

Notice of Non-key Executive Decision

Subject Heading:	Build Licence for Napier New Plymouth (Havering Wates JV LLP)
Cabinet Member:	Councillor Damian White Leader of the Council
SLT Lead:	Neil Stubbings Director of Regeneration Programme Delivery
Report Author and contact details:	Maria Faheem Maria.Faheem@havering.gov.uk
Policy context:	Havering Housing Strategy HRA Business Plan 2020-2050 National Planning Policy Framework Draft London Plan Havering Proposed Local Plan
Financial summary:	The granting of the Build Licence would enable the development of Napier New Plymouth to proceed. The granting of the licence to HWR does not generate a fee and as such does not generate any direct financial implications for the Council.
Relevant OSC:	Towns and Communities
Is this decision exempt from being called-in?	Yes - It is a non-key decision

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The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval of the Director of Regeneration to enter into the Build Licence at Appendix 1 on behalf of the Council with HWR Phase 1 Stage 1 LLP to carry out the 'Development' in relation to the Napier New Plymouth Site, on terms substantially the same as the agreed form of Build Licence appended to the Development Agreement and as summarised in this report.

AUTHORITY UNDER WHICH DECISION IS MADE

Pursuant to the Cabinet meeting of 12th February 2020, authority was delegated to the Director of Regeneration to enter into a build licence for sites within work package one of the 12 site regeneration programme, once the Council has met the Conditions Precedent for individual sites. This report seeks approval; to enter into a Build Licence in relation to the development of Napier New Plymouth according to this authority.

STATEMENT OF THE REASONS FOR THE DECISION

Pursuant to the Development Agreement dated 27 April 2018 and made between (1) the Council and (2) Havering and Wates Regeneration LLP ("LLP") (the "Development Agreement"), once the Conditions Precedent have been satisfied in relation to a Site the Council is obliged to grant a Build Licence to the LLP or a development subsidiary. HWR Phase 1 Stage 1 LLP is a development subsidiary which has been set up pursuant to the JV Members Agreement to deliver the Napier and New Plymouth development.

The Conditions Precedent have now been satisfied for Napier and New Plymouth so the Council should grant the Build Licence in order to comply with its contractual obligations in the Development Agreement and enable the delivery of the development.

Background

- London Borough of Havering ("the Council") entered into a contract for a partner to form a long-term corporate joint venture ("JV") property vehicle to secure investment and expertise to deliver Havering's housing led regeneration strategy, entered into 27 April 2018. The documents include a Development Agreement (as referred to above) which requires the parties to satisfy a number of Conditions Precedent. Once those Conditions have been satisfied and development can commence the Council is obliged to grant a Build Licence.

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- The proposals in this report support the recommendations approved by the Cabinet meeting of 12th February 2020. The Conditions Precedent have now been satisfied and the Build Licence will enable the 'Development' of Napier, New Plymouth, including the development of 197 units for the borough at the Napier, New Plymouth Site. Without the Build Licence in place the JV is unable to commence works.
- The Build Licence substantially follows the agreed form of Build Licence which was appended to the Development Agreement on exchange.
- The main terms are as follows:
- The Council is granting a licence to HWR Phase 1 Stage 1 LLP (the Developer) of part of the land comprised in title known as Napier New Plymouth.
- The Licence Period starts on the date of the Licence and terminates on Practical Completion (unless terminated earlier for breach).
- There is no fee payable for the grant of the Licence.
- The Licence grants the right for the Developer its contractors and those authorised by it with or without vehicles workmen plant machinery and/or equipment for the Licence Period to occupy the relevant areas within the Property upon which are to be constructed Units as such area(s) are more particularly shown on the Plan for the purpose only of carrying out the construction of the Development in accordance with the Licence
- The Licence confirms that the Council appoints the Developer to carry out the 'Development' (defined in the licence as: the demolition of existing buildings and redevelopment of the Property comprising a number of buildings ranging between 3 to 10 storeys, providing 197 residential dwellings (Class C3), public and private open space, formation of new accesses and alterations to existing accesses, associated car and cycle parking and associated works in accordance with the Existing Planning Permission (dated 6 April 2020 with reference P0751.19).
- The Licence contains covenants on the Developer's use of the Property (set out in Clause 4 and Schedule 2) which include provisions around the carrying out of the Development and the use of the Property which follow those in the Development Agreement.
- The Licence confirms that all risk in the Property passes to the Developer on completion of the Licence and the Developer gives the Council an indemnity relating to this (clause 5).
- The Licence contains termination provisions which are engaged if the Developer becomes insolvent, materially breaches the Licence or the JV Agreement is terminated in relation to the Property (clause 6). The Council must serve a termination notice and if there has been a material breach, the Council must

