

Report of The Directors of Resources and City Development

Report to Executive Board

Date: 19th June 2013

Subject: Support to the Leeds Rail Growth Package – Agreement of Terms and Conditions

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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4(3) Appendix number: B (Group Structure), C (Financial Report) and E (Development Plan)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. The Board at its meeting on the 17th October 2012 agreed in principle to provide support to the delivery of the Leeds Rail Growth Package, subject to the agreement of satisfactory terms and conditions with the developer of former Kirkstall Forge site. It was recognised that the development of the former Kirkstall Forge site and the associated Leeds Rail Growth Package was of strategic importance to the city and the wider city region, and that there were sound economic reasons for providing support.
2. Since the previous report, discussions have been on-going with a variety of stakeholders, to maintain and secure support. The Growing Places Fund, administered by the Leeds Local Enterprise Partnership, has agreed to provide support to the construction of the rail halts within the package, but in order for the scheme to be progressed it is proposed that the Council undertake the associated highway infrastructure works. It is proposed that there would then be a separate agreement with the developer for the Council's costs to be reimbursed. The heads of terms for this agreement have been agreed with the developer, with the Council being provided with a second charge on the main site and a parent company guarantee by way of security.
3. It is acknowledged that the proposed support does carry risk; the most obvious being that the Council's costs are not reimbursed. However, the report demonstrates that this is a risk the Council may wish to take given the scale of the potential benefits that

would flow from the delivery of the Leeds Rail Growth Package and from supporting the full development of the former Kirkstall Forge site.

1 Purpose of the Report

- 1.1 The Board at its meeting on the 17th October 2012 received a report on a request from the developer of the former Kirkstall Forge site for financial assistance in connection with the development and delivery of a rail halt as part of the Leeds Rail Growth Package. The report recognised that the development of the former Kirkstall Forge site and the associated Leeds Rail Growth Package was of strategic importance to the city and the wider city region.
- 1.2 However the report also identified that there were a number of significant issues, both financial and legal, to be determined in order for the Council to be able to provide financial assistance as requested and to ensure that such assistance was secured as far as possible.
- 1.3 Members at their meeting on the 17 October 2012 agreed the recommendation to the approval in principle of financial support to the scheme, but that this be subject to finalisation of terms and conditions and that final agreement be sought from Executive Board.
- 1.4 This report updates members of the Board as to the proposal. The report sets out the work that has been undertaken since October 2012, to progress the proposal. It provides information as to the proposed terms and conditions of financial support and specifically the security that would be provided to the Council and, subject to finalisation of legal contracts etc, recommends that financial support is provided.

2 Background and information

- 2.1 Much of the background to the development of the former Kirkstall Forge Site was provided in the report to the Board at their meeting on the 17 October 2012. The 23 hectare brown field site when developed will bring over 1,000 new homes, 300,000 sq. ft. of grade A office accommodation and complementary 136,000 sq. ft. of leisure and retail facilities. It is estimated that it will lever in £350m of private sector investment supporting 300 full time equivalent construction jobs during its construction, 1,800 direct jobs once completed and operational, and nearly 300 local jobs in the wider community. It is also estimated that it will increase economic spend by £40m from households in the wider city-region and will provide a £40m gross wage bill for office workers. Appendix A is a site map of the development, showing proposed usage.
- 2.2 The site is owned by GMV Twelve Ltd. The development is being managed by Commercial Estates Group (CEG) Ltd on behalf of GMV Twelve Ltd. Further information on the companies involved can be found within the exempt Appendix B.
- 2.3 The previous report explained that an important part of the proposed Kirkstall Forge development is the construction of an access road and a new rail halt which would be sited at one of two stations (Kirkstall Forge in Leeds and Apperley

Bridge in Bradford) that are planned to be constructed as part of the Leeds Rail Growth Package (“the LRGP”). This is supported by the Department for Transport (DfT) and Metro (subject to approval of the Final Business Case by the DfT), with a financial contribution to be made by GMV Twelve as part of a section 106 agreement for the development of the site. The original expectation was that the development of the Kirkstall Forge site would proceed in advance of the construction of the rail halt and would therefore fund GMV Twelve’s section 106 contribution. However, the general economic situation has meant that the required development finance has not been available with the result that the development of the site has been delayed. Without GMV Twelve’s contribution to the rail halt, there is a danger that the other funding that has been secured for the rail halt will be lost.

