

**Report of the Chief Officer, Financial Services**

**Report to the Deputy Chief Executive, Director of City Development and City Solicitor**

**Date: 7<sup>th</sup> April 2014**

**Subject: Support to the Leeds Rail Growth Package – Agreement of Legal Documentation (Significant Operational Decision)**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Kirkstall, Horsforth, Bramley and Stanningley	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number 10.4(3) Appendix A and B	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

The Executive Board at its meeting on the 19th June 2013 agreed to provide financial support to the Leeds Rail Growth Package (LRGP), with approval of the final terms of legal documentation being delegated to the Deputy Chief Executive, the Director of City Development and the City Solicitor.

Legal documentation for the agreement between the Council and the developer of the Kirkstall Forge site has now been agreed. The terms of these documents are very largely in line with the agreed heads of terms as included in the June 2013 report, but with a security package which now includes the Council being provided with a first charge, which is an improvement on the position agreed previously. The documents will though be subject to a number of conditions being met.

**Recommendation**

In accordance with the delegation agreed at the meeting of the Executive Board on the 19th June 2013, the Deputy Chief Executive, the Director of City Development and the City Solicitor are asked to approve the terms of the documents referred to in this report so as to

provide assistance to GMV Twelve Limited to facilitate the delivery of the LRGP as detailed in this report.

## **1. Purpose of this report**

- 1.1 The Executive Board at its meeting on the 19th June 2013 agreed to provide support to the LRGP (the construction of new rail halts at Kirkstall Forge in Leeds and at Apperley Bridge in Bradford) with approval of the final terms of legal documentation being delegated to the Director of Resources (now the Deputy Chief Executive), the Director of City Development and the City Solicitor.
- 1.2 This report sets out the issues which have had to be dealt with since June 2013, provides details of the legal documents which it is proposed that the Council enters into, and seeks the approval of the delegated decision makers as to the terms of those documents.

## **2. Background Information**

- 2.1 Executive Board at its meeting on the 19<sup>th</sup> June 2013 received a report proposing that the Council provide support to the LRGP. It set out that the Council had been approached by CEG Ltd who are managing the development of the former Kirkstall Forge site on behalf of the owner of the site GMV Twelve Ltd. The report explained that CEG were seeking support from the Council to enable GMV Twelve to meet its planning obligations to contribute to the LRGP and to carry out associated highway infrastructure access works at the Kirkstall Forge Site.
- 2.2 The report recognised that the proposed Kirkstall Forge Scheme (both the construction of the rail halt and the development of the adjoining land) is of strategic importance to the city and the city region and that there were sound economic reasons for the Council supporting GMV Twelve in meeting their obligations.
- 2.3 It was noted that CEG had successfully applied to the Leeds Local Enterprise Partnership (LEP) for a loan of up to £5m from the Growing Places Fund to be used to meet GMV Twelve's obligation to contribute towards the cost of the rail halts.
- 2.4 Executive Board agreed to provide assistance to GMV Twelve and to the Council entering into an agreement with GMV Twelve based on the terms and conditions set out in the agreed heads of terms and to delegate the approval of legal documentation and agreement of an acceptable business plan for the first phase of the residential development to the Deputy Chief Executive, the Director of City Development and the City Solicitor.

## **3. Main Issues – Terms and Conditions**

- 3.1 Since obtaining approval from Executive Board in June 2013, extensive negotiations have taken place between the various parties and their respective legal advisors. Although there are some variations to the previously agreed heads of terms, agreement has now been reached between the various parties and it is recommended that the Council should enter into the following documents in order to provide assistance to GMV Twelve:-

- A principal agreement with GMV Twelve for the provision of a loan of £5m from the LEP and the carrying out by the Council of the works required to provide an access road connecting the rail halt to the A65, and which provides for the Council's investment to be repaid in accordance with a schedule of repayments over a 10 year period to commence 6 months after the first sale of a residential property at the site, but no later than 1<sup>st</sup> April 2018.
- A first legal charge on the Kirkstall Forge site and a guarantee from GMV Holdings in respect of all indebtedness to the Council
- An intercreditor deed with Excellenta AG (a group company which has an existing charge over the Kirkstall Forge site) to regulate the enforcement of the Council's and Excellenta's respective charges.
- A supplemental agreement to facilitate the early commencement of the infrastructure works if necessary.
- A deed of covenant for the future maintenance of some of the infrastructure works.

These documents are discussed further in the exempt Appendix A and a summary of the main terms of each of the documents is attached to this report in the exempt Appendix B.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 The Leeds Rail Growth Package has been subject to extensive public consultation both as part of the Local Transport Plan and also in terms of the previous planning process for the Kirkstall Forge development.

