

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter:	Langley Court – Loan to Luminus
Meeting/Date:	Overview & Scrutiny (Economic Well-Being) Panel – 3 rd September 2015 Cabinet – 17 th September 2015
Executive Portfolio:	Cllr Gray, Resources Cllr Dew, Planning and Strategic Housing
Report by:	Head of Resources Lead Housing Strategy Manager
Ward(s) affected:	St Ives

Executive Summary:

Together with Cambridgeshire County Council and health partners, we identified a need for extra care for older people in St Ives. Developing this scheme is a priority in the Council's Housing Strategy 2012-15 and helps to meet the needs of our ageing population. Luminus had an outdated sheltered scheme in Langley Close, Ramsey Road. Luminus were willing to demolish the scheme and redevelop a new extra care scheme in its place consisting of 55 1 and 2 bedroom flats. Luminus have supported residents to move out of the original building and the new building has planning permission and ground works have commenced.

There is a grassed area to the front of the site, bordering the car park which is still owned by this Council, and not by Luminus. To make best use of the site, Luminus would like to use this space to form part of the car park and green space for the scheme. To enable this to happen, this Council would need to transfer ownership of the green space to Luminus (see Appendix 1). Any potential transfer will be subject to a clawback arrangement so that if the site is ever sold in the future, the monetary equivalent of the land value reverts to this Council. This grassed area does not have any standalone development potential, given its proximity to the street, and the surrounding buildings, and therefore transferring it to Luminus would be in line with the Council's forthcoming Asset Strategy.

Legal advice has been obtained from a member of Queens Counsel to give assurance of the Council's legal position in relation to the loan. A specialist consultant has been appointed by this Council to help arrange the loan facility for Luminus. The heads of terms for the legal agreement have been drafted and the due diligence is underway. These fees will be reimbursed by Luminus.

At the time of drafting the report the specific loan details are yet to be finally agreed; however the loan will not have a negative financial impact on the Council as Luminus will be repaying the loan in full including a margin of 1.5% over the 30 year term of the loan.

Recommendation(s):

That members:

1. agree to the transfer of the grass area (see Appendix 1) at the front of Langley Court to Luminus, subject to a clawback arrangement at paragraph 3.5.
2. agree to the continued support of the Langley Court development by the provision of loan finance at nil cost to the Council.
3. agree that the Head of Resources, as the Section 151 Officer, be authorised to make the loan following consultation with the Executive Councillor for Resources (and a satisfactory Due Diligence report from the Council's Treasury Management Advisors).

1. WHAT IS THIS REPORT ABOUT?

- 1.1 To update Members on the redevelopment of Langley Court St Ives.
- 1.2 To seek approval to transfer a piece of land to Luminus to enable the redevelopment to proceed.
- 1.3 To update Members about the terms of the loan to Luminus.

2. BACKGROUND

- 2.1 Together with Cambridgeshire County Council and health partners a need has been identified for extra care for older people in St Ives. Developing this scheme is a priority in our Housing Strategy 2012-15 and helps us to meet the needs of our ageing population.
- 2.2 Luminus had an outdated sheltered scheme consisting of 50 bedsits and 1-bedroom flats in Langley Close, Ramsey Road, next to Slepe Hall. Luminus were willing to demolish the scheme and redevelop a new extra care scheme consisting of 55 1 and 2 bedroom flats in its place. The extra care scheme will feature communal areas including restaurant and lounge, hairdressing salon, assisted bathing facilities and guest room. Social activities and other services (e.g. visiting chiropody) will be made available for older people who live in the surrounding community to make use of. In addition to the normal housing related support service, there is 24 hour social care presence on the site. Health partners intend to commission intermediate care in the scheme whereby people go to the scheme for a short while to help with rehabilitation after a hospital admission. This facility can also be used to prevent emergency hospital admissions when someone has had a period of ill health at home.
- 2.3 The scheme is expected to cost in the region of £8.4m with £2.3m being secured in grant funding from the Department of Health via the Homes and Communities Agency (HCA), with this Council's support. On 21st November 2013 Cabinet considered a report by the Executive Director of Finance and Resources (a copy of which is appended in the Minute Book) regarding a request by Luminus for a loan to enable them to develop a new extra care scheme for frail older people at Langley Court, St Ives. Executive Councillors discussed the significant housing, health and social care benefits the scheme would offer to the local population. In expressing their support for the scheme, the Cabinet stressed that:
 - no residents should be asked to leave until planning permission for the scheme is granted;
 - any provision allows any resident that wishes to return after the new build is finished, can;
 - every possible effort be made to ensure that any resident that wishes to return is temporarily housed in St Ives; and
 - the Luminus Board reconsiders its attitude to District Council appointed Members to ensure full engagement and transparency.

