

## Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. It is exempt because it refers to confidential commercial information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

<b>Subject Heading:</b>	<b>Authorisation to provide additional equity funding to Mercury Land Holdings Ltd to enable the purchase of sites in accordance with the approved 2023-26 MLH Business Plan</b>
<b>Decision Maker:</b>	Councillor Graham Williamson Cabinet Member for Development & Regeneration
<b>Cabinet Member:</b>	Councillor Graham Williamson Cabinet Member for Development & Regeneration
<b>SLT Lead:</b>	Kathy Freeman Strategic Director of Resources
<b>Report Author and contact details:</b>	Mark Butler - 01708 432947 mark.butler@havering.gov.uk
<b>Policy context:</b>	Asset Disposal Programme 2022-2028 MLH Business Plan 2023-26 Medium Term Financial Strategy Havering Local Plan 2016-2031 London Plan 2021
<b>Financial summary:</b>	Provision of loan and equity funding totalling £10.69 million to MLH for the purpose of acquiring Council sites (£8.69 million - equity) and progressing design and planning activities (£2.00

## Key Executive Decision – Part Exempt Report

	million - loan), in accordance with the approved Mercury Land Holdings Business Plan (approved July 2023).
<b>Reason decision is Key</b>	Expenditure or saving (including anticipated income) of £500,000 or more
<b>Date notice given of intended decision:</b>	19 <sup>th</sup> February 2024
<b>Relevant Overview &amp; Scrutiny Committee:</b>	Overview & Scrutiny Board
<b>Is it an urgent decision?</b>	No
<b>Is this decision exempt from being called-in?</b>	No

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

People - Things that matter for residents

Place - A great place to live, work and enjoy X

Resources - A well run Council that delivers for People and Place. X

### **Part A – Report seeking decision**

#### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

For the reasons detailed in this report and its exempt appendix, the Cabinet Member for Development and Regeneration, in consultation with the Strategic Director of Resources (S151 Officer), the Strategic Director of Place and the Deputy Director of Legal and Governance, is recommended to:

- (1) Approve the provision of additional equity funding in the sum of £8.69 million to Mercury Land Holdings Ltd (MLH) for the proposed acquisition of council-owned sites in accordance with the updated MLH Business Plan as identified in Exempt Appendix A and to enter into the relevant funding agreements to enable the sale by the Council and acquisition by MLH.
- (2) Approve the provision of £2m loan funding to Mercury Land Holdings (MLH) to undertake design and planning activities relating to the achievement of planning permission.

#### **AUTHORITY UNDER WHICH DECISION IS MADE**

## Key Executive Decision – Part Exempt Report

Cabinet agreed, at its meeting on 19<sup>th</sup> July 2023, when considering the Mercury Land Holdings Business Plan Update (item 6):

*2. to delegate authority to the Cabinet Member for Development & Regeneration, in consultation with the S151 Officer, the Strategic Director of Place and the Deputy Director of Legal and Governance, to approve the detailed business cases, related viability assessments and funding requirements for the individual schemes noted within the Business Plan as they may be presented during the business plan period, including the authority to enter into all relevant agreements to give effect to the schemes*

### **STATEMENT OF THE REASONS FOR THE DECISION**

At its meeting on 8th February 2023, Cabinet agreed a medium-term asset disposal programme spanning 2022-2028, to provide a pipeline of capital receipts as an integral part of the council's wider Capital Strategy. Authority was granted for the disposal of a number of sites, set out within Appendix A to that report, including several sites intended for sale to Mercury Land Holdings Ltd (MLH), the Council's wholly owned housing company.

The disposal of these sites for an initial value of £8.69 million, would count towards the £20 million capital receipts earmarked for 31 March 2024.

To maximise the capital value of the sites, it has been necessary to undertake some preliminary design and planning work to secure planning consents. It is estimated to take between 12 to 18 months to secure a valid planning consent beyond the target date of 31 March 2024 for some of the disposals.

It will be necessary to put MLH in funds to progress the necessary planning and design work during this period. An additional £2 million of loan funding would be advanced.

The February 2023 Cabinet report recognised that planning permission may not be secured for each site by the end of the 2023/24 financial year and in anticipation of this scenario set out proposals for an unconditional purchase by MLH by 31<sup>st</sup> March 2024, subject to an independent valuation to determine the interim purchase price. An overage provision is to be included within any disposal where planning permission is yet to be granted, enabling a balancing payment to be made to the Council at the point where planning consent is forthcoming. A final valuation would be undertaken at this point, with a further issue of share capital from MLH to the Council in recognition of any uplift in value.

