

Notice of NON KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt as the appendices within this report are not available for public inspection as they contain or relate to exempt information within the meaning of the Access to Information Procedure Rules set out in the Constitution pursuant to Schedule 12A Local Government Act 1972 as amended. The exemption sought is by virtue of Paragraph 3 – Information relating to the financial or business affairs of any particular person including the authority holding that information. It is in the public interest to withhold the information as the public interest in maintaining the exemption outweighs the public interest in disclosing the information as disclosing the information could prejudice the Council's position and this is not in the public interest.

Subject Heading:	Approval of Loan Facility Agreements for Mercury Land Holdings (Quarles Campus)
Cabinet Member:	Councillor Damian White Leader of the Council
SLT Lead:	Neil Stubbings Director of Regeneration
Report Author and contact details:	Paul Walker Interim Assistant Director of Regeneration 01708 434282 paul.walker@havering.gov.uk
Policy context:	The establishment of Mercury Land Holdings was agreed in May 2015. Its key objectives were to generate a financial return for the Council, contribute to the delivery of housing supply, ensure the right mix of housing for the borough

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	and to support the growth and regeneration needs of the Council.
Financial summary:	Costs, funding and the associated risks/issues have previously been considered in the exempt part of an approved Key Executive Decision.

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 type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Place an X in the [] as appropriate

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Background

In October 2021 the Leader approved a Key Executive Decision concerning proposals advanced by Mercury Land Holdings Limited.

The relevant recommendations approved at that time are reproduced below for ease of reference:

Quarles Campus

1. Approve the Business Case for the Company, relating to Quarles Campus, provided at Exempt Appendix C.
2. Note that the Council is required to dispose of the land at Quarles Campus (Title Numbers EGL381186 & EGL 442119) to the Company under the terms of a previously approved Option Agreement and in line with the independent Red Book valuation at Exempt Appendix H, including entering into the related agreements following service by the Company to exercise the Option.
3. Approve the proposed development of land at Quarles Campus by MLH Limited via a contractual joint venture arrangement with a national house builder, Bellway Homes, comprising 120 residential units on the terms set out at Exempt Appendix I.
4. Subject to recommendations above, to approve the provision of a state subsidy control compliant loan and equity by the Council including approval to enter into the relevant PRS and Sale loan facility agreements, to develop 120 units for sale, of which the Company will acquire 20 units for use as additional private-rented accommodation.
5. That the Director of Regeneration, acting in consultation with the Director of Legal and Governance and the Section 151 Officer, be authorised to enter into all necessary legal agreements to bring into effect the proposed arrangements in these Recommendations for both sites.

Quarles Campus and Roneo Corner are following different timescales, so this report is focused on Quarles Campus. It is envisaged that a separate report be will presented on Roneo Corner in due course.

Since the approval of the Key Executive Decision in October 2021, the date of the Quarles Options Agreement between the Council and MLH, has been extended until March 31st 2022.

Given that the Loan Facility Agreements necessary for the Council to provide state subsidy control compliant loan and equity are now in final form and agreed between Council officers and MLH, it is now appropriate to ask the Director of Regeneration, acting in consultation, to approve the Agreements in readiness ahead of transfer arrangements.

Recommendations

1. For the reasons set out in this report and its exempt appendices the Director of Regeneration, in consultation with the Director of Legal & Governance and the Section 151 Officer, is recommended under the delegation provided, to approve entering into the following agreements to give effect to the Leader's decision:
 - (a) **Quarles Campus (PRS)**
 - Loan Facility Agreement (Exempt Appendix 1)
 - Supplemental Legal Mortgage (Exempt Appendix 2)
 - Loan Note (Development Phase) (Exempt Appendix 3)
 - Loan Note (Operational Phase) (Exempt Appendix 4);
 - (b) **Quarles Campus (Residential for Sale)**
 - Loan Facility Agreement (Exempt Appendix 5)
 - Supplemental Legal Mortgage (Exempt Appendix 6).
2. The Director of Regeneration should note that Mercury Land Holdings Limited is required under the Option Agreement to serve notice on the Council related to the transfer of Quarles Campus and must ensure that they satisfy the conditions precedent to secure the finance arrangements under this report.
3. The Director of Regeneration is recommended to approve the completion and submission of the Land Transfer Documents associated with this transaction, when appropriate and as required.
4. The Director of Regeneration in consultation with the Director of Legal and Governance and Section 151 Officer, is asked to approve any minor amendments, as necessary, to any of the documentation referenced in Recommendations 1 and 3 above.

