contained in Appendix 2 of the Book of Appendices is a minimum requirement and must be submitted with the proposal. Failure to complete and sign the Declaration will result in the submission not being considered further.

**8.3** The **Proposal Form** at Appendix 3 of the Book of Appendices outlines all of the questions/queries that must be addressed in a proposal. It should be noted that if additional information is required to address the question then this should be clearly referenced in the appropriate section of the Proposal Form and attached when the proposal is submitted.

**8.4** Included in the Proposal form at Appendix 3 of the Book of Appendices is the requirement to provide details of the Proposers' **Corporate Structure**. Proposers must provide up-to-date information set out below, or its nearest equivalent, about the entity that will become party to the AFL and Lease.

### **Corporate Entity**

Where a Proposer is a corporate entity it is required that the entity is established pursuant to the Companies Act 2014, as amended from time to time. Depending on the proposed corporate vehicle or shareholding structure, the Housing Agency/Local Authority reserves the right to seek a parent company guarantee, where it deems appropriate.

### **Individual**

To the extent that a Proposer has not incorporated a company for the purposes of the Scheme, Proposers are required to provide the information set out below:

- Name, and
- Details of investment structure, including constitutional documents if applicable, investment vehicle type, potential equity ownership (including names and addresses of shareholders), any guarantors.

**8.5 Proposed rents** itemised by property type and supported by rent valuation report prepared by a qualified valuer, (being a Member of the Irish Auctioneers and Valuers Institute or of the Society of Chartered Surveyors Ireland or of such body of professional valuers or surveyors as shall for the time being have undertaken in Ireland the functions in the activity of property valuation currently performed by said institute or society). Open Market Rent is to be evidenced by referencing to three (3) comparable properties in the relevant area. If direct comparables are not available properties in the area should be used and rational for the change in rental levels documented. For more details on the process for agreeing the rent payable see Section 10 of this document.

**8.6** The Proposer will be required to demonstrate their **financial capacity** to deliver and maintain the properties for the duration of the Lease. Additional information on the financial requirements and due diligence is contained in Section 12 of this document.

Where appropriate and if deemed necessary a meeting can be arranged with the Housing Agency's financial advisors to discuss these requirements in detail. It should be noted that it is a pre-requisite of entry into the scheme to comply with these requirements in order to satisfy the Housing Agency and its advisors that the Proposer has the capacity to service the lessor obligations over the term of the lease.

The Housing Agency and their financial advisors will carry out **Due Diligence** on the proposal in respect of the following:

- Title
- Fifth Schedule (fit-out of furniture and appliances)
- Financial capacity, and
- Corporate and Management Structure Due Diligence.

**8.7** A Proposer must submit the following information on the proposed properties for all delivery methods:

- Site Location Map(s) at a scale of not less than 1:1000 in built up areas and 1:2500 in all other areas, along with any relevant grid reference number(s)
- Layout and map of the development, including floor plans and elevations at the requisite planning scale (i.e. 1:200)
- Ownership of the site(s). If the Proposer is the current owner of the site/properties, a copy folio should be furnished or, alternatively, a solicitor's letter outlining the details of the ownership. If the Proposer is not the current owner of the site, details of engagement with the current owners and arrangements to purchase same must be provided. At the point of Proposal, the Proposer should have a legal agreement with the current owner of the site(s)/Properties to acquire the site(s)/properties and should furnish evidence of same. By way of example, the legal agreement in question could be an option agreement or a signed conditional contract for sale

- Number and type of proposed properties identified for the Scheme to be constructed on the site(s) and location within the overall scheme(s)
- Planning permission, including planning permission reference no. including status of Part V compliance and details of how this compliance will be met
- Details of how the repair and maintenance obligations under the Lease will be met over the 25-year period of the Lease
- Target construction/delivery programme, and
- Utility connection status.

In addition, the following information is required for a proposal where the properties are being delivered through an Acquisition or Existing Portfolio:

- Confirmation that proposed properties are vacant and are new to the housing market or have not been occupied in the preceding 12 months, the verification of the latter will form part of the local authorities' due diligence process. This may be demonstrated by way of a copy utility bill that shows that the property was unoccupied or that the property has been recently sold with vacant possession.

*Proposed Market Rent must be evidenced by a valuation prepared by a qualified valuer. Each valuation must refer to three comparable properties in the locality of the Proposal to evidence the Open Market Rent for the property.*



## 09 Submission of Proposed Rent Levels

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**9.1** Proposers will be required to submit Proposed Rents for each of the properties they intend leasing under these arrangements.