Cabinet then agreed that (a) that a loan be provided to Luminus of up to £5.5m over 30 years to fund the new extra care home, subject to confirmation of the various legal, procedural and security issues highlighted in the report and agreement of the interest rate; and

(b) that the Assistant Director, Finance and Resources, be authorised to make the loan following consultation with the Executive Councillor for Resources on these issues, subject to the Executive Councillor having the right to require agreement of the details to be determined by Cabinet.

2.4 However, considering:

- the time that has elapsed since this approval was given,
- the changing financial environment that the Council now finds itself, and the
- new management arrangements that have come into place since 2013,

it is opportune to update members on the loan arrangement.

3. UPDATE ON PROGRESS

The Scheme

3.1 Luminus have supported residents to move out of the original building. A planning application was submitted for the new extra care scheme. This included a large glass and steel atrium. Unfortunately the final costs of this proved prohibitive and Luminus have had to reproduce a more modest design in order to deliver the project within their budget. The revised plans have been approved and Luminus have let a build contract. An archaeological dig has been completed and contractors are now on site commencing ground works. Luminus have claimed the first tranche of grant funding from the HCA to support this stage of development.

The Site

3.2 There is a grassed area to the front of the site, bordering the car park (see Appendix 1) and is still owned by this Council, and not by Luminus. To make best use of the site, Luminus would like to use this space to form part of the car park and green space for the scheme. At this time the grass area does not have any obvious standalone development potential, given its proximity to the street and the surrounding buildings. However that does not mean that if the Langley Court development had not been taking place that some future development opportunity would not have been possible. To enable Luminus to utilise this space the Council would need to transfer ownership of the green space to Luminus.

3.3 To give some relative depth to the value of this space, a separate external valuation has been undertaken of this land to determine the potential transfer cost to the Council; three scenarios were reviewed:

i. Scenario 1 – Market Value: existing use and present condition

As a cleared site subject to the benefit of planning permission (as secured by Luminus) for the proposed extra care development, the combined Luminus and HDC land is valued at £1.4m, with the Councils element being £50,000 (3.5%).

ii. **Scenario 2 – Market Value; in its proposed use as an extra care development.**

This valuation was based on the agreed plans and costings and on the express assumption that the development has been completed as at the date of valuation. The combined Luminus and HDC land is valued at £11.1m, with the Councils element being £100,000 (0.9%).

iii. **Scenario 3 – Market Value; subject to tenancies and no restrictions upon subsequence disposal.**

This valuation was based on the principle that tenancies would convert from affordable rents to market rents after an average of five years for each tenancy. The combined Luminus and HDC land is valued at £5.5m, with the Councils element being £30,000 (0.4%).

3.4 It is envisaged that the extra care facility will continue for the duration of the loan agreement, consequently Scenario 3 is unlikely. Further, a 4th scenario of alternative use was not considered because the Council has previously made a full commitment to supporting this partnership development.

