

MID SUFFOLK DISTRICT COUNCIL

TO: Cabinet	REPORT NUMBER: MCa/21/23
FROM: Councillor Peter Gould Cabinet Member Asset & Investments	DATE OF MEETING: 4th October 2021
OFFICER: Emily Attack Assistant Director - Assets and Investments	KEY DECISION REF NO. CAB311

Gateway 14 Limited- Guarantee of Public Infrastructure Works until Adoption

1. PURPOSE OF REPORT

- 1.1 This report considers the options available to the Council in supporting Gateway 14 Limited (working with their development partner, Jaynic) to deliver the off-site infrastructure necessary to bring forward the development of land at Gateway 14 in accordance with the planning application DC/21/00407.
- 1.2 The Council has approved the budget finance for Gateway 14 to deliver the necessary on-site and off-site infrastructure and as such no further funds are requested for this purpose. However, statutory undertakers such as the Highways Authority require developers to provide security when committing to undertake public works. This report considers the options around this security and recommends the Council acts as a guarantor for public works being undertaken under agreements such as S278, 38 and 104 with statutory bodies.

2. OPTIONS CONSIDERED

- 2.1 **Option 1:** - Gateway 14 Ltd pays a cash deposit to the statutory bodies that is equivalent to the value of the works being undertaken. This is likely to be in the order of £2,025,000 and would be retained by the statutory bodies until all of the works have been undertaken to an acceptable standard plus necessary time for snagging and warranty periods. This option is not viable as it is likely to use all of the Gateway 14 Ltd debt facility and leave minimal working capital within the business to operate thus delaying delivery or require the peak debt facility to be increased further which would increase borrowing costs without improving the return on investment.
- 2.2 **Option 2:** - Gateway 14 Ltd provide a bond to the statutory undertakers using a third party (bondsman) to provide the necessary security. The bondsman would require a premium to be payable for offering this service, the cost of which is likely to be in the order of £300,000. This would be a development cost and not returned to Gateway 14 Ltd and therefore would reduce the profits/ dividends payable to the Council in the longer term. It has been increasingly difficult to secure bonds for construction works over the last 18 months and as such this option may not be deliverable in the market or may exceed the estimate cost provided.
- 2.3 **Option 3:** - The Council act as Guarantor for the public works, and as such are party to the necessary agreements such as the S278, 38 and 104 agreements with statutory undertakers, such as Highways and Anglian Water. The Council would be liable to complete any works not undertaken by the developer (Gateway 14 Ltd) in

the event that the developer ceased to trade. Gateway 14 Ltd is a wholly owned subsidiary of MSDC (Suffolk Holdings) Ltd which in turn is wholly owned by the Council. The guarantee would terminate once works had been successfully completed and snagging warranty periods expire.

- 2.4 Option 3 provides the best value for money for the Council, mitigating the need to increase borrowings in the short term. Gateway 14 Ltd is a wholly owned company and activities and performance are monitored and reported regularly, thereby mitigating the risk of the Company's failure in the future. In the event that the company did fail and the guarantor was required to implement the necessary works, the land ownership would pass to the Council who in turn would benefit from the increase in value of the land generated by the development process undertaken to date.

3. RECOMMENDATIONS
3.1 The Council agree to act as guarantor in respect of agreements between Gateway 14 Ltd and statutory bodies to deliver the required public works enabling Gateway 14 to be developed.
3.2 Delegate authority to S151 officer to approve and enter into any necessary agreements for the Council to act as guarantor for Gateway 14 in this respect.
REASON FOR DECISION
To support the delivery of Gateway 14 and the agreed business goals and objectives.

4. KEY INFORMATION

- 4.1 A revised planning application was submitted in January 2021 to bring together as a cohesive scheme, the land originally acquired and known as Gateway 14 with the adjacent land previously known as Stowmarket East. The application was considered on the 18th of August 2021 and a resolution to grant planning consent, subject to conditions and S106 agreement, was made. Gateway 14 Ltd now needs to progress the delivery of the site infrastructure, including the new road layout, structural landscaping works and service connections. These works will include public works such as connecting into existing road infrastructure and providing new crossings and footpaths, changes to traffic systems such as nearby roundabouts as well as connecting into existing services such as power, foul and water off-site.
- 4.2 The cost of these public works has been incorporated into the cost plan for the infrastructure delivery works. The total cost of the infrastructure works to deliver Gateway 14 development is anticipated to be circa £16.2m, of which £1.4m has already been incurred as set out in the cost plan at Confidential Appendix 1.
- 4.3 In February 2020 the Council agreed a peak debt facility of £37.9m for Gateway 14 to cover the costs of acquiring the land and instigating the infrastructure works on site. Gateway 14 Ltd are comfortable that they will remain within the peak debt framework as agreed subject to not being required to make a cash deposit for public works. Details of expenditure to date and the remaining facility available are set out in the finance section below.
- 4.4 The provision of public works is agreed with the relevant statutory body and documented within legal agreements. The works themselves will be monitored and

overseen during construction by the professional team procured to deliver the works by Gateway 14 Ltd and the statutory providers to ensure that the works are completed to an adoptable standard.

