

## REPORT OF THE GOLDEV LOAN AGREEMENT TASK GROUP

### Executive Summary

At its meeting of 17 June 2021, the Executive resolved to establish the GolDev Loan Agreement Task Group (Task Group) in response to a petition heard by the Executive. The Task Group was convened, and this report presents the Task Group's findings to the Executive.

### Recommendations

The Executive is requested to:

#### **RESOLVE That**

the report be received.

### Reasons for Decision

Reason: To note the findings of the Task Group.

The Executive has the authority to determine the recommendation(s) set out above.

<b>Background Papers:</b>	None.
<b>Reporting Person:</b>	Tim Stokes, Independent Person and Chair of the GolDev Loan Agreement Task Group Joanne McIntosh, Director of Legal and Democratic Services/ Monitoring Officer Email: joanne.mcintosh@woking.gov.uk, Extn: 3038
<b>Contact Person:</b>	Joanne McIntosh, Director of Legal and Democratic Services/ Monitoring Officer Email: joanne.mcintosh@woking.gov.uk, Extn: 3038
<b>Portfolio Holder:</b>	Councillor Ayesha Azad Email: cllrayesha.azad@woking.gov.uk

## Report of the GoDev Loan Agreement Task Group

**Shadow Portfolio Holder:** Councillor Ann-Marie Barker  
Email: [cilrann-marie.barker@woking.gov.uk](mailto:cilrann-marie.barker@woking.gov.uk)

**Date Published:** 16 March 2022

## Report of the GolDev Loan Agreement Task Group

### 1.0 Introduction

- 1.1 On 17 June 2021 the Council's Executive considered a Petition (115 signatures submitted online) related to the Council's Revolving £250million Facility Agreement dated 30 January 2019 (Loan Agreement) with GolDev Woking Limited (GolDev).
- 1.2 The Petition sought to assert that there had been a material breach of the Loan Agreement by GolDev and the Council should take action. The Petition stated that:

*"We the undersigned petition Woking Borough Council to Appoint an oversight committee to determine if the Loan Agreement with Goldev Woking Ltd should be voided. We ask that Woking Borough Council appoint an oversight committee to determine if there have been material breaches of the £250m Loan Agreement with Goldev Woking Ltd.*

*The reason for this request is that there have been two changes that appear to be in breach of the Loan Agreement. Council Tax payers have tried eliciting replies from WBC Finance Department however the department repeated fails to reply.*

*The material changes to be considered are a) the ownership of the Borrower "Goldev Woking Ltd" has changed materially since the Loan Agreement was struck and appears to breach "18.6 Material adverse changes" b) in breach of the Loan Agreement Section 19.9 Goldev Woking Ltd has taken on board Security with Frith Holdings Ltd. The only security should be WBC acting as the only beneficiary in the event of difficulties.*

*As stated above in light of this we ask that an oversight committee be appointed and if they feel appropriate that the Loan Agreement is voided."*

- 1.3 In summary it was considered that two questions arose as a result of the petition:-
- (a) Has GolDev's action to offer security to Erith Holdings Ltd resulted in a material breach of the Loan Agreement?
  - (b) Has there been a material adverse change, which gives rise to a material breach of the Council's Loan Agreement with GolDev?
- 1.4 The Council's Executive resolved that the Petition should be considered further and resolved to establish the GolDev Loan Agreement Task Group (Task Group). The remit of the Task Group was to investigate the status of the Loan Agreement and formulate the Council's response to the Petition.

### 2.0 The Task Group

- 2.1 The Council's Independent Person chaired the politically proportionate Task Group. Remote meetings were held on 30 September 2021, 1 November 2021 and on 1 February 2022. The Task Group invited the Petitioner to attend a meeting of the Task Group. The Task Group welcomed Mr Instone to its meeting of 1 November 2021, during which he made representations to the Task Group and answered their queries.
- 2.2 At its meeting on 1 November the Task Group decided that it should seek independent legal advice. The Task Group was keen to demonstrate to the Petitioner that the Council had given the Petition serious and robust consideration and that the Task Group had independently reviewed the issue of a potential material breach of the Loan Agreement (as raised by the Petitioner) and whether or not it should be voided.