In the event planning is not secured, or the Council does not agree to the redevelopment of the site post planning, the Council would be obliged to buy back the land at its original value, along with reimbursing MLH in full for any abortive work undertaken.

The above proposals were approved by Cabinet as part of the February 2023 report.

A follow-up report to Cabinet on 9<sup>th</sup> August 2023 confirmed the proposed sale of 4 car park sites to MLH, provisionally agreed in February subject to a public consultation process.

These proposals were incorporated within the MLH Business Plan Update approved by Cabinet at its meeting on 19th July 2023. As part of the decisions arising from the report, Cabinet agreed to delegate authority to the Cabinet Member for Development & Regeneration, in consultation with the S151 Officer, the Strategic Director of Place and the

## **Key Executive Decision – Part Exempt Report**

Deputy Director of Legal and Governance, to agree a number of matters to progress the MLH Business Plan, including funding arrangements.

This report now seeks to agree the additional equity funding required to enable MLH to complete the purchase from Havering Council of the subject sites identified within the February 2023 Cabinet report, prior to 31<sup>st</sup> March 2024. There will be a separate report detailing the disposals to be made between the parties.

### **OTHER OPTIONS CONSIDERED AND REJECTED**

*Decline the additional equity funding required by MLH to conclude site acquisitions*

This option was dismissed as it would frustrate both the delivery of the MLH Business Plan objectives and efforts within the Council's Asset Disposal Programme to conclude the sale of sites in the current financial year.

*Seek disposal of the subject sites to another purchaser*

This option was dismissed as it would frustrate both the delivery of the MLH Business Plan objectives and efforts within the Council's Asset Disposal Programme to conclude the sale of sites in the current financial year.

### **PRE-DECISION CONSULTATION**

None relating to this specific funding decision

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

Name: Mark Butler

Designation: Assistant Director of Regeneration & Place Shaping

Signature:

Date:

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

Members established MLH, a company limited by shares and wholly owned by the Council subject to Part V Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995. The company's business is the provision of homes for market rent and for sale, and if required through compliance with planning obligations, the construction of affordable homes. Agreement in principle is sought to provide funding to MLH in the form of

## Key Executive Decision – Part Exempt Report

either equity or loans which will be secured by way of registered charges on acquisition from the Council. Such loans will enable the Company to make its acquisitions from the Council in respect of sites; that decision to be dealt with under separate governance.

S1 Localism Act 2011 provides the Council with General Power of Competence, to do anything an individual may do subject to statutory limitations. The Council may exercise this power for its own purpose, for a commercial purpose and/or for the benefit of others. Operating a business to let homes at market sale or rent with the intention of making profits is considered a commercial purpose and the Council, in compliance with s4 Localism Act 2011 undertakes that activity through its Company, MLH. S4 Localism Act 2011 prohibits the Council from engaging in activities for a commercial purpose if legislation requires the Council to fulfil those functions under statutory duties.

S24 Local Government Act 1988 provides the Council with the power to provide a wide range of financial assistance to MLH including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) acquire share or loan capital in it. S111 Local Government Act 1972, provides Councils 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 S1 Localism Act 2011. The Council could rely on this power to provide the company with loans such as those detailed in this report. Any support provided must be subsidy control compliant (see below) and will be the subject of agreements between the Council and MLH.

If the Council intends to borrow to lend to MLH, Reg 25 Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) treats the giving of a loan by a local authority to a third party (such as MLH) towards expenditure (e.g. works on a new buildings) as capital expenditure providing that if the local authority itself incurred that expenditure (it borrowed to undertake the works itself) it would treat that expenditure (under proper accounting practices) as capital expenditure. It should be noted that the Council borrowing to lend to MLH in connection with revenue funding is not permitted. Any Council borrowing must comply with prudential borrowing code under Part 1 Chapter 1 Section 1 Local Government Act 2003, a local authority may borrow for any purpose relevant to its functions or for "the prudent management of its financial affairs"

The finance requested (whether on commercial terms or otherwise) constitutes 'financial assistance' under the terms of s24 Local Government Act 1988 which permits the Council to provide financial assistance to any other person for the provision of "privately let accommodation". If the Council exercises its powers under this section then under s25 it must obtain the consent of the SoS to do so. The SoS has set out pre-approved consents in the "General Consents 2010" (July 2011 updated in 2014). If the circumstances of financial assistance meet one of the criteria in the General Consents then the SoS consent is given.