5. LINKS TO CORPORATE PLAN

- 5.1 The delivery of the Gateway 14 development will generate income for the Council, regenerate local areas to benefit the local economy delivering between 1400 and 4800 direct jobs and providing gross value added to the economy of between £75m and £250m per annum which will enable market towns to thrive.
- 5.2 The development will also use low carbon technologies, deliver significant enhancements to biodiversity and improve local utilities particularly broadband connections.

6. FINANCIAL IMPLICATIONS

Income/Expenditure Items	2018/19	2019/20	2020/21	Total
Accrued Income	468,505	914,317	1,042,999	2,425,821
Interest paid	(141,000)	(219,000)	(179,893)	(539,893)
Accrued Recharges Income	68,776	60,000	70,000	198,776
Net Effect	396,281	755,317	933,106	2,084,703
Loans Made to G14 (90% of exp up to & incl 31/03/19, then 100%)	14,601,224.17	4,154,489.00	600,000.00	19,355,713.17
Overdraft	247,804.08	312,195.92	70,000.00	630,000.00
Equity	1,622,358.24	-	-	1,622,358.24
Gross Investment in Year	16,471,386.49	4,466,684.92	670,000.00	21,608,071.41

	31/03/2021	30/06/2021
Total amount drawdown	19,355,713.17	20,355,713.17
Overdraft	630,000	630,000
Total Equity	1,622,358.24	1,622,358.24
Total accrued Income	(2,425,821)	(2,705,886)
Cost of Debt	539,893	583,643
Total Facility	£37,884,431.17	£37,884,431.17
Remaining balance against the £37,884,431.17	£17,898,718.00	£16,898,718.00

- 6.1 The Council has accrued income of circa £2.6m as at 31 March 2021 since Gateway 14's inception with details set out in the table above.

6.2 The Council's investment in Gateway 14 shows a total of £19.4m being drawn down as at 31st March 2021 and £20.4m as at 30/06/2021. The remaining balance against the £37.9m as at 30 June 2021 is £16.9m which we expect to continue to be drawn down during the year for the infrastructure works.

7. LEGAL IMPLICATIONS

Vires Considerations

7.1 Since the enactment of Part 1 of the Localism Act 2011 (the Act), local authorities have been able to rely upon the power of general competence to justify the types of activities that the Council would need to undertake to facilitate the development of the Site. Subsection 1 (1) of the Act permits a local authority to do anything that an individual may generally do. This is an intentionally wide power.

7.2 In establishing a Special Purpose Vehicle (SPV) and providing finance to the SPV to enable the acquisition and development of the site, Devonshires solicitors advised previously that it is open to the Council to rely on the general power of competence to justify these activities.

7.3 When exercising any power, the Council must act for a proper purpose and have regard to the usual "Wednesbury" reasonableness principles, its fiduciary duty to obtain value for money and whether the Council's involvement in Gateway 14 would be proportionate and properly balanced against the anticipated benefits as well as the wider interests of the Council's local Business Rate and Council Taxpayers. There is nothing in this report which indicates any cause for concern with regard to any of those matters.

7.4 The Council would be required to enter into formal agreements to guarantee the works with the statutory bodies such as Suffolk County Council and Anglian Water. These are legal contracts which could be enforced against the Council if the trading company fails to comply with the agreements. Browne Jacobson would be instructed on behalf of Gateway 14 Ltd whilst the shared legal service team would act for the Council in such agreements.

7.5 Consideration has been given to the proposed option constituting a subsidy, being:

- i. a measure given by a public body of more than 325,000.00 Special Drawing Rights (currently approximately £330,000.00) to a single enterprise (being anyone/thing which puts goods or services on a market. This could include a public body if acting commercially) over three years; and
- ii. which makes a contribution to that enterprise; and
- iii. in doing so affects international trade.

The measure can be a benefit in kind, such as a guarantee. Opinion is this guarantee can be granted. Whilst it pursues a specific public policy objective that will deliver a boost to the local economy and jobs growth with emphasis on key sectors of

infrastructure, the measure is to a local based company and is unlikely to affect international trade and is not therefore a subsidy.

