

**REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION**

**HOUSING INFRASTRUCTURE FUND AND FUNDING AGREEMENTS WITH HOMES ENGLAND**

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<b>Responsible Officer</b>	Mrs Jenny Clifford, Head of Planning, Economy and Regeneration

**Reason for Report:** To update members of Scrutiny Committee on the applications for funding under the Housing Infrastructure Fund (HIF) totalling £18.2 million, in relation to which the Council has entered grant funding agreements with Homes England and has submitted the initial claims to draw down the first tranches of funding.

**RECOMMENDATION:** That Scrutiny Committee note the contents of this report.

**Financial Implications:** The Housing Infrastructure Fund will play a pivotal role in bringing forward the corporate aspirations to facilitate growth within the district which in turn will help boost the economy. The £18.2m for the two HIF schemes has been secured as recoverable grant to forward fund infrastructure in Mid Devon.

At the outset of the bid process it was envisaged that no additional contributions from the District Council were required over and above those already reflected in existing budgets. However as the discussions with Homes England progressed and the formal offer letters for the schemes were received, it became clear that an element of forward funding (cash flow) from this Council would be needed to provide funding for the projects. This was for two reasons:

1. The grant funding agreements with Homes England for each project specifies that the HIF funds will be drawn down in accordance with a programme of payments that has been agreed with Homes England. Whilst these payment claims are programmed by quarter and can be in advance of spend, it is still possible that the Council will be required to bear project costs in the short term until the quarterly HIF draw down payment is claimed and made.
2. Funds are being made available through the HIF programme on the basis of a recoverable grant. Through the terms of the grant funding agreements entered into between the Council and Homes England, the Council is required to secure the recovery of the HIF funding from housing developers. It is envisaged that this will be via future S106 agreements to be entered into as part of the planning process. This is to ensure that public funds are not subsidising developer profit. There will therefore be a time lag between when monies needed to be expended in order to deliver the infrastructure and the recovery of funding from developers via S106 agreement. For the Cullompton relief road project in particular the overall project is expected to cost at least £15m, with £10m forward funding being provided through HIF. £5m will need to be forward funded by the Council until such time as S106 monies are

collected from the housing development that is unlocked by the provision of the road.

The forward funding of monies for delivery of these projects by the Council is expected to be achieved through utilisation of the Council's existing financial resources and/or taking a loan via the Public Works Loan Board and is reflected in the capital programme. It is intended that any interest charges accrued in the forward-financing of infrastructure will be clawed-back through s106 arrangements. The financial risk to the Council is one of phasing to deliver the infrastructure up front for residents' benefit with the anticipated net cost to the Council being zero.

Further information on the timing of cost recovery and the latest on anticipated project cost in relation to the Cullompton relief road scheme is to be found in the main body of the report.

**Budget and Policy Framework:** None directly in terms of the Council's policy framework. The agreed 2020/21 capital programme includes the two HIF schemes within the general fund projects and the projects are also built into the medium term financial plan capital programme to 2023/24. The assumptions over forward funding and payback are being kept under review.

**Legal Implications:** This report includes consideration of the grant funding agreements that have been entered into between the Council and Homes England. The Council is the accountable body for the projects, although they are being delivered by Devon County Council. The contents and terms of the grant funding agreements have been considered by the Head of Legal (Monitoring Officer) following protracted negotiation with Homes England. At the meeting of Cabinet on 30<sup>th</sup> May 2019 it was resolved as follows:

1. To enter into grant funding agreements with Homes England to secure £18.2 million Housing Infrastructure Fund monies and grant delegated authority to the Section 151 Officer in consultation with the Group Manager for Legal Services to finalise and sign the agreements;
2. To forward fund the Cullompton town centre relief road and Tiverton Eastern Urban Extension phase 2 junction projects as set out in paragraphs 5.1 and 5.4 including taking out any associated borrowing.

The grant fund agreements were subsequently signed in accordance with the resolution on 29<sup>th</sup> November 2019 (Tiverton) and 4<sup>th</sup> December 2019 (Cullompton).