- 2.4 Updated details of the funding requirement for the scheme are contained in the exempt Appendix C. GMV Twelve have successfully applied to the Leeds Local Enterprise Partnership (LEP) for financial support of up to £5m for the scheme from the Growing Places Fund. This funding would be used to meet GMV Twelve’s obligation to contribute towards the cost of the rail halt and associated works. This funding would be paid to Metro as promoter of the Leeds Rail Growth Package, with the works being commissioned by Network Rail. CEG on behalf of GMV Twelve have requested the Council to consider forward funding of the access road and associated works. These are currently estimated at £9.893m. See table 1 at 3.4 below.

3 Main issues

- 3.1 The previous report identified that there were sound economic reasons for the Council to consider a request for financial support. The development planned is of strategic importance to the City and the wider City region, and is consistent with the Council’s City Priority Plan. The proposal not only provides an opportunity to support the delivery of a key infrastructure development, but also the potential to help kick start this important commercial and residential development.
- 3.2 A further reason for the Council supporting the proposal is that in the absence of any other appropriate funding options at this time, there is a need to progress the development in order not to jeopardise the funding that has already been secured for the scheme. In partnership with Metro, GMV Twelve, Bradford City Council and Network Rail, the Council has expressed its support for the scheme, and also has been involved in a meeting with the Minister of Transport to try and ensure that Department for Transport funding is not lost. As part of their commitment GMV Twelve are committed to bringing forward the development at Kirkstall Forge as soon as possible, and have confirmed that works on a reserved matters application for Phase 1 have already commenced in order to bring forward the first residential units in 2016. They anticipate that Phase 1 will consist of around 120 units of which 40% will be 3 and 4 bed family homes. GMV Twelve have commented that they expect that the recently announced Government equity lending and mortgage guarantee schemes will be likely to have a positive impact on housing demand and in turn will enhance investor confidence in the site.
- 3.3 Since the original report to the Board in October 2012, work has been undertaken with all stakeholders to consider ways in which the Council’s support could be

structured. This has been a complex process, but it has been concluded that the best way forward for the Council would be for the Council to procure the construction of the associated infrastructure works (which would ultimately be adopted by the Council as highway authority) and for GMV Twelve to reimburse the cost of those works to the Council. The Council to be provided with a legal charge over the Kirkstall Forge site and a Parent Company Guarantee by GMV Twelve's parent company by way of security.

3.4 The highway infrastructure works at the Kirkstall Forge site are crucial to the Leeds Rail Growth Package as without them there would be no access to the Rail Halt from either the proposed development or the nearby A65. The works consist of a signalised junction onto the A65, an access road from the A65 to the rail halt (including road and pedestrian bridge over the River Aire) and temporary car parking for 190 vehicles. The current estimated cost to the Council of the highway infrastructure works and professional costs are as summarised in the table 1 below:

Table 1

	£
Infrastructure Works	7,938,000
CEG Fees	865,000
LCC Highway Fees/Commutated Sums	1,090,000
Total Highway Costs	9,893,000
LCC Professional costs (TBC)	100,000
TOTAL	9,993,000

3.5 The attached Appendix D1 and D2 provides draft plans for the highway infrastructure works, whilst the exempt Appendix E sets out CEG's master-plan for the development, including Phase 1 of the main development. Under that plan, design work for the highway infrastructure will commence in July 2013, but the main works would not commence until March 2014, with practical completion of the works in April 2015. On completion, the highway infrastructure works would be adopted by the Council as highway maintainable at the public expense. However, the contract for the works would not be let by the Council until the DfT has agreed the final business case for the Leeds Rail Growth Package. This decision is not expected until March/April 2014. Design work for the Rail Halt is planned to commence in September 2013, with construction commencing in April 2014 and the station opening in June 2015. In respect to Phase 1 of the main development, CEG's plans would see construction commencing October 2015 with the first properties being available for sale from mid-July 2016.