8. RISK MANAGEMENT

- 8.1 This report is most closely linked with the Council's Significant Business Risk No. 11, which considers the risks of the scheme not being delivered by Gateway 14 Ltd. Key risks in relation to this recommendation are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
The Council would be liable to complete any works not undertaken by the developer (Gateway 14 and their partner, Jaynic) in the event that the developer ceased to trade.	Highly Unlikely (1)	Disaster (4)	Gateway 14 Ltd is a wholly owned subsidiary. A peak loan budget has been agreed with appropriate loan documentation in place including a charge over the land.
The Council as guarantor could be placed into a situation where they have little control over costs for which they are liable for.	Highly Unlikely (1)	Disaster (4)	The Council would be party to the legal agreements with the statutory providers detailing all of the works required and would have options on how to deliver these works if necessary. In the event of Gateway 14 Ltd failure the Council would benefit from a legal charge over the land and off set costs against the value of the land with infrastructure in place.

9. CONSULTATIONS

- 9.1 Gateway 14 Ltd has consulted with the statutory bodies to understand the options available, namely a cash deposit, bond or guarantee and understand that a guarantee from the Council would be acceptable.
- 9.2 The Section 151 officer and Monitoring Officer have been consulted and are supportive of the recommendation for the Council to act as a guarantor.
- 9.3 The board of Gateway 14 Ltd and MSDC is also supportive of the recommendation.

10. EQUALITY ANALYSIS

An Equality Impact Assessment (EIA) is not required as the Council acting as a guarantor in this case would not have an impact on any individual protected characteristics.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 Environmental issues are being considered as part of the planning and delivery process however there are no direct environmental implications in respect of the recommendation at section 3.
- 11.2 Gateway 14 Ltd has a clear business goal to maximise sustainable construction opportunities and explore low carbon heat and energy/water sources on the site. A summary of some of Gateway 14's commitments in this regard is set out below: -
- The development will be designed to meet the BREEAM 'Very Good' target as a minimum. Where feasible this will be increased to BREEAM 'Excellent' (i.e., Innovation Centre and low energy usage tenants).
 - Building fabric and airtightness will be designed in excess of Building Regulations standards, incorporating Green Guide A rated products where feasible.
 - The proposals for the development, shall mitigate carbon impact of the development as far as practically possible, during construction and whilst in use. Individual building CO₂ emissions will be reduced by 15% over current target as a minimum.
 - All roofs will be designed to be fully PV Ready, PV installation to roofs will be sized in accordance with the tenant energy usage. Additional renewable technologies to be considered alongside individual building design.
 - Gateway 14 Ltd are reviewing opportunities for a local energy network where occupiers could share solar generated energy.
 - Rainwater Recycling will be incorporated for all buildings and buildings will be designed to meet higher water efficiency standards. Low flow wash hand basin, small flush WC's and shower water outlets shall specified throughout to prevent excessive water use.

- 20% active and 20% passive EV charging points will be installed to all units at the outset.
- Construction waste and recycling will be managed and monitored as part of the development strategy to ensure the minimisation of waste and maximisation of recycling of any waste generated during construction and operation of the proposed development.
- Improved transport links and provision for bicycle storage and bike routes. 13.59% net gain for habitats and 148.65% for linear features (hedgerows).
- Planting of 13,819 whips (tree seedlings), 330 trees, 1,003sqm native hedge, 16,931sqm woodland, 7,626sqm scrub and 60,000m2 wildflower meadow
- Retention of 21,640sqm of existing habitat and enhancement of 25,432sqm
- Inclusion of green corridors to facilitate species movement through the site and to maintain ecological links with the wider landscape
- Inclusion of brush piles, bat and nest boxes and hibernacula to provide nesting opportunities and dens
- 20% of each plot to be delivered as green landscaping in addition to the structural landscaping proposed
- 31.85ha of agricultural land at Saxmundham provided as mitigation for Eurasian skylark which will be specifically managed to enhance breeding habitat.
- The Suffolk Wildlife Trust (SWT) have reviewed the application proposals and have confirmed they are happy with the application. Gateway 14 are exploring opportunities for SWT to have an ongoing role.

12. APPENDICES

Title	Location
(a) Gateway 14 Cost Plan (Confidential Paper)	Attached
(b)	
(c)	
(d)	

13. BACKGROUND DOCUMENTS

13.1 None

14. **REPORT AUTHORS** Emily Atack, Assistant Director Assets & Investments/ MD Gateway 14