AUTHORITY UNDER WHICH DECISION IS MADE

In October 2021 the Leader approved a Key Executive Decision to provide funding to Mercury Land Holding (a company wholly owned by the Council) in relation to proposals at Roneo Corner and Quarles Campus via loan facility agreements, with authority given to the Director of Regeneration, acting in consultation with the Director of Legal and Governance and the Section 151 Officer, to enter into all necessary legal agreements to bring into effect the proposed arrangements for both sites. This is more fully set out in the background section of this report.

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STATEMENT OF THE REASONS FOR THE DECISION

Although the proposed Loan Facility and associated Agreements between the Council and MLH for Quarles Campus are now in an agreed form, in order to act constitutionally, given the recommendations in the approved Key Executive Decision taken by the Leader in October 2021, it is necessary for the Director of Regeneration, acting in consultation with the Director of Legal & Governance and Section 151 Officer, to record a decision to approve and enter into the Loan Facility and associated Agreements to facilitate the transfer of arrangements for Quarles Campus.

OTHER OPTIONS CONSIDERED AND REJECTED

The recommendations in this paper are to give effect to the decision made by the Leader. The original governance reports in relation to Quarles set out other options as to the site but these are no longer applicable.

PRE-DECISION CONSULTATION

As per the recommendations.

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

Name: Paul Walker

Designation: Interim Assistant Director of Regeneration

Signature:

A handwritten signature in black ink that reads "P Walker". The "P" is large and stylized, and "Walker" is written in a cursive script.

Date: 1 March 2022

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

Finance Arrangements

The Legal Implications and Risks remain as previous described on the Key Executive Decision Report (October 2021).

Section 24 Local Government Act 1988 (LGA 88) provides the Council with the power to provide a wide range of financial assistance to MLH (in respect of privately let housing) including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) also acquire share or loan capital in it. Privately let housing means any form of rented accommodation provided this is not let by a local authority.

If the Council exercise its powers under Section 24 LGA 88 then under Section 25 of the LGA 88 it must obtain the consent of the Secretary of State to do so. The Secretary of State has set out pre-approved consents in the 'General Consents 2010' (July 2011 update). If the circumstances of financial assistance meet one of the criteria in the General Consents then the Secretary of State's consent is given.

The current version of the General Consents 2011 contains Consent C. This permits financial assistance to be provided to any person (which includes MLH). The only form of financial assistance which may not be given under Consent C is support through the transfer of land – i.e. at nil or a reduced consideration.

In relation to entering into the financial arrangements the Council may also rely on Section 1 of the Localism Act 2011 which provides local authorities with the power to do anything that an individual may do subject to a number of limitations (this is referred to as the General Power). Together with Section 111 Local Government Act 1972, which provides the Council with the power to do anything whether or not involving the expenditure, borrowing or lending of money or the acquisition of property rights which is incidental, conducive or calculated to facilitate the exercise of any of their functions. This would include the exercise of functions under Section 24 and 25 LGA 88 together with Section 1 Localism Act 2011. The Council could rely on these powers to provide the company with loans and other support such as providing staff and the use of premises. Any support provided must be state subsidy control compliant and will be the subject of agreements between the Council and MLH.

State Subsidy Control

The Trade and Cooperation Agreement between the European Union and the UK (TCA) sets out the parameters for giving financial assistance or offering guarantees to 'economic actors' from public resources being generally prohibited if it is selective, confers an economic advantage and has or could have an effect on trade or investment between the UK and EU. TCA therefore requires the United Kingdom to adopt a subsidy control system in order to prevent grantors, that is governments and public bodies, from providing harmful subsidies to businesses.

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It is important that any loans/credit/guarantee or other support provided to MLH are UK subsidy control compliant. Loans/credit/guarantees which the Council generally makes available to MLH for market housing must be made on commercial terms and at a commercial interest rate or where the Council is acting like any usual market investor. It will be necessary for the Council to obtain independent confirmation that such arrangements have been made on commercial terms prior to them being entered into including taking usual securities over land/assets under usual market conditions.