**9.2** The Proposed Rent will be a euro amount per month per property type. The maximum Proposed Rent payable under the Lease will be 95% of the monthly Open Market Rent for the property.

**9.3** For the purposes of this process the Proposed Market Rent means the estimated amount, for which the property should be Leased between a willing lessor and willing lessee on appropriate Lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

**9.4** Proposed Market Rent must be evidenced by a valuation prepared by a qualified valuer (being a Member of the Institute of Professional Auctioneers and Valuers or of the Society of Chartered Surveyors Ireland or of such body of professional valuers or surveyors as shall for the time being have undertaken in Ireland the functions in the activity of property valuation currently performed by said institute or society). Each valuation must refer to three (3) comparable properties in the locality of the Proposal to evidence the Open Market Rent for the property.

**9.5** Once the Proposed Rents have been accepted and agreed by the Local Authority via the Housing Agency (see Section 10), they will be inserted in the AFL/Lease, with indexation operating from the date the rents are formally agreed using the **HICP**.

# 10

## Agreement on Proposed Rent for Purposes of Assessment and Lease

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**10.1** The Proposed Rent for each property submitted by a Proposer, together with supporting valuation, will be sent by the Housing Agency to the relevant Local Authority for review. Provided the Proposed Rent is accepted by the Local Authority, the Proposer will be informed, and the proposal will move to the next stage of the process. Where the Local Authority does not accept a Proposed Rent for a property, the Proposer will be notified by the Housing Agency and given one opportunity to adjust the Proposed Rent within a specified period of time, following which the process above will be repeated.

**10.2** If the Proposed Rent, as adjusted, is not accepted by the Local Authority within the specified period of time or no alternative Proposed Rent is submitted, then, the Proposer may request an independent valuation at the Proposer's cost to determine the Open Market Rent. The Housing Agency will commission an Independent Valuer who will be required to determine the Open Market Rent for the property within a specified period of time. The final Open Market Rent determined for each property will be the lower of the Proposer's initial Proposed Open Market Rent and the Independent Valuer's Open Market Rent. The Proposer and the Local Authority will then be advised of the Independent Valuer's determination. The Proposer will consider the rents and indicate if they are willing to proceed by submitting revised Proposed Rents calculated by reference to the final agreed Open Market Rent. The Local Authority will be obliged to accept the final Open Market Rent determined by the Independent Valuation process. The Proposer can withdraw their submission following the Independent Valuation if they are unhappy with the determined rents.

**10.2.1** For the purposes of this process an **Independent Valuer** means an independent valuer (being a Member of Institute of Professional Auctioneers and Valuers or of the Society of Chartered Surveyors Ireland or of such body of professional valuers or surveyors as shall for the time being have undertaken in Ireland the functions in the activity of property valuation currently performed by said institute or society), such independent valuer to be nominated upon the application of the Housing Agency by either the President of the Institute of Professional Auctioneers and Valuers or the President of the Society of Chartered Surveyors Ireland at the discretion of the party entitled to make the application PROVIDED HOWEVER that in the event of the President or other officer endowed with the functions of the President of such society or institute as shall be relevant for the purposes aforesaid being unable or unwilling to make the nomination the same may be made by the next senior officer of that society or institute who shall be so able and willing AND PROVIDED FURTHER that should neither of the said societies nor the said institute then be in existence or should there be no officer thereof able and willing to make the nomination within a reasonable time of the application in such behalf the same may be made by the most senior ranking officer (so able and willing) of such body of professional surveyors or valuers as the Housing Agency shall appoint.

**Where a Proposer does not agree with the final Open Market Rent and withdraws the proposal, the Local Authority will not be obliged to accept a resubmitted proposal for the same properties where the only change is an increased rent.**

# 11

## Assessment of Proposals

### 11.1 Minimum Requirements

Proposers are required to meet the minimum eligibility requirements contained in **Appendix 2** (the “**Minimum Requirements**”) of the Book of Appendices in order to be considered for participation in the Scheme. Proposers are required to self-declare that they meet the Minimum Requirements. Failure to submit a completed signed Declaration Form contained in Appendix 2 will result in the submission not being considered further.

### 11.2 Assessment

**11.2.1** Proposers that have furnished all the requisite documentation in compliance with Appendix 1 of the Book of Appendices and who meet the Minimum Requirements referred to above will have their Proposal assessed.

**11.2.2** The Housing Agency in conjunction with the Local Authority for the area that the properties are located will assess the Proposals based on two Criteria.

Criteria 1 and 2 are Pass/Fail Criteria and as a result must be passed. Proposals that meet Criteria 1 and 2 will be deemed acceptable (“**Suitable Proposals**”).