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2.3 The Council instructed, Matt Hutchings QC of Cornerstone Barristers. He has significant experience in this area of law. He was independent, impartial and new to this matter and had not dealt with any matters in respect of this project beforehand. A copy of his advice is attached to this report.

### 3.0 Summary of Counsel's Advice

3.1 Counsel advised that he agreed with the advice of the Monitoring Officer that, based on the comprehensive evidence put forward, GolDev was not in material breach of its obligations under the loan facility agreement.

3.2 Counsel was instructed to advise on the matters raised in the Petition. In summary, Counsel was asked to advise on the below questions. His responses, which should be read in conjunction with his opinion in its entirety, are below in red italics:

Has there been a "material adverse change"?

*The events complained of have not had and nor are they likely to have a Material Adverse Effect so as to constitute an Event of Default under clause 19.9.*

Is there a material breach of the Loan Agreement?

*There has not been a material breach of the Facility Agreement.*

If there is a material breach of the Loan Agreement, should it be voided? What is the impact on the Council? What other steps should the Council take to rectify the position and protect its interests?

*This does not arise.*

If there was no material breach are there any circumstances in which it would be realistic for the Council to void the Loan Agreement?

*There is no evidence before me that would indicate that it is realistic for WBC currently to seek to cancel or otherwise avoid the Facility Agreement.*

If there is no material breach of the Loan Agreement, is there anything else the Council should consider or action in order to protect its position?

*My primary view is that there is nothing WBC needs to do to protect its position. However, WBC should check that it concurs with my advice at paragraph 35, and if it does not make the inquiries of GolDev I have advised at paragraph 36 above.*

If Planning Permission was granted what would the consequences be if the Council refused to permit drawing down of any sums subject to the Loan Agreement?

*If WBC refused to permit the drawing down of loans due under the Facility Agreement, WBC would be in breach of contract and thus exposed to a claim for damages for the loss of profits that GolDev stood to make from the development.*

### 4.0 Conclusion

4.1 The Task Group has considered the advice of the Monitoring Officer and the independent legal advice of Matt Hutchings QC and agrees with the conclusion reached; based on the comprehensive evidence put forward, GolDev was not in material breach of its obligations under the loan facility agreement.

4.2 The Task Group met on 1 February to determine its findings and agree the content of its report. The Task Group is grateful for the hard work and commitment of all those involved in this matter.

4.3 Before commencing its work, the Task Group was aware that, having had its Planning Application refused, GolDev had appealed to the Secretary of State for Communities and Local

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Government. In December 2021, the Secretary of State rejected the Goldev Appeal at which point the Loan Agreement and all other contracts relating to Goldev in this matter fell away.

- 4.4 Subsequent to the decision by the Secretary of State, the Petitioner in email correspondence made further points and asked other questions. The Task Group was established as a “task and finish” group related to the Petition considered by the Council’s Executive on 17 June 2021 and as such and as the additional points made were beyond its scope, the Task Group had now finished its work.

### **5.0 Corporate Strategy**

- 5.1 The actions undertaken by the Task Group are consistent with the Council’s Corporate Plan.

### **6.0 Implications**

#### Finance and Risk

- 6.1 The Task Group sought independent legal advice which was a cost to the Council. It was considered that in the circumstances of the matter, it was appropriate to seek advice from an independent legal expert.
- 6.2 Whilst believing in this instance, there was exceptional circumstances which justified the appointment of an external legal expert, the Task Group wanted to express its support for the advice received by the Monitoring Officer (and Legal Team) and that the circumstances of this matter distinguish it from others and should not set a precedent.

#### Equalities and Human Resources

- 6.3 None specifically arising from this report.

#### Legal

- 6.4 Counsel’s opinion supported that of the Monitoring Officer.

### **7.0 Engagement and Consultation**

- 7.1 The Task Group was established in response to a Petition and The Petitioner was engaged by the Task Group and attended one of its meetings.

REPORT ENDS