Fiduciary Duties

The Council's fiduciary duties could be briefly summarised as it acting as a trustee of tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and Council-tax payers.

In making decisions concerning MLH, the Council considers whether making investment and/or extending loans to that body (and similar activities) should give proper consideration to the risks and rewards of approving the recommendations. In practice Members will want to consider whether the Council will achieve an appropriate return for its risk and that the Council has minimised the risk and potential cost to it if the Company were to become insolvent and/or defaulted on its loan(s).

Consideration should also be given to whether the Council's involvement in this arrangement is proportionate and properly balanced against the anticipated benefit as well as the wider interest of its local business rate and council tax payers. On a practical basis this means that Members should consider whether the monies that they are requested to approve for lending could be better used by the Council for the wider interests of its local tax payers. This should include considering the impact on the Council (and therefore its local tax payers) if the Company became insolvent or otherwise defaulted on loans it had taken from the Council.

FINANCIAL IMPLICATIONS AND RISKS

The financial implications including details of the cost and funding of the purchase and associated issues were provided in the exempt appendices which comprised a part of the previous Key Executive Decision Report (October 2021).

A number of risks were previously considered in the evaluation of the business cases relating to the proposed funding of the development proposals at Quarles Campus. These include looking at the PWLB borrowing rates and on-lending; assessment of development risk; letting and management risks; public subsidy control and transfer pricing. These risks can be appropriately managed.

The information previously provided in the Key Executive Decision Report (October 2021) demonstrated that it would be appropriate for the Council to provide the loan

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support requested by MLH provided that it is regulated by Loan Facility Agreements between the Council and MLH.

Given that the Facility Agreements and associated Agreements have now been agreed, the funding requested by MLH for Quarles Campus, as set out in the Exempt Appendices to the previous Key Executive Decision Report (October 2021), can be advanced once the agreements have been legally exchanged/completed.

In November 2021 HMG launched 'Consultation on changes to the capital framework: Minimum Revenue Provision' which sought views on proposed changes to regulations to better enforce the duty of local authorities to make prudent Minimum Revenue Provision each year.

Whilst it is still unclear precisely what changes may be made, it is possible that they might affect the way that the Council finances MLH by approximately £180k over a 3 year period, and this will therefore need to be monitored following the completion of the pending consultation.

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

There are no direct implications arising from the proposed provision of funding to MLH.

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, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

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.

In relation to the proposed provision of funding to MLH there would appear to be no risks or implications associated with the Council's statutory duty.

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Beyond the narrow decision to approve the Loan Facility and associated Agreements, the new homes to be developed/acquired will all conform to the appropriate Building Regulations, including those for access, and with planning requirements.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

There are no direct implications arising from the recommendations set out in this report to approve the necessary Loan Facility and associated Agreements.

Indirectly, the funding provided and regulated by these Agreements will enable new housing to be produced. This will be built in accordance with planning policy and building control standards. Such new homes will be warm, well-ventilated and conform to appropriate space standards, all of which will help to support individual health and well-being.

CLIMATE CHANGE & ENVIRONMENT

There are no direct implications arising from the recommendations set out in this report to approve the necessary Loan Facility and associated Agreements.

BACKGROUND PAPERS

Proposed Loans to Mercury Land Holdings Limited, company number 09878652 (the company) for the development at Quarles Campus and development at Roneo Corner: Part Exempt Key Executive Decision, October 2021.

EXEMPT APPENDICIES

Quarles Campus (PRS):

- Loan Facility Agreement (Exempt Appendix 1)
- Supplemental Legal Mortgage. (Exempt Appendix 2)
- Loan Note (Development Phase). (Exempt Appendix 3)
- Loan Note (Operational Phase). (Exempt Appendix 4).

Quarles Campus (Residential for Sale):

- Loan Facility Agreement. (Exempt Appendix 5)
- Supplemental Legal Mortgage. (Exempt Appendix 6).

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

CMT Member Title: Director of Regeneration

Date: 14 April 2022.

Details of Consultees

Signed:



Name: Alison McKane

CMT Member Title: Director of Law & Governance

Date: 14 March 2022.

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CMT Member Title: Section 151 Officer

Date: 14 March 2022.

Signed: 

Name: Dave McNamara

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 _____