

Record of Cabinet portfolio holder decision

Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

DCLG Building Foundations for Growth: Enterprise Zone Capital Grants Allocation of £7 million to Milton Park	
Decision made by	Matthew Barber (Science Vale Portfolio Holder)
Key decision?	Yes
Date of decision (same as date form signed)	16 March 2015
Name and job title of officer requesting the decision	Anna Robinson, Strategic Director
Officer contact details	Tel: 01235 540405 anna.robinson@southandvale.gov.uk
A. Decisions Taken	
<p>1. Claim grant of £7m from the Department of Communities and Local Government (DCLG) Building Foundations for Growth fund in accordance with the letters of 17 December 2014 and 16 March 2015 from Helen Edwards, Director General Localism, DCLG</p> <p>2. Pay the specified grant to MEPC for the construction of the Milton Bioscience Research and Innovation Centre, in accordance with the locally agreed milestones, being payment in three tranches, at design stage, start on site and practical completion.</p> <p>3. Monitor construction progress and management of the facility and take such actions as may be necessary to ensure the continuation of the facility for the purpose intended</p> <p>4. Delegate authority to the strategic director with responsibility for the Enterprise Zone, to enter into Heads of Terms and an Accountable Body Agreement with MEPC for the development of a Bioscience Research and Innovation Centre</p>	
B. Context	
<p>Vale of White Horse in partnership with MEPC, Milton Park, has been successful in a bid to DCLG for grant funding of £7m for MEPC to build a bio-science research and innovation centre at Milton Park. The funding was won under the category of</p> <p><i>'unlocking sites that are being held back by market failure, but which have strong potential</i></p>	

to deliver private investment and jobs in the short term'.

Innovation centres, especially those that require high specifications, are not financially viable, due to high set up costs, and to high turnover in occupancy. The injection of government grant will enable this much needed facility to be built and operated to support the growth of the bioscience sector in Oxfordshire.

The total cost of this project is £15 million, of which £7 million is grant, and it will provide 40,000sq ft of specialist laboratory and office accommodation and create 370 additional jobs over a five year period.

C. Vale responsibilities

Vale of White Horse, as accountable body, must agree to accept this grant and to administer its release to MEPC in accordance with the grant conditions applied by DCLG. On 10 December 2014 Vale council agreed to establish a budget for this grant in anticipation of its receipt from the department of communities and local government.

The funding is being made available subject to assurances from Vale to DCLG that

- a) a suitable mechanism has been put in place to ensure the project is State Aid compliant,
- b) Vale agrees heads of terms with MEPC that ensure the development is carried out as quickly as possible and that locally agreed milestones are achieved
- c) should there be 'excessive performance' as defined in the agreement between Vale and MEPC, Vale will claw back any surplus, which may be used to further EZ objectives as determined by Vale

Council was advised that the grant would be paid to Vale in two tranches, however, due to the time elapsed since the initial offer was made, it will now be paid in one lump sum before the end of March, subject to final sign off by HM Treasury. Any grant unclaimed or unpaid by the end of March 2015 will be lost.

D. State Aid

Trowers and Hamblins have assessed the nature of this project and have advised us that it is state aid compliant under the terms of Article 26 (Investment aid for research infrastructures), Commission Regulation (EU) No 651/2014 of 17 June 2014. Article 26 is a new category permitting funding / aid to be provided for research infrastructures that perform economic activities.

All state aid assessments identify a degree of risk in granting large sums to private companies, often due to the complexity and lack of clarity in the EU regulations. The state aid advice identifies the precautions we should take to ensure the project remains state aid compliant and to do this we will undertake periodic monitoring to ensure the project remains compliant with the state aid provisions.

The state aid provisions of the Accountable Body Agreement between Vale and MEPC require MEPC to refund any payments if they are subsequently held to be unlawful state aid. In addition MEPC is required to monitor and certify that it is not receiving excess subsidy.

In the event that MEPC is deemed to have received excess subsidy it is the responsibility of Vale to seek to recover this money. In this unlikely event Vale will retain the recovered grant, and must spend it on projects that contribute to delivery of Enterprise Zone objectives.

E. Accountable Body Agreement (ABA)

The ABA will set out in detail the requirements of MEPC in delivering this project and of Vale in monitoring progress and performance. The intention of the two parties is set out in heads of terms which will be incorporated into the ABA once the funding has been received. In the event of dispute the ABA will provide for external professional advisors to be commissioned, paid for by MEPC.

Although Vale will monitor the success of the project on an annual basis, a formal assessment as to whether 'excessive performance' has been achieved is required, either at year seven or on intended disposal. This will be undertaken on Vale's behalf by external advisers, with provisions for arbitration and final decision making should MEPC disagree with the findings.

The heads of terms for the ABA contain commercially confidential information and hence are exempt from disclosure pursuant to section 43 of the Freedom of Information Act 2000 (the "Act").

F. Risk assessment

The risks attaching to this project for Vale in its role of accountable body, are

- MEPC does not complete the building as planned or in accordance with the locally agreed milestones and Vale has to seek to recover the grant
- MEPC does not maintain the usage of the building for scientific research and innovation and Vale has to compel performance or trigger a review that could lead to grant recovery
- MEPC could achieve excessive performance in terms of income received and if so, as assessed at year seven or when the building is sold, Vale is responsible for recovering the sum identified as excessive performance
- An external body could mount a challenge to the project under the state aid regulations. Should a breach of the regulations be proven, Vale could have to seek to recover any grant that is determined to be state aid
- In the event of a breach by MEPC they do not repay grant on demand and Vale could have to take legal action

Should any of these risks crystallise Vale could become involved in time consuming work to recover grant. The liability for repayment in all cases sits with MEPC and so the cost to Vale would be administrative and legal costs. Vale is required to use best endeavours to recover any overpayment or 'excessive performance' sums but cannot be held liable by government for sums not recovered.