3.5 Considering that:

- there is a likelihood that there will be an increase in the value of the land,
- the land does not have any standalone development potential considering the Councils partnership commitment to the project, and
- the valuations have shown that the HDC land has a proportionately small value when compared to the whole,

the land should be transferred to Luminus subject to an appropriate a claw-back arrangement.

The Loan and associated Financial Considerations

3.6 The net loan finance to be arranged by the Council in respect of the development itself is £5.0m. Interest due on loan instalments during the construction period will be capitalised and rolled up into a consolidated loan at Practical Completion of Langley Court. This means the estimated gross value of the loan is £5.140m at Practical Completion. The maximum permitted value of the loan, including any interest, is £5.5m. A summary of the cost of the project and all financing is shown in **Table 1** below.

HDC Loan Arrangement		Table 1
	£m	
Project Cost	8.346	
Luminus Sourced Funding		
- Homes and Communities Agency	(2.300)	*1
- Luminus Contribution	(0.746)	
- Recycled Capital Grant	(0.113)	*2
- Capital Receipts	(0.187)	*3
	<u>(3.346)</u>	
HDC Loan Arrangement - Langley Court Development	5.000	
Interest - maximum roll-up	0.500	
Total Loan	<u>5.500</u>	
Key		
*1 £2.3m via a successful bid to the Homes and Communities Agency (HCA)		
*2 £0.113m via Recycled Capital Grant Fund – this is a pot that Luminus have accrued from the sale of shared		
*3 £0.187m via capital receipts contribution from Luminus' disposal and replacement programme.		

3.7 It is anticipated that Luminus will draw down their loan at various stages of the development process; consequently the Council will draw down the loan from PWLB in similar tranches. The currently estimated draw down profile is shown in **Table 2** below.

Loan Funding Profile		Table 2
		£
2015	October	750,000
	November	500,000
2016	January	500,000
	February	500,000
	March	500,000
	April	500,000
	May	750,000
	June	500,000
	July	500,000
		<u>5,000,000</u>
Interest Roll-Up: Maximum		
	After July 2016	500,000
		<u>5,500,000</u>

3.8 Luminus is a group of separate companies. The practicalities of the loan arrangement are that the:

- Loan will be with Luminus Finance Limited,
- Langley Court development will be undertaken by Oak Foundation Limited,

- And security during the development phase will be Brook House, which is owned by Luminus Finance Limited, as the development comes to practical completion the intention will be a transfer of security to the Langley Court development itself. However, if there is any risk in respect of not being able to secure the charge on the Langley Court development (i.e. potential change to charitable status) the release of Brooke House will not be undertaken until all such risks are eliminated
- 3.9 Although this appears to be a relatively complicated arrangement, a summary is attached in **Appendix 2** but members should be reassured that the various legal agreements provide the same protection to HDC as would a single Loan Agreement and associated legal charge.
- 3.10 At the time of drafting this report, the following elements of the loan arrangement process have been completed:
- Queens Counsel has provided assurance that the loan does not attract any State-Aid Issues.
 - Heads of Terms have been agreed between the Council and Luminus.
- 3.11 The following work continues:
- A Due Diligence review is being undertaken by the Councils Treasury Management Advisors, Arlingclose.
 - Actual draw-down of the loan from PWLB.
- 3.12 All costs relating to the loan arrangement will be reimbursed by Luminus. However there has been a considerable opportunity cost in arranging this loan facility and there will be an ongoing opportunity cost in respect of future monitoring of the loan facility for both the finance and legal services.
- 3.13 Other elements of the terms of the loan that members should be aware include:
- The margin on the loan will be 1.5% above the prevailing PWLB rate at the time of drawdown (Subject to confirmation from Arlingclose that this is an acceptable margin and anticipated to be £75,000 in the first full year of the loan, which will then gradually reduce as the loan is repaid over a 30 year period)
 - The Facility Fee for the loan will be 0.75% (approximately £37,500)
 - The term of the loan is 30 years from Practical completion of Langley Court.