3.6 Contained within the exempt Appendix C are agreed heads of terms for an agreement with GMV Twelve for the reimbursement of the Council's costs in relation to the proposed highway infrastructure works. It is also proposed that this agreement is used to facilitate the repayment of the support being provided by the Growing Places Fund, with payments received being shared between the Council

and the Growing Places Fund in the same proportions as the funding provided. The agreed heads of terms also detail the security that the Council will be able to call upon in case of default by GMV Twelve. This includes a second charge on the Kirkstall Forge site and a parent company guarantee from GMV Twelve's parent company. However, as more fully explained in the exempt Appendix C, at least initially the main form of security will be the parent company guarantee. A number of the costs to be incurred up front by the Council, and indeed by Metro in respect to the rail halt are at this stage estimated and will not be confirmed until tenders are let. The agreement with GMV Twelve is designed to recover the actual costs incurred by the Council in undertaking the highway infrastructure works, together with the actual cost of GMV Twelve's contribution to the rail halt (but only up to the agreed maximum of £5m). In addition, GMV Twelve will also reimburse the Council's cash flow costs, the interest charged by the Growing Places Fund and the Council's legal and property costs. Further information as to these is provided in the attached confidential Appendix C. The repayment schedule will be subject to variation as these costs are confirmed. Given that CEG's forecast is that the first stream of development will not be available until mid-July 2016, it is proposed that the agreed payment schedule does not commence until 6 months after the date of the first sale, but no later than 1st April 2018 and will operate for a period of 10 years.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Although both the LGRP and the Kirkstall Forge development have been subject to extensive consultation. There has been no external consultation in respect to this report as it is not considered appropriate as the proposals concern a financial arrangement.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 A screening document was completed and submitted as part of the report to the meeting of the board held on the 17th October 2012. This concluded that the proposed financial arrangements had no specific complications for equality and diversity, or for cohesion and integration. Nothing has changed to alter this assessment.

4.3 Council Policies and City Priorities

4.3.1 The proposal for which financial support is requested is of strategic importance to the City and the wider city region. It is consistent with the Council's city priority plans in terms of its impact on the sustainable growth of the Leeds economy, the redevelopment of a brownfield site, provision of new housing, increasing access to public transport and the creation of jobs.

4.3.2 The park and ride facility that the construction of the Rail Halt would facilitate aligns with the West Yorkshire Local Transport Plan and with the objectives of the Leeds city region transport strategy.

4.4 Resources and value for money

- 4.4.1 The Council will need to borrow in order to provide financial support for this development. The agreed repayment schedule has been designed to ensure that all the costs to the Council are reimbursed by no later than October 2027.
- 4.4.2 As identified in the previous report as well as the creation of homes and jobs, the development will also benefit the city as the City Council will receive a new homes bonus (for a period of 6 years) for each new house delivered as well as council tax payable on the new properties and business rates on the commercial properties.
- 4.4.3 It has been agreed that the legal and other related costs incurred by the Council in assisting GMV Twelve including undertaking due diligence will be included in the payments to be made by GMV Twelve.

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 Section 1 of the Local Government Act 2003 enables the Council to borrow money for any purpose relevant to its functions. Section 3 of the Local Government Act 2003 provides that the Council shall determine and keep under review how much it can afford to borrow. The Director of Resources is satisfied that the Council can afford to borrow the money necessary to provide the assistance referred to in this report.
- 4.5.3 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 it will not be State aid on the basis that the assistance is being provided on a commercial basis (and thus satisfies the EC's "private investor" test) and that the ultimate aim of the assistance is the provision of public infrastructure (and cannot therefore be State aid).
- 4.5.4 Heads of Terms for the agreement with GMV Twelve are appended to this report. It is proposed that final approval of the terms and conditions of the agreement and associated legal documents be delegated to the Director of Resources, the Director of City Development, and the City Solicitor.