#### **Criterion 1 – Suitability for Social Housing**

Social housing need varies across the country, but it is generally strongest in urban area.<sup>5</sup> The nature type of demand varies across local authorities, however in many local authorities a high proportion of households on housing waiting lists require one or two bed accommodation.

For a Proposal to be acceptable it must propose the **delivery of suitable properties**<sup>6</sup> to meet the social housing demand of the Local Authority.

#### **Criterion 2 – Appropriateness of the Scale of the Proposal**

Proposals in an area where there is already a high proportion of properties for social housing use may make it difficult to achieve a sustainable tenure mix within an area. For example, a Proposal may be sustainable if it is located in a large urban area and surrounded by mainly privately owned/rented housing. On the other hand, a Proposal located in a smaller town may not achieve this. Proposals are required to meet the requirement of achieving sustainable communities, issues such as accessibility, security, safety, privacy, community interaction, availability of appropriate services and the provision of adequate space are factors that need to be considered.<sup>7</sup>

The Housing Agency will liaise with the relevant Local Authorities to determine if a proposal passes or fails this criterion.

A Proposer will be given the opportunity to reduce the number of properties in its Proposal within a fixed period of time if the Local Authority determines it is too high and does not allow for an appropriate mix of tenure. If the number is not reduced to a sustainable level the Proposal will not be considered further.

**If a proposal passes Criteria 1 and Criteria 2 it is deemed suitable and the proposed rent levels will be assessed.**

<sup>5</sup> For more information on social housing need the Housing Agency's report on the Summary of Social Housing Assessments 2017 is available at [https://www.housingagency.ie/getattachment/Our-Publications/Latest-Publications/SHA-Summary-2018-NEW-v1-\(1\).pdf](https://www.housingagency.ie/getattachment/Our-Publications/Latest-Publications/SHA-Summary-2018-NEW-v1-(1).pdf)

<sup>6</sup> The assessment of suitability of properties will include a review of whether the size and type of properties proposed meet the social housing demand in that particular area

<sup>7</sup> For additional information see <http://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Housing/FileDownload%2C1979%2Cen.pdf>

# 12

## Due Diligence

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As soon as the proposal has passed the various stages of the assessment the Housing Agency will write to the Proposer informing him/her that the proposal has been deemed suitable and that the process can move to the Due Diligence Stage. The due diligence process will require the submission of additional documentation.

### Due Diligence

In order to allow the Local Authority's legal advisors to carry out this due diligence the Proposer will be required to submit:

- Key title documents
- Relevant Planning documentation for the development
- Financial encumbrance if any on the title of the properties/units
- Details of the arrangements for the Roads and Services within the proposal area, and
- Any relevant Management Agreements for the units.

### Fifth Schedule Due Diligence

As part of the Enhanced Leasing Scheme a Proposer is required to provide the furniture and appliances as set out in the fifth schedule of the Lease. For clarity of this requirement a specimen copy of the Fifth Schedule is contained in Appendix 10 of the Book of Appendices.

### Financial Due Diligence

The proposer will be required to provide the following information to the Housing Agency during the due diligence stage of the process. This information will assist the Housing Agency and their financial advisors, the National Development Finance Agency (NDFA) in determining the financial robustness of the Submission.

- i. A paper setting out the funding strategy of the Proposer, including details of the timeline for finalising third party funding, if applicable. The timeline must include updates to the Housing Agency on the progress towards securing the funding solution

- ii. Financial statements/ management accounts for key Proposers in the Scheme
- iii. A Business Plan for the Scheme and financial model (as per Appendix 7 of the Book of Appendices)
- iv. Details of the tax structure of the [Lessor/Landlord] so as to ensure compliance with the Code of Practice for the Governance of State Bodies<sup>8</sup> issued by the Department of Public Expenditure and Reform in August 2016. Prior to signing an Agreement for Lease, a tax clearance certificate will be required from the Proposer in respect of the company entering into the agreement, and
- v. Prior to signing an Agreement for Lease, the Proposer must provide evidence of committed financing in the form outlined at Appendix 4 of the Book of Appendices.