Treasury Management

- 3.14 The Councils Treasury Management Strategy, as approved by Council in February 2015 includes the Prudential Indicator “The authorised limit for external debt”; this permits the Council to borrow up to £75.0m in respect of “Loans to Organisations and Investments Yielding a Commercial Return”. This indicator is broken down further between two sub-indicators:
- £15.0m for “long term borrowing to finance long term loans to organisations”, and
 - £60.0m for “long term borrowing to finance loans for capital investments delivering a commercial yield”

As shown in **Table 3**, if the loan for Langley Court is £5.5, the total borrowings for the Council will be £7.075m, this is well within the overall authorised limit and the sub-indicator “long term borrowing to finance long term loans to organisations”.

Treasury Management Long Term Borrowing for Loans to Organisations	Table 3	
	Amount HDC has borrowed	Amount HDC has invested
	£m	£m
Financed from external borrowing		
- Luminus Finance (Langley Court)	5.500	5.500
- Huntingdon College	1.500	1.500
Total	7.000	7.000
Financed from internal borrowing		
- Huntingdon Gym	0.075	0.075
Total	0.075	0.075
Overall borrowing & investment	7.075	7.075
Authorised Limit as per 2015/16 Treasury Management Strategy	15.000	

3.15 A specific consideration is in respect of Minimum Revenue Provision (MRP). Both the Treasury Management Strategy (which was approved by Council in February 2015) and also the accounting policies that are approved by the Councils external auditors permit the Council to:

- recognise principal repayments from the borrower as capital receipts, and to
- subsequently apply these as the Councils own principal repayment.

This approach will thereby mitigate the requirement for the Council to set-aside additional MRP. The specific Treasury Management and Accounting Policy mitigations in respect of MRP are shown in **Appendix 3**.

4. COMMENTS OF OVERVIEW & SCRUTINY PANEL

4.1 The report was introduced to the Overview and Scrutiny (Economic Well-Being) Panel by the Executive Councillor for Resources. The housing needs assessment has been the driver in this project, as there is a clear need in the area for additional care facilities. It was explained that as adult social care becomes a wider issue, we need to work with strategic partners to deliver solutions. This fundamental need is the driver behind the loan, rather than commercial interest.

The Chairman commented that the decision to award the loan was made some time ago, and the Panel were in agreement that the recommendations should be approved.

**5. KEY IMPACTS/RISKS?
HOW WILL THEY BE ADDRESSED?**

5.1 The loan of up to £5.5m is substantial and carries risk. This risk is mitigated by the due diligence process that is underway. Furthermore, the ongoing financial position of Luminus is subject to ongoing regulation by the Homes and Communities Agency.

5.2 Other risks involved in delivering the project on time and within budget are owned by Luminus and not the Council. However, the loan is not risk free in that should the scheme not be successful, the Council could be required to step in and resolve any problems. Ultimately it may be forced to sell the assets upon which it has security and it cannot be guaranteed that the proceeds would cover the value of any loan outstanding.

5.3 However the Council has taken steps to mitigate the various project risks, there are shown in **Appendix 4**. If mitigation were ever to be necessary then this would be taken in consultation with the regulator, the Homes and Communities Agency.

6. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

6.1 Once the due diligence and legal agreement are completed, the loan can be drawn down. This is likely to happen in the Autumn of 2015.

6.2 Development has commenced and the scheme should be completed by Winter 2016.

7. LINK TO THE CORPORATE PLAN

7.1 Enabling sustainable growth

- Improve the supply of new and affordable housing to meet future needs

7.2 Working with our communities

- Improve health and well-being
- Meet the housing and support needs of our ageing population
- Enable people to live independently through the provision of adaptation, accessible housing or support

7.3 Ensuring we are a customer focused and service led council (Delivering value for money services)

- Become more business-like and efficient in the way we deliver services
- Maximise income opportunities

8. CONSULTATION

8.1 Enabling an extra care scheme to be developed in St Ives is a key action for the Council's Housing Strategy 2012-15. The Housing Strategy was produced following consultation with partners.