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serve 20 working days' notice on the Developer and may only terminate if the Developer is still in breach following expiry of the notice.

- The Developer's dealings with the Property are restricted and it may only enter into adoption agreements in relation to any infrastructure works.

Following Practical Completion of the scheme, the Licence will terminate.

OTHER OPTIONS CONSIDERED AND REJECTED

Rejected – **Do nothing.** Placing a pause on development activities. This was rejected on the grounds that this will stall the development of affordable homes for the borough and would be in breach of the provisions of the Development Agreement.

PRE-DECISION CONSULTATION

Wates Construction as JV Partner
Bevan Brittan Solicitors
OneSource business partners

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Maria Faheem

Designation: Regeneration Officer

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

This report follows a number of previous reports to Cabinet, most recently 5th August 2020 and 12th February 2020.

Pursuant to the delegated authority of the Cabinet of 12th February 2020, the Director of Regeneration is being asked to enter into a Build Licence with HWR Phase 1 Stage 1 LLP to progress the development of Napier and New Plymouth.

Pursuant to the Development Agreement between the Council and Havering and Wates Regeneration LLP, once the Conditions Precedent have been satisfied in relation to a Site the Council is obliged to grant a Build Licence to the LLP or a development subsidiary. HWR Phase 1 Stage 1 LLP is a development subsidiary which has been set up pursuant to the JV Members Agreement to deliver the Napier and New Plymouth development.

The Conditions Precedent have now been satisfied for Napier and New Plymouth, accordingly, the Council is now contractually committed to enter into the Build Licence

The Council has entered into the Joint Venture Agreement and the Development Agreement pursuant to a number of powers including the Housing Act 1985, the Housing and Regeneration Act 2008, the Local Government Act 1972 and the general power of competence in section 1 Localism Act 2011. The general power of competence will enable the Council to enter into the Build Licence.

The recommendations in this report are in accordance with the delegated to the Director of Regeneration granted by the Cabinet on 12th February 2020 and the contractual terms of the Development Agreement. The terms of the Build License, summarised in this report, are substantially the same as the agreed form of Build Licence appended to the Development Agreement previously approved by the Cabinet.

FINANCIAL IMPLICATIONS AND RISKS

The financial implications of development of Napier New Plymouth as a 100 per cent Council scheme was set out in the Cabinet Report of 5th August 2020.

The grant of the Build Licence would enable the development of Napier New Plymouth to proceed. The grant of the licence to HWR does not generate a fee and as such does not generate any direct financial implications for the Council.

The Licence confirms that all risk over the Property passes to the Developer on the grant of the Licence during the period of development, and the Developer (HWR) would provide the Council with an indemnity relating to this.

HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

None

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

BACKGROUND PAPERS

None

APPENDICES

[Appendix 1 – Build Licence Napier New Plymouth](#)
[Appendix 2- Summary of Building Licence](#)

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

~~Proposal NOT agreed because~~

Details of decision maker

Signed



Name: Neil Stubbings

Director of Regeneration Programme Delivery

Date: 12.11.2020

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____

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