

Notice of Non-key Executive Decision

This Non-Key Executive Decision Report is part exempt. Appendix 1 is not available for public inspection as it contains exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to information relating to the financial or business affairs of any particular person (including the authority holding that information), and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Subject Heading:	Proposed engagement of MLH to undertake some development potential work on Council owned land.
Cabinet Member:	Councillor Graham Williamson Cabinet Member for Development and Regeneration
SLT Lead:	Neil Stubbings Director of Regeneration
Report Author and contact details:	Paul Walker Interim Assistant Director of Development 01708 434282 paul.walker@havering.gov.uk Mark Butler Director of Asset Management 01708 432947 mark.butler@onesource.co.uk
Policy context:	MLH Business Plan LBH Capital Strategy and Asset Plan London Plan 2021 Havering Local Plan 2016-2031

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Financial summary:	The proposed arrangements would be funded by the Council, from within existing budgets. The amount of expenditure would be within the Director's delegated authority level.
Relevant OSC:	N/A
Is this decision exempt from being called-in?	Yes, this is an officer decision taken under delegation.

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

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

[x]
[x]

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

The Council's Capital Strategy is a key element of the wider budget and financial planning process, seeking to identify both the priorities for forthcoming capital investment and the appropriate funding sources. These funding sources typically comprise a combination of:

- Prudential borrowing
- Use of developer contributions generated from S106 or CIL (Community Infrastructure Levy) contributions
- Capital grant (often ring-fenced)
- Capital receipts generated through asset disposal.

The relative contribution from each of the above will vary from year to year depending upon a variety of factors, but Havering Council has proactively used the option to generate capital receipts through the sale of surplus assets over the past 15-20 years as a means of reducing the call on prudential borrowing.

There is a limit to the possible generation of capital receipts from asset disposals as the asset base diminishes over time, but opportunities are still available in the medium term as a consequence of various factors including:

- Existing asset rationalisation proposals – Cabinet agreed in January 2021 to rationalise its administrative accommodation to reflect revised working practices following the Covid pandemic and the opportunity to reduce the Council's office needs, rendering some buildings surplus to operational requirements;
- Medium term financial strategy – the need to achieve significant reductions in the Council's revenue expenditure (as reported in accompanying papers) has necessitated a comprehensive review and re-prioritisation of Council services and their means of delivery. Resulting from this work is the likely opportunity to rationalise assets linked to front-line service delivery in order to deliver service efficiencies, with a consequent release of some assets from operational use;
- Asset review – the Council's Asset Management Plan promotes the ongoing review of all assets to ensure that there is a clear and justified requirement for their ongoing retention. Where the alternative use value of an asset exceeds its existing (operational) use value, it is appropriate to review whether the operational case for retaining the asset can be upheld, relative to the opportunity cost (i.e. the greater value that could otherwise be realised by releasing the asset). Similarly, there may be examples where the continued retention of an asset generates increasing revenue liabilities due to age, obsolescence and/or future investment/maintenance costs to the extent that disposal represents the most cost-effective option.

Together the above factors combine to potentially offer a series of opportunities to develop a pipeline of capital receipts in the short to medium term to support the Council's Capital Strategy.

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2. Development Potential and Due Diligence

The potential disposal of any asset always requires some due diligence work to help estimate development potential as well as to confirm legal title, potential constraints, environmental conditions or contamination. In light of the information arising from this work, it is possible for the Council to form a view about how to maximise the potential capital receipt arising from any particular site.

The Council also has to demonstrate that it has met its obligations under S.123 of the Local Government Act 1972 to achieve 'best consideration' from any disposal. This generally requires the Council to demonstrate that open market value (OMV) has been achieved, either by evidencing that the asset has been openly marketed, providing an opportunity to potential purchasers to submit an offer, or in circumstances where this is not practical, that an independent valuation has been provided to demonstrate that OMV has been achieved.

It will be impractical for the Council itself to complete the necessary work on assets proposed for sale, including due diligence and planning related work, by the 31st March 2023, without assistance. Thus an alternative approach is proposed in relation to those assets that could be disposed of during 2022/2023, which involves working in collaboration with the Council's wholly owned housing company, Mercury Land Holdings Limited (MLH).