S24 Local Government Act 1988 provides the Council with the power to provide a wide range of financial assistance to MLH including making a grant or loan to it and as MLH is a body corporate the Council may under Section 24 (2)(d) acquire share or loan capital in it. The current version of the General Consents 2011 contains Consent C. Under this consent the Council could provide financial assistance to any person.

When exercising its powers, the Council must, as with any other power, have regard to its own procedural rules, the Wednesbury principles of reasonableness and its fiduciary duties. It must also ensure that its powers are used for the proper purpose.

The Council's fiduciary duties could be briefly summarised as it is acting as a trustee of tax and public sector income on behalf of its rate and Council-tax payers. The Council in effect holds

## **Key Executive Decision – Part Exempt Report**

money but does not own it; it spends money on behalf of its business rate and Council tax payers.

In making the 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 consideration is given as to 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 MLH became 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 interests of its local business rate and tax payers. On a practical basis this means that consideration is given as to whether the monies they requested to approve for investment/lending, could be better used 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 MLH became insolvent or otherwise defaulted on loans it had taken from the Council.

The Council is required to provide funding and ensure it operates in accordance with the Subsidy Control Act 2022. It is important that any loans/credit or other support provided to MLH are subsidy control compliant. Loans/credit which the Council generally makes available to MLH must be made on commercial terms and at a commercial interest rate. If the Council subsequently chooses to make an equity investment into MLH its must ensure this is done on commercial terms as a 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.

The disposal of assets from the Council will be dealt with under separate governance and are therefore not covered here by way of implications.

### **FINANCIAL IMPLICATIONS AND RISKS**

MLH are seeking to promote the redevelopment for sale of the Council sites set out within confidential Appendix A. The acquisition and redevelopment of these sites for sale is within the scope of the approved Mercury Land Holdings Ltd (MLH) Business Plan.

The disposal of these sites for an initial value of £8.69 million, would count towards the £20 million capital receipts earmarked for 31 March 2024. To date a total of £8.725 million comprising £6.9 million linked to the disposal of the old Quarles Campus and £1.825 million generated from open market disposals of other sites has been realised.

Underpinning the current MTFS is an assumption that c. £20 million of disposal receipts would be yielded by 31 March 2024, or as soon as practical thereafter. The realisation of £8.69 million of receipts would count towards this target.

To achieve this outcome the Council and the MLH board have jointly agreed to dispose of the sites in advance of securing a valid planning consent. The disposals would be advanced on an initial valuation basis, with MLH issuing share capital as consideration. The share capital issued by MLH qualifies as capital expenditure for the Council. Subject to planning consent, these costs would be treated as qualifying development expenditure for MLH and would be considered relevant in determining the final land value payable to the Council (subject to planning approval).

## Key Executive Decision – Part Exempt Report

The disposal agreement would make provision for a subsequent valuation to take account of any uplift in value once planning has been secured, alongside an overage clause, to enable the Council to demonstrate best value.

In addition, MLH are assuming the full cost of any planning and design work, including the costs incurred by the Council to date. To facilitate the transfer of costs, and enable MLH to fund future liabilities, the Council would advance up to £2 million in the form of a loan secured against the land assets transferred to MLH. Interest would be chargeable on the loan to MLH (rolled up), the total value of which is to be deducted against the initial land value but the Council would recognise the interest as income. As a result, the overall financial return to the Council would remain unchanged.

The investment is critical to ensuring that the Council derives the maximum benefit from the underlying land values. A valid planning consent could enhance land values, with a provision in the agreements to ensure any uplift is paid over to the Council. The redevelopment of the sites could lead to an overall uplift in homes in the borough, alongside a likely increase in the number of PRS homes for MLH. Increasing the PRS portfolio is key to MLH's long-term future, with an aspiration to deliver 400 PRS homes.

The approved MLH Business Plan focuses on supporting the Council's Disposal programme, with necessary funding set aside to achieve this aspiration. The long-term target of delivering 400 PRS homes remains and it is anticipated that the roadmap for achieving this target will be set out in the next MLH Business Plan.