9. LEGAL IMPLICATIONS

9.1 Advice on State Aid was obtained and assurance received that the loan does not trigger any State Aid provisions.

- 9.2 Risk has been negated as much as possible by securing the loan against various properties owned by Luminus. Once the new build has been completed, the loan will then be secured against this property.
- 9.3 Discussions are ongoing for the remainder of the terms of the loan agreement and will be in place prior to any loan being provided.

10. RESOURCE IMPLICATIONS

- 10.1 The loan to Luminus, although it will broadly be in line with market rates, will only generate the Council a small return – but it will be at nil cost to the Council. However, it is considered that any such investments should be viewed in the future as a means of supporting the Council's strategic housing objectives rather than as a means by which the Council can make a worthwhile contribution to bridging the known future revenue budget gap.
- 10.2 With regard to the land that is needed to complete the Langley Court development, it is considered that without this land the development would not meet its full potential and therefore the proposal of transferring to Luminus, with appropriate clawback arrangements, is fair.

12 REASONS FOR THE RECOMMENDED DECISIONS

(Summary leading to the Recommendations)

- 12.1 This report updates Members on the progress with Luminus' extra care scheme in St Ives. In summary, the original building has been vacated by residents. It has been demolished and construction has commenced.
- 12.2 There is a green space at the front of the site which is owned by HDC. To make best use of the site, this should be transferred to Luminus to incorporate within the car park and green space for the scheme; subject to a clawback arrangement; whereby Luminus agree that if the site is ever sold in the future, the monetary equivalent of that area of land reverts to the Council.

13. LIST OF APPENDICES INCLUDED

- Appendix 1 - Map of Langley Court green space.
- Appendix 2 - Diagram representing the various parties to the Facility/Loan Agreement re. Langley Court.
- Appendix 3 - Council policies in respect of Minimum Revenue Provision.
- Appendix 4 - Risks and Mitigations relating to the Loan Facility to Luminus.

BACKGROUND PAPERS

Cabinet Report 21.11.13 – Exempt Report

<http://applications.huntingdonshire.gov.uk/moderngov/ieListDocuments.aspx?CId=256&MId=5084&Ver=4>

