

Annexe A

PROPOSED HIBERNATION OF COLCHESTER AMPHORA HOMES LTD

To: Boards of

Colchester Amphora Homes Ltd

Colchester Commercial Holdings Ltd

Date: 13 February 2024

From: Interim Managing Director, Colchester Commercial Holdings Ltd

1. PURPOSE

1.1 In line with the approved Future Strategy for Amphora and following a review of the company's assets and agreements with third parties, to propose the resolutions required to enable the hibernation of Colchester Amphora Homes Ltd (CAHL), including the treatment of its assets and agreements.

2. BACKGROUND

2.1 The Future Strategy for Amphora was approved through both Amphora's and the City Council's formal governance processes towards the end of 2023. The Strategy included the hibernation of CAHL, as a result of the change in the City Council's ability to accommodate risk, due to the more challenging financial circumstances faced by all authorities and in line with the recommendations made by CIPFA in 2022 as part of their review earlier.

2.2 The general considerations involved in the hibernation of CAHL are essentially the same as those set out for CAEL when similar resolutions were considered towards the end of last year. For ease of reference, the report setting out those considerations covering CAEL are attached for ease of reference at Appendix 1.

2.3 As for CAEL, before formal resolutions to bring about the hibernation of CAHL could be presented to the Boards of CAHL and CCHL and, thereafter, the City Council's Governance and Audit Committee and Cabinet, it has been necessary to review CAHL's assets and agreements with third parties, to determine the appropriate way forward for each of these. This has now been completed with the support of Anthony Collins, who have been advising both Amphora and the City Council on this issue.

3. DOCUMENT REVIEW

3.1 CAHL's assets are confined to a property at Creffield Road. The proposed approach to it and the limited number of agreements CAHL has with third parties is set out in Anthony Collins' advice note entitled 'Document Review dated 25 January 2024' and included at Appendix 2.

3.2 As far as Creffield is concerned, on the assumption that the sale of one remaining flat cannot be completed by 31st March, the proposal is to transfer this to CCHL, given that local authorities do not have the legal powers to act commercially, which is what holding open market 'for sale' housing would be. An offer has now been received for the property and if the prospective sale could be completed before 31st March, this would negate the need for the proposed intercompany transfer. However, realistically, the sale is unlikely to be completed until after the financial year end, not least as the prospective purchaser has still to sell their own property. As Creffield is a site of six flats, the freehold of the common parts will also need to transfer to CCHL.

3.3 Anthony Collins' advice note emphasises the need to establish whether there are any tax implications associated with this proposed inter-company transfer, although even if there were, given that the asset cannot be owned by the City Council, these would not detract from the recommended transfer. However, advice secured from Amphora's external auditors Scrutton Bland has now been received. This confirms that there are no detrimental tax implications arising from the proposed inter-company transfer of the Creffield property if, as seems likely, this proves necessary due to its sale not being completed before 31st March.

3.4 Anthony Collins have confirmed that the Creffield property could be held by CCHL without any adjustment required to the holding company's Articles of Association. In due course, the business plan and group governance agreement will need to be refreshed to reflect the holding.

3.5 The associated rights and liabilities arising from CAHL having redeveloped the Creffield site will also transfer to CCHL, in accordance with the advice from Anthony Collins.

4. FINANCIAL & STAFFING IMPLICATIONS

4.1 Before the proposed resolutions for the hibernation of CAHL could be implemented, it will be necessary to reach agreement with the City Council over the treatment of the losses incurred by Amphora Homes in a way that protects the interests of both the City Council and Amphora, including CCHL. This is the same position as for CAEL. This includes agreeing the most appropriate approach to the impairment of CCHL's interest in CAHL. This is being pursued with the City Council's S151 Officer.

4.2 CAHL has two employees. The Future Strategy for Amphora envisages that both will take up roles elsewhere within the Colchester family. One is transferring to Colchester Borough Homes under TUPE and the other is engaged in a recruitment process for a new role within the City, the outcome of which should be known shortly. If the approach to staffing anticipated in the Future Strategy did not materialise, the implications of this would need to form part of the discussions with the City Council described in paragraph 4.1.

5. CONCLUSION

5.1 The principle of hibernating CAHL has been agreed by both Amphora and the City Council, as part of the Future Strategy for Amphora.

5.2 Following the review work carried out with support from Anthony Collins, the way is now clear for the Board to consider and approve the formal resolutions to enable the hibernation to be implemented. These are appended at Appendix 3 and include the approach to CAHL's solitary asset and its agreements with third parties. To be clear, the implementation of the resolutions

would be contingent upon a satisfactory conclusion of the matters set out in paragraph 4 as is the case with the hibernation of the agreed resolutions to hibernate CAEL.

6. RECOMMENDATION

6.1 The Board is recommended to approve the resolutions set out in Appendix 3.

APPENDICES

Appendix 1 – Report to Colchester City Council – Amphora Governance and Decision Making

Appendix 2 – CAHL Documents Review 2024

Appendices 3 – CAHL Shareholder Resolutions

CCHL Board Resolutions

CCHL Shareholder Resolutions