MLH continues to operate as a going concern, with the latest accounts for the period ended 31 March 2023 affirming this position. As set out above, the current focus of MLH is to support the Council's disposal strategy. Significant investment will be required during this period to fund the construction and disposal activities, to deliver a return for MLH and ensure the Council realises the maximum value from the earmarked sites. The business plan outlines the financial parameters for funding, which need to be carefully managed.

In the event planning is secured, and both the Council and MLH agree, it is anticipated that MLH would furnish the Council with a detailed Business Case to secure a lending facility to take forward the site(s) to develop and resale. The advancing of a lending facility would be subject to a subsequent approval.

A final valuation would be undertaken at this point, with a further issue of share capital from MLH to the Council in recognition of any uplift in value.

With the facility in place, MLH would proceed to take the sites forward for development and sale. The sales proceeds from a successful development would be first used to repay:

1. Senior debt
2. Loan Notes
3. Equity / share capital including shares issued in lieu of the land and pre-development expenditure.

It is at this point; the capital receipts are converted from share capital (not usable) to cash (usable) subject to governance and agreement between the parties. As a final step, overage would be assessed, and a further payment in cash would be made to the Council.

In summary, these disposals would deliver capital receipts in up to three tranches:

1. Initial disposal (pre-planning)
2. Post-Planning (start on site)
3. Overage (sales completion)

## **Key Executive Decision – Part Exempt Report**

The direct financial implications of taking forward the development of the disposal sites is set out in the Mercury Land Holdings, update to Business Plan 2022/23 Cabinet Report, approved by Cabinet on 19th July 2023.

### **Risks**

The maximisation and realisation of the capital receipt to the Council is subject to a number of risks including and not limited to the following .

1. Planning consent: without a valid planning consent it would not be possible to realise the full value of the sites. In such an event the Council would be obliged to buy back the land at its original value, along with reimbursing MLH in full for any abortive work undertaken.
2. Approved Tenure Mix: to optimise capital receipts, it would be necessary to ensure that the approved tenure mix seeks to maximise the number of private sale homes for resale, where possible.
3. Market / Economy: the wider economy is likely to have an impact on future sale values, and therefore Council coverage / receipts. Sales values are forecast to be stagnant for the next year to 18 months. In most instances it is unlikely that any homes for sale would be brought forward within this period. Construction costs have continued to escalate, which has the potential to erode future receipts.

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

There are no anticipated HR implications arising from the proposals within this decision

### **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.

An EqHIA (Equality and Health Impact Assessment) is usually carried out when a current or planned service/policy/activity is likely to affect staff, service users, or other residents.

Some of the sites for proposed acquisition by MLH are no longer operational and have been declared surplus, meaning that there is no material impact upon groups with protected characteristics.

The proposed acquisitions include a number of car parks with varying levels of disabled parking provision within. Consideration has been given to the proximity and capacity of alternative disabled parking provision (provided by both the Council and others) within Romford and Hornchurch town centres in order to mitigate the impact of withdrawing the subject car parks



## **Key Executive Decision – Part Exempt Report**

from their current use. For the time being these facilities remain in operational use and a full EqHIA will be conducted in advance of any change of operational status.

### **HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

There are no Health & Wellbeing risks specifically related to this funding decision

### **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

Acquisition of the proposed sites will not, in itself, generate any environmental or climate change implications. Subsequent development of the sites will be subject to seeking planning permission and building control approvals, the process for which will require the applicant to demonstrate how any potential impacts are addressed.

### **BACKGROUND PAPERS**

Report to Cabinet – 9<sup>th</sup> February 2023  
**Asset Disposal Programme 2022-2028**

Report to Cabinet - 19<sup>th</sup> July 2023  
**Mercury Land Holdings – Update to Business Plan 2022/23**

Report to Cabinet – 9<sup>th</sup> August 2023  
**Site Disposals under the Asset Disposal programme 2022-2028**

Non-Key Executive Decision issued 21<sup>st</sup> December 2023  
**Authorisation to release the working capital increase of the Overarching Facility Agreement for Mercury Land Holdings Ltd**

### **APPENDICES**

<b>Appendix A</b>	<b>Schedule of Council site acquisitions by MLH</b>	<b>Exempt</b>
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**Key Executive Decision – Part Exempt Report**

**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: : Councillor Graham Williamson

Cabinet Portfolio held: Cabinet Member for Regeneration & Development

Date:

**Lodging this notice**

The signed decision notice must be delivered to Committee Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_