<p>G. Alternative options rejected</p> <p>The bid arrangements for the Building for Growth Fund were prescribed by government and the only alternative option would have been to not bid or to reject the grant and not proceed with the initiative.</p>
<p>H. Legal considerations</p> <p>The Department of Communities and Local Government has placed a number of obligations on Vale as set out in section C above. The draft Heads of Terms ensure that these obligations are met and the Accountable Body Agreement to be signed by Vale and MEPC will make it legally binding on MEPC to meet these terms. The strategic director is responsible for ensuring compliance by MEPC before grant funding is paid and for monitoring performance to ensure compliance.</p>
<p>I. Financial considerations</p> <p>This grant funding is paid to Vale through the Enterprise Zones (Science Vale Oxford) Building Foundations for Growth Capital Grant Determination (2014/15) 31/2452. This is paid by Under Secretary of State for Communities and Local Government under powers conferred by section 31 of the Local Government Act 2003 and is non-recoverable by government. In the event that grant funding is recovered or not paid to MEPC, it will be held by Vale and used to further the objectives of the Enterprise Zone.</p> <p>The Accountable Body Agreement will provide for external advisors to assess compliance and performance by MEPC in relation to the financial indicators. In the event that grant has to be recovered Vale must use best endeavours but is not liable for any funding not recovered.</p> <p>As accountable body Vale will manage the budget and issue grant to MEPC in accordance with delivery against the agreed milestones.</p> <p>The administrative costs relating to this project are absorbed by Vale as part of its accountable body role, however the costs associated with external advice on performance and arbitration are to be met by MEPC.</p>
<p>J. Related documents</p> <ol style="list-style-type: none"> 1. Draft Heads of Terms and ancillary documents for an Accountable Body Agreement between Vale and MEPC (<i>commercially confidential and exempt from disclosure</i>) 2. Legal advice on state aid (<i>attached</i>) 3. Funding letter/ capital grant determination notice dated 17 December 2014, and funding letter dated 16 March 2015 (<i>attached</i>)
<p>Declarations/conflict of interest? Declaration of other councillor/officer consulted by the Cabinet member?</p> <p>None known</p>

Commented [A1]: William, the grant offer letters don't place a requirement on us, its been referred to in exchanges of emails at times. I don't feel happy to take this statement out as it would seem morally wrong if politicians were to seek to use the money for other purposes. I could take it out of the finance section if you would feel more comfortable with that

Consultees	Name	Outcome	Date
Legal	Pat Connell	Agreed	16/03/15
Finance	William Jacobs	Agreed	16/03/15
Strategic Management Board	Anna Robinson	Agreed	16/03/15
Confidential decision?			
Heads of Terms between Vale and MEPC contain commercially confidential information and hence are exempt from disclosure pursuant to section 43 of the Freedom of Information Act 2000 (the "Act").			
Call-in waived by Scrutiny Committee chairman?	Yes		
Has this been discussed by Cabinet members?	Yes		
Cabinet portfolio holder's signature To confirm the decisions as set out in this notice.	Signature _____		
	Date _____		

ONCE SIGNED, THIS FORM MUST BE HANDED TO DEMOCRATIC SERVICES IMMEDIATELY.

For Democratic Services office use only		
Form received	Date:	Time:
Date published to all councillors	Date:	
Call-in deadline	Date:	Time:

Guidance notes

1. This form must be completed by the lead officer who becomes the contact officer. The lead officer is responsible for ensuring that the necessary internal consultees have signed it off. The lead officer must then seek the Cabinet portfolio holder's agreement and signature.
2. Once satisfied with the decision, the Cabinet portfolio holder must sign and date the form and return it to the lead officer who should send it to Democratic Services immediately to allow the call-in period to commence. Democratic Services staff are located on the ground floor north wing (C block) of the Crowmarsh Gifford offices. Tel. 01235 540307 or extension 7307.
Email: democratic.services@southandvale.gov.uk
3. Democratic Services will then publish the decision to the website (unless it is confidential) and send it to all councillors to commence the call-in period (five clear working days). The decision cannot be implemented until the call-in period expires. The call-in procedure can be found in the council's constitution, part 4, under the Scrutiny Committee procedure rules.
4. Before implementing the decision, the lead officer is responsible for checking with Democratic Services that the decision has not been called in.
5. If the decision has been called in, Democratic Services will notify the lead officer and decision-maker. This call-in puts the decision on hold.
6. Democratic Services will liaise with the Scrutiny Committee chairman over the date of the call-in debate. The Cabinet portfolio holder will be requested to attend the Scrutiny Committee meeting to answer the committee's questions.
7. The Scrutiny Committee may:
 - refer the decision back to the Cabinet portfolio holder for reconsideration or
 - refer the matter to Council with an alternative set of proposals (where the final decision rests with full Council) or
 - accept the Cabinet portfolio holder's decision, in which case it can be implemented immediately.