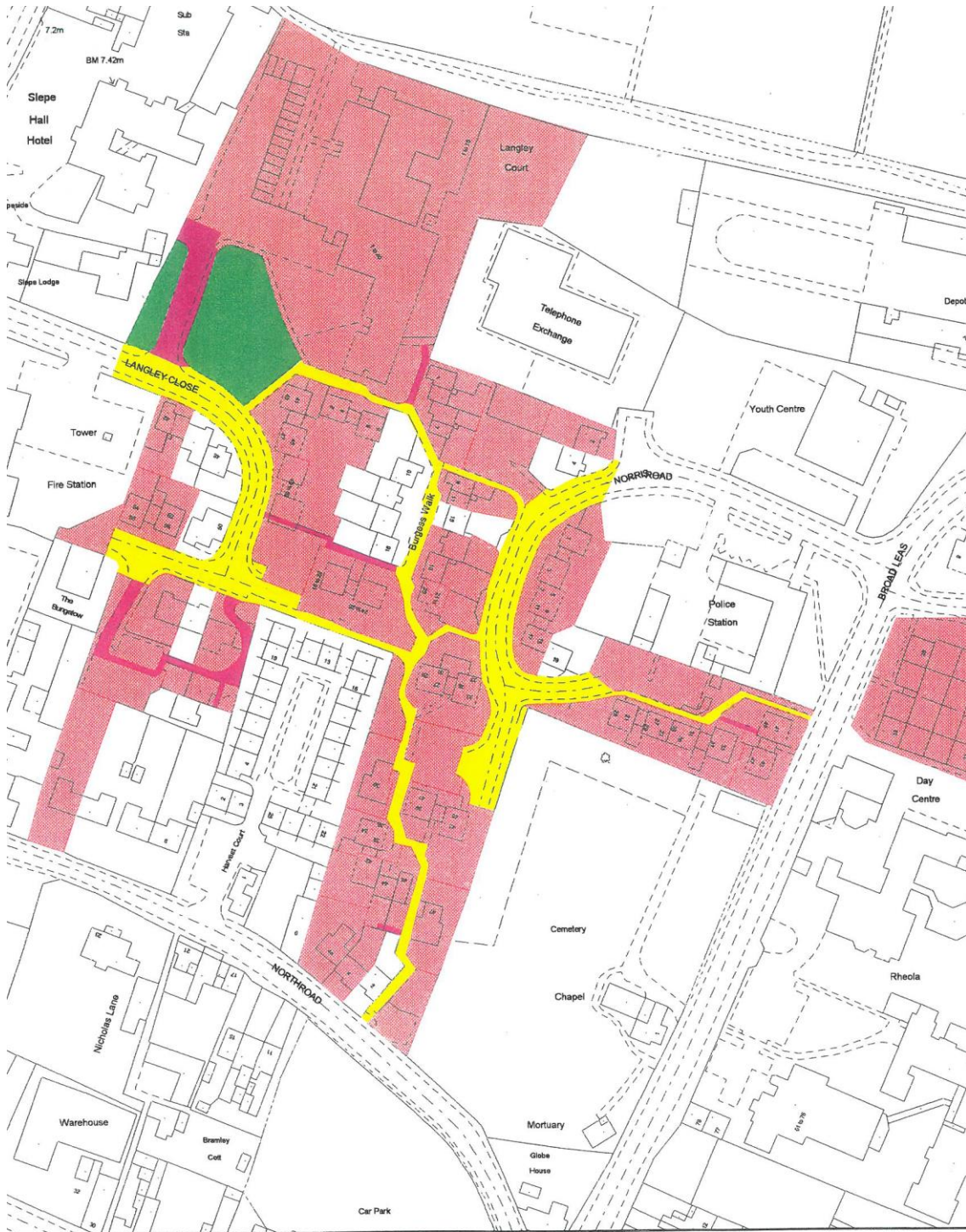
Langley Court Development File

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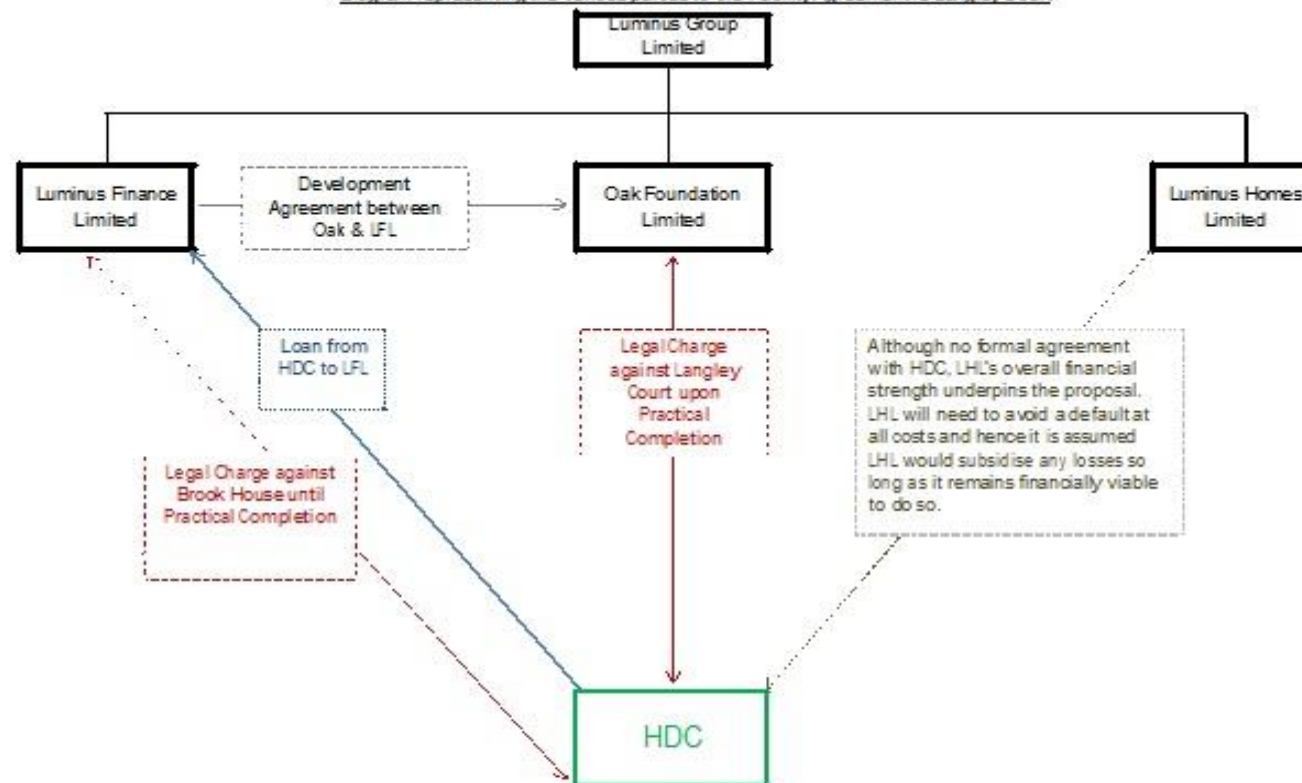
Map of Langley Close St Ives

Land owned by HDC and recommended for transfer to Luminus is shaded green.



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Diagram representing the various parties to the Facility Agreement re Langley Court



Notes
 The loan facility will be between HDC and LFL. This agreement will contain development obligations that LFL will in turn pass on to the Developer, Oak Foundation Ltd.

HDC will have the benefit of a legal charge over Brook House (owned by LFL) during the construction phase (the riskiest part of the project). Brook House was valued at £8.6m in 2014. Post completion, HDC will have the benefit of a legal charge against Langley Court valued in July 2015 at £11m (market value) and £5.53m based upon use as an affordable Extra Care home.

The Council will not have any direct control over the development within the loan agreement itself. However, the development and ongoing obligations will also be reflected within the charges on Brook House and Langley Court respectively meaning that HDC will be able to enforce these obligations if required.

1. Treasury Management Strategy:

Annual Minimum Revenue Provision Policy 2015/16

Approved by Council, February 2015

- Where loans are made to other bodies for their capital expenditure, and the principal repayments are received at least on an annual basis, no MRP will be charged. The capital receipts generated by the annual repayments will replace the need to make a provision for MRP.

2. Annual Financial Report:

Accounting Policies

➤ **Depreciation and other Charges to Revenue for Non-Current Assets**

i. Policy in respect of Loans to Organisations or Loans with Security (as defined within the Treasury Management Strategy)

Where the Council has provided:

- loans to local organisations or businesses, and/or
- loans with security

and these loans are repaid on, at least an annual basis, that the principal repayments received can replace the need to make a minimum revenue provision.