It is proposed that MLH be commissioned to undertake much of the pre-planning work on the Council's behalf, using consultants already procured by them to, for example, conduct site/ground surveys, capacity studies, transport planning, flood analysis and other pre-app studies, with a view to the eventual submission of planning applications on the Council's behalf. The Council will need to forward-fund MLH to commission this work as it is beyond MLH's existing Business Plan.

Any decision to dispose of all or any of the sites subject to the proposed work set out here, would be subject to separate reports, as may be appropriate, in the usual way.

It should be noted that there are no significant implications arising from the proposed undertaking of what, in effect, is just feasibility work. Should this particular report be approved, then it would provide sufficient forward funding for MLH to advance the necessary work.

Recommendation

For the reasons stated in this report and exempt Appendix 1, the Director of Regeneration agrees to award a contract to the Council's wholly owned company, Mercury Land Holdings Limited, to undertake development potential/due diligence work on council-owned sites identified for possible disposal at the estimated cost of £250,000 and that any necessary associated administrative and /or legal arrangements be made to bring this into effect.

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AUTHORITY UNDER WHICH DECISION IS MADE

The authority for the this decision is provided under the following provisions of the Council's Constitution:

3.3 Powers of Members of the Senior Leadership Team (General Powers) (a) To take any steps necessary for proper management and administration of allocated portfolios, and

Financial responsibilities (a) To incur expenditure within the revenue and capital budgets for their allocated portfolio as approved by the Council, or as otherwise approved, subject to any variation permitted by the Council's contract and financial procedure rules.

Contract powers (b) To award all contracts with a total contract value of between £500,000 and £5,000,000 other than contracts covered by Contract procedure Rule 16.3.

STATEMENT OF THE REASONS FOR THE DECISION

The proposed provision of funding to MLH will assist the Council to undertake necessary development potential/due diligence work on a number of Council owned sites that could be suitable for disposal, which in turn could eventually result in capital receipts. This is the most efficient way of progressing this work at this time.

OTHER OPTIONS CONSIDERED AND REJECTED

The option of not undertaking the development potential/due diligence work has been considered but rejected because the work is needed to inform the future use of some of the Council's assets. **This option has been rejected.**

The option of directly employing consultants to undertake the development potential/due diligence work has been considered. This has also been rejected because this would take longer to set up and execute and would also require additional project management capacity within the Council itself. **This option has also been rejected.**

PRE-DECISION CONSULTATION

None

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

Name: Paul Walker.

Designation: Interim Assistant Director of Regeneration.

Signature: 17/11/2022.

Name: Mark Butler

Designation: Director of Asset Management

Signature:  18/11/2022.

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

In order to make a direct award of contract the wholly owned Council Company is required to fall within the exemptions contained in regulation 12 Public Contracts Regulations 2015 (as amended). The work undertaken for the Council must be more than 80% of the work undertaken by the Company. The level of control exerted by the Council must be akin to the way the Council controls its internal departments. Mercury Land Holdings Limited is a wholly owned company of the Council and has no private capital participation. These requirements must be met continuously and so must be kept under review if the companies undertake non-Council work.

The direct award of a services contract is considered to fall within the regulation 12 exemption and therefore lawful. Further, the Council's Contract Procedure Rules permit a direct award to a Council wholly owned company where legal requirements are met.

FINANCIAL IMPLICATIONS AND RISKS

The cost of the proposed development potential/due diligence work will be met from an existing and approved budget. The cost and extent of the proposed work to be undertaken by MLH is set out at Exempt Appendix A.

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

There are no implications arising from the proposed arrangements set out in this report.

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ENVIRONMENTAL IMPLICATIONS AND CLIMATE CHANGE

There are no implications arising from the proposed arrangements set out in this report.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions. This includes to have “due regard” to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

“Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged.

There are no implications arising from the proposed arrangements set out in this report. Officers are cognisant that any future action taken in respect of assets may require an EqIA as appropriate.

BACKGROUND PAPERS

None.

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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 the Decision Maker

Signed



Name:

Neil Stubbings

CMT Member title:

Director of Regeneration

Date:

22 November 2022.

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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