### Non Irish Entities

- vi. A legal opinion will be required from a legal firm in the jurisdiction in which the entity is incorporated which verifies:
  - a) That the entity was properly incorporated, is still in existence and no steps have been taken or are being taken to appoint a receiver, examiner, liquidator or similar officer over or to wind it up;
  - b) That the entity has the power to enter into the transaction in question and any corporate or statutory procedures required in the jurisdiction in which the entity is incorporated have been attended to;
  - c) That the EL, as executed by the non-Irish entity, has been correctly executed by it and the document binds the non-Irish entity and is enforceable against it;

<sup>8</sup> To ensure that the proposed tax structure does not entail tax avoidance

- d) That there are no charges or other encumbrances registered against the non-Irish entity which affect, or which are capable of affecting, the property involved in the transaction;
  - e) There is no necessity under the laws of the jurisdiction in which the entity is incorporated to file or register the EL with any public office to ensure its validity, enforceability and priority;
  - f) The choice of Irish law as the governing law of the agreement and the submission by the parties to the exclusive jurisdiction of the Irish courts will be upheld by the Courts in the jurisdiction in which the entity is located.
- vii. Confirmation of the tax structure of the leasing entity.

Table 3 below gives an overview of the Appendix 4 of the Book of Appendices requirements for each funding type.

**Table 3: Requirements by funding type**

Equity Funding	Debt Funding (existing facility)	Debt Funding (new facility)
Model Certificate A	Model Certificate B	Model Certificate A

### Debt Funding

The Proposer should provide details of all substantive financing terms agreed with funders. Where applicable, details of debt terms should be provided as per the term sheet at Appendix 6 of the Book of Appendices.

### Equity Funding

Where an equity commitment forms part of the funding solution, the proposer must provide evidence of the quantum of equity commitment to the company and details of board approval for the investment.

### Management Structure

The proposer will be required to provide details of the management structure that will be in place to manage and maintain the properties in line with the terms of the lease for the duration of the lease. The purpose of seeking this information is to ensure that the arrangements will allow the Lessor carry out the management and maintenance obligations as set out in Clause 10 and the Sixth Schedule of the Lease. The evidence to be submitted will be required to include:

- Name of Authorised Representative and point of contact for the Local Authority for the duration of the contract
- Name and details of the maintenance and repairs contractor, and
- Details of the experience of the contractor in management and maintenance of residential property.

**Please note: Unless the non-Irish entity appoints an agent to collect the rent in Ireland, the LA is required to deduct income tax at the standard rate from the rent payable in accordance with Section 1041 of the Tax Consolidation Act 1997 and remit it directly to the Revenue Commissioners using a Form R185.**

# 13 Other

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## 13.1 Proposer Costs

Proposers shall bear all costs associated with the preparation, submission and clarification of his/her Proposal. The Housing Agency will not be responsible and/or liable for any costs, expenses or losses which may be incurred by a Proposer in the preparation, submission or clarification of his/her Proposal, regardless of the conduct or outcome of the process.

## 13.2 No Liability

Proposers may not rely on anything contained in this document as a representation of fact or promise regarding the future, nor as constituting the basis of a contract or Lease that may be concluded, in relation to the Scheme. No contractual relationship, implied or otherwise, or any other legal obligation will arise between a Proposers and the Housing Agency or the Minister.

## 13.3 Confidential Information

If a Proposer considers that any of the information supplied in his/her submission should not be disclosed because it is confidential, the Proposer should, when providing the information, identify that information as "confidential". The Housing Agency shall not disclose confidential information, save as required by law.

## 13.4 Freedom of Information Requirements

The Housing Agency and the DHPLG are subject to the Freedom of Information Act 2014 (the "FOI Act") and as such all submissions and correspondences with either party is subject to the provisions of the FOI Act.

Where a Proposer consider any information, he/she provides to be "commercially sensitive", he/she shall mark the information as such. If requested by the Housing Agency, Proposers must provide the Housing Agency with the reasons why he/she considers such information to be commercially sensitive. Failure to do so may result in such information being released in response to a request pursuant to the FOI Act. The Housing Agency will use reasonable endeavours to consult with Proposers about sensitive information before making decisions on any request received under the FOI Act. If the Housing Agency decides to release particular information relating to a Proposer, the Proposer will have the option to appeal the Housing Agency's decision to the Information Commissioner (as referred to in the FOI Act).

If there is a conflict between any agreement between or requirement of the parties and the statutory requirements of the FOI Act, the FOI Act will prevail.

## 13.5 Conflicts of Interest

Any actual or potential conflicts of interest arising, whether professional or commercial must be fully disclosed in writing to the Housing Agency as part of the process and on an on-going basis throughout the process, as soon as any actual or potential conflict becomes apparent.

In the event of an actual or potential conflict of interest arising, the Housing Agency will, in its absolute discretion, decide on the appropriate course of action, which may involve the exclusion of the relevant Proposers from the process. If the Housing Agency determines that no such conflict of interest arises or that the conflict of interest is immaterial, then the Housing Agency may decide to take no action.





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