- 4.5.5 The information contained in Appendices B, C and E of this report has been identified as exempt because they contain information relating to the financial and business affairs of GMV Twelve, its parent company and the Council. The public interest in maintaining the exemption in relation to Appendices B, C and E outweighs the public interest in disclosing the information and financial details which, if disclosed, might adversely affect the business of the Council, GMV Twelve and its parent company.
- 4.5.6 The Council has a common law duty of care to the taxpayers of Leeds to act in a business-like manner, with reasonable care, skill and caution, and with a due and alert regard to their interests. This means that the Council must act prudently and in good faith and comply with its statutory duties and exercising its statutory powers for the benefit of the community; have regard to the possible financial consequences of its actions; and strike a fair balance between the interests of the taxpayers on the one hand and the community's interest in adequate and efficient services on the other hand. As set out in this report, the Council will need to undertake borrowing to fund the highway infrastructure works. The construction of the highway infrastructure works and the rail halt will have a benefit to the community as a whole and the cost to the Council in carrying out the highway infrastructure works and making a contribution to the cost of the rail halt will be reimbursed by GMV Twelve with security being provided by way of a second legal charge over the Kirkstall Forge site and a parent company guarantee from GMV Twelve's holding company. There is a risk to the Council, and consequently a risk to the taxpayers of Leeds, that the Council's costs may not be reimbursed, but it is considered that it would be reasonable for Members to conclude that the benefits of the scheme outweigh that risk, and that the proposals as a whole are compliant with the Council's fiduciary duty to council tax payers.
- 4.5.7 The report is eligible for call-in.

4.6 Risk Management

- 4.6.1 The main risk associated with the proposal is that the costs incurred by the Council are not reimbursed by GMV Twelve. The agreement with GMV Twelve will include an agreed schedule of payments and will provide for security in the form of a second charge on the Kirkstall Forge site and a parent company guarantee from GMV Twelve's parent company. It should be noted though that as with any transaction of this nature, there can be no guarantee that the Council will recover all of its costs.
- 4.6.2 There is also a risk that the final business case for the Leeds Rail Growth Package will not be approved by the DfT. Final agreement is not scheduled until March/April 2014, and as such the contract for the highway infrastructure works will not be let until the DfT agree the final business case and the agreement with GMV Twelve will be conditional upon the final business case being approved by the DfT.
- 4.6.3 There is also a risk that, although the rail halt and associated highway infrastructure works are built, the station never becomes operational or, that if it does, customer demand is lower than anticipated. As a financial risk this would fall upon Metro as the promoter of the scheme and upon the Integrated Transport

Authority as funder of rail services in the county, but given the level of financial support provided by the Council, at the very least, it could potentially be damaging to the Council's reputation.

5 Conclusions

- 5.1 In approving the in principle agreement for the provision of financial support to the LRGP, members recognised that there were sound economic reasons for supporting a development of strategic importance to the city and wider city region. In addition, given the timescales associated with the funding of this development, and the absence of alternative funding options, it is appropriate for the Council to consider a request for financial support. In future however, funding for such developments should be directed to the West Yorkshire Transport Fund and the Regional Economic Growth Fund both of which are in the process of being developed.
- 5.2 As such this report outlines the terms and conditions to be applied to ensure that as far as possible the Council is assured that its position is safeguarded and that any costs it incurs will be reimbursed.
- 5.3 In addition to the agreement of a schedule of payments and acceptable terms and conditions with GMV Twelve, a security package has been agreed in the form of a second charge on the Kirkstall Forge site and a parent company guarantee.
- 5.4 Whilst there will always be a risk that the Council's costs will not be reimbursed, we have sought to minimise this as far as possible in the circumstances. Moreover, it is argued that this is a risk worth bearing for the benefits that would flow from the delivery of the LRGP and supporting the full development of the former Kirkstall Forge site. It is therefore proposed that financial support to the Leeds Rail Growth Package be agreed in accordance with the terms and conditions set out in the exempt Appendix C.

6 Recommendations

- 6.1 Executive Board are asked:
- To agree to the Council assisting GMV Twelve, on the terms and conditions detailed in exempt Appendix C, subject to the finalisation of legal documentation between the various parties, with approval of the terms of those documents being delegated to the Directors of City Development and of Resources and the City Solicitor.
 - To agree to the Council committing to invest and expend a total of £9.993m for the highway infrastructure works required for the development and professional costs to be met by borrowing and to delegate the formal authority to spend to the Director of City Development.
 - To agree that any changes to the costs of the highway works will be updated in the capital programme to be fully funded by GMV Twelve over the period of the agreement.

7 Background documents¹

7.1 None.

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