4.1.2 There has been no external consultation in respect to this report as it is not considered appropriate given that it relates only to the agreement of legal documentation.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 An equality impact assessment for the scheme has been prepared by Metro as part of the scheme development process. A screening document was completed for the report to the executive Board in June 2013 and concluded that there are no specific implications for equality and diversity, nor for cohesion and integration. The recommendations of this report relate to the legal documentation.

### **4.3 Council policies and City Priorities**

4.3.1 The proposal for which financial support is required is of strategic importance to the city and the wider city region, and its links to Council policies and city priorities were fully explained in the report to the Executive Board in June 2013.

### **4.4 Resources and value for money**

4.4.1 As set out in the report to the Executive Board in June 2013, the Council will need to take out borrowing in order to provide financial support for this development, and, whilst there could be an impact on the Council's budget in individual years (either

positive or negative) the Deputy Chief Executive will ensure that, overall, there will be no residual cost to the Council Tax payer.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The Council has power to provide assistance of the kind set out in this report under Section 1 of the Localism Act 2012. This section provides that the Council can do anything that individuals generally may do, in any manner it wishes, but is subject to a restriction that the Council cannot do anything which it is prohibited from doing under any other Act. There is nothing in any other Act that would prevent the Council neither from making a contribution to the cost of the Rail Halt on behalf of GMV Twelve nor from carrying out the infrastructure works on its behalf.
- 4.5.2 In providing assistance of the kind referred to in this report the Council must have regard as to whether that assistance might be State aid (assistance given to commercial undertakings which has the potential to distort competition between member states of the European Union). In certain circumstances State aid is unlawful and the European Commission can order that it has to be repaid. As regards the assistance being provided to GMV Twelve, Legal Services have considered the position and are of the opinion that the majority of the assistance being provided will not be State aid on the basis that the ultimate aim of the assistance is the provision of public infrastructure (and cannot therefore be State aid). In addition, in so far as any part of the works might not be considered to be public infrastructure, the agreement provides that the GMV Twelve will pay the Council interest on the cost of those works at a rate which is compliant with the State aid rules, thus ensuring that it will satisfy the European Commission's "private investor" test.
- 4.5.3 The information contained in Appendix A of this report has been identified as exempt because it contains information relating to the financial and business affairs of GMV – Twelve and the Council. The public interest in maintaining the exemption in relation to this matter outweighs the public interest in disclosing the information by reason of the fact that it contains information and financial details which, if disclosed, would adversely affect the business of the Council and GMV Twelve.
- 4.5.4 Executive Board's decision to assist GMV Twelve being a key decision, this decision is a significant operational decision and is exempt from call-in.

#### **4.6 Risk Management**

- 4.6.1 The report to the June 2013 meeting of the Executive Board identified a number of risks associated with the proposal, including the risk that the financial support provided by the Council is not repaid. The agreed legal documents provide the Council with security in the form of a first charge and a parent company guarantee which is an improved position compared to that assumed in the June 2013 report, nevertheless, it will be understood that there is no absolute guarantee that the Council will be repaid.
- 4.6.2 A further risk that was identified in the June 2013 report was for the main development not to proceed, or not in line with expectations. GMV Twelve have submitted a business plan to the Director of City Development and will be put under an obligation to carry out the first phase of development in accordance with it.

## **5. Conclusions**

- 5.1 The Executive Board at their meeting on the 19<sup>th</sup> June 2013 agreed to the Council providing financial assistance to GMV Twelve in order to assist the company in meeting their planning obligations to provide support to the Leeds Rail Growth Project. Members also agreed that finalisation of legal documentation between the parties, with approval of the terms of those documents, be delegated to the Director of Resources (now the Deputy Chief Executive), the Director of City Development and the City Solicitor.
- 5.2 Legal documents have now been agreed between the various parties as described in this report. Overall, the legal documentation is in line with the agreed heads of terms as included in the June 2013 report to the Executive Board, except that, in addition to a parent company guarantee, the Council will now also have a first charge on the site.

## **5. Recommendation**

- 5.1 In accordance with the delegation agreed at the meeting of the Executive Board on the 19<sup>th</sup> June 2013, the Deputy Chief Executive, the Director of City Development and the City Solicitor are asked to approve the terms of the documents referred to in this report and to agree to the Council entering into them so as to provide assistance to GMV Twelve to facilitate the delivery of the Leeds Rail Growth Package as detailed in this report.

## **6. Background documents<sup>1</sup>**

- 6.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. This list of background documents does not include published works.