Risks and Mitigations relating to the Loan Facility to Luminus		
Category	Risk	Proposed Mitigation
Financial	1. Significant expenses incurred in setting up the loan facility	When heads of terms were agreed, it was confirmed that the Council's subsequent legal and due diligence costs would be borne by Luminus.
	2. The finance is used poorly meaning the loan is worth less than the assets created.	The Borrower's obligations will be set out in Loan Facility Agreement. Upon the occurrence of an Event of Default, the Council's rights will include: a) cancel, suspend or vary the terms of the Development Facility; b) call for immediate repayment or whole or part of the Development Facility; and/or c) Enforce the Legal Charge.
	3. The scheme is not as successful as expected causing diminution of the Value of the loan.	Satisfactory completion of due diligence in relation to the construction contract and warranties that will be assigned to the council in the event of default. The scheme is also backed by HCA funding and significant Luminus contributions.
	4. Development assets do not provide sufficient security	Independent valuations have confirmed the value of the land and the completed facility (based upon both market value and existing use) In addition, the council will have the benefit of a charge over Brook House (valued at £6.6m) during the construction period, the riskiest phase of the project.
	5. Significant costs are incurred in drafting the Agreement and monitoring the security provided.	Legal costs, and valuation fees incurred after Heads of Terms are agreed will be met by the Borrower.

Risks and Mitigations relating to the Loan Facility to Luminus		
Category	Risk	Proposed Mitigation
	6. The Developer repays the loan early resulting in significant early repayment premiums payable by HDC.	The Borrower will be liable for any early repayment premiums.
	7. 3rd party rights/ covenants affect the development, subsequent use or the value of the land.	Certificates of Title to be prepared and title due diligence will be undertaken. Luminus will be required to obtain title indemnity insurance if required (although this is considered unlikely).
	8. Interest rates change during the period of the Loan Facility	The council will be protected in that it is the margin above the prevailing PWLB rate (at the time of drawdown) that is fixed, not the interest rate itself. This way it is Luminus that bears the interest rate risk.
	9. Proposed accounting treatment is challenged and MRP needs to be applied.	The Council has an acceptable policy in respect of MRP and a new accounting policy was introduced in respect of 2013/14 with no challenge by the external auditor.
Construction Phase	10. Poor Construction means that the asset created does not achieve the required value.	The Council has the option to appoint a Technical Adviser (Funder's TA) to monitor the development. This cost would be funded by the Borrower if required. The Borrower will be required to provide access to all relevant construction information and significant changes to the development would require the Council's consent. Drawdowns will be dependent upon pre agreed milestones being achieved.

Risks and Mitigations relating to the Loan Facility to Luminus		
Category	Risk	Proposed Mitigation
	11. Increased construction costs reduce the viability of the scheme.	The Council has security over Brook House during the construction period. This means Luminus has every incentive to commit additional funds to finance any construction overspend. Luminus' ability to fund any cost overruns will be addressed as part of the due diligence exercise.
	12. Luminus cannot complete the construction.	The Council will have the following options: <ul style="list-style-type: none"> • Exercise its rights under the charge over Brook House and sell the property • Step in and complete Langley Court itself with a view to an ultimate sale. All key construction and design warranties will be assignable to the council in this event.
Operational Phase	13. Poor maintenance/ management means that the assets fall in value post construction.	Valuations will take place periodically to ensure the assets are properly maintained. If loan covenants are breached then this would give rise to an Event of Default and the Council exercising its rights under the legal charge. Typically a "cure plan" will be implemented to address any potential breach. The ultimate recourse for the Council would be to exercise its rights under the legal charge and step in and sell the development.
	14. Reduced rental income means that Luminus cannot afford to repay the loan.	Interest and income covenants will alert the Council to warnings prior to this situation arising. Again poor performance could lead to an Event of Default and the Council exercising its rights under the legal charge.
Legal	15. The Council does not have the power to make the loans	Counsel Opinion has been obtained to confirm that the Council has such powers.

Risks and Mitigations relating to the Loan Facility to Luminus		
Category	Risk	Proposed Mitigation
	16. The loan constitutes state aid	<ul style="list-style-type: none">Market Economy Investment Principles to be adhered to. Professional Opinion (via Arlingclose) to be sought that confirms the loan terms reflect the current market and therefore do not constitute State Aid.