As required by Homes England, the Council has gained specialist state aid legal advice for each project. This advice has not raised any concerns.

Devon County Council will act as this Council's delivery partner. Given that the two HIF projects involve highway infrastructure, it is appropriate that the County Council as Highway Authority takes on the responsibility for their project managing, procuring, contracting and delivery. A formal agreement will be required between the two councils to this effect and to ensure compliance with the requirements of the HIF funding agreements. This agreement is at an advanced stage of drafting and likely to be entered into shortly. More information on this aspect is to be found within the main body of this report.

A further area of legal implication is pursuance of S106 legal agreements as part of the planning process in order to secure developer contributions towards the cost of the delivery of the infrastructure in question. It is through this means that the Council proposes to recover the HIF funds as required by the grant funding agreements. Entering into S106 agreements in this way is a standard requirement and would have been sought irrespective of whether this HIF funding was forthcoming or not.

Legal implications will also arise as a result of the need to assemble and acquire land to deliver the Cullompton relief road scheme and also in respect of the legal interests of existing sports providers likely to be affected and any loss or substitution of public open space. There are a range of land ownerships and interests that will need to be addressed and be the subject of negotiation as the project progresses. It is understood that the Cullompton Community Association Fields are subject to a charitable trust for recreational purposes. For the Tiverton A361 junction project, legal provisions for licenses and title transfer between the landowner and Devon County Council are already set out within a signed S106 agreement. As the Council's delivery partner, it will be Devon County Council that will negotiate to ensure the land needed to deliver the projects is assembled and secured, will run the procurement process, award the contract for the construction of the infrastructure and undertake the day to day project management to deliver the infrastructure in question.

The adoption and implementation of an Air Quality Action Plan (where an authority has designated one or more Air Quality Management Areas) is a statutory requirement under Part IV of the Environment Act 1995 for Local Air Quality Management (known as the LAQM regime). Under the regime, Local Authorities have a duty to pursue measures which are designed to improve air quality. The Council's Air Quality Action Plan includes the delivery of a Cullompton town centre relief road as an air quality mitigation measure, specifically due to the opportunity it provides to take traffic away from the High Street which, as well as improving air quality in the vicinity, will also allow a future opportunity for the considered regeneration of the historic town settlement.

A planning application has been submitted to this Council by Devon County Council for the Cullompton town centre relief road to connect Station Road with Duke Street (reference 20/00876/MFUL). This planning application is valid and is currently under consideration and will be referred to a future meeting of Planning Committee for determination. Nothing within this report is considered to affect the assessment, recommendation or future outcome of that application which will be determined on its planning merits under section 70 of the Town and Country Planning Act 1990. Scrutiny Committee is reminded that they are not able to scrutinise an individual planning application and any members of Scrutiny Committee that are also on Planning Committee will need to ensure that their future consideration of that application remains unfettered and that there is no bias, predetermination, or appearance of such.

**Risk Assessment:** The consequences to the authority of not securing an adequate funding package for the infrastructure in question would have been serious as it could have compromised the ability to deliver much needed housing and affect housing land supply. At examination the Local Plan Review Inspector wished to be assured that the Plan was sound and provided deliverable housing sites in the early

years of the Plan together with a supply of developable sites later in the Plan with a reasonable prospect of being developed at the point envisaged. The funding agreements with Homes England were therefore entered into against this wider background with HIF funding being made available by the Treasury via Homes England specifically to unlock planned housing growth through the provision of key pieces of infrastructure.

To qualify for HIF funding, the proposed infrastructure has needed to meet the HIF scheme criteria and deliverables, as tested through a prolonged due diligence assessment process. HIF offer letters were issued on 5<sup>th</sup> March 2019 (Cullompton) and 18<sup>th</sup> March 2019 (Tiverton)

In order to meet fund timescales; work streams and expenditure needed to commence in advance of the signing of the agreements. Such work was not abortive as it formed part of more extensive infrastructure necessary to deliver the growth planned at Tiverton Eastern Urban Extension and within the Cullompton area in the longer term including the garden village. The HIF funding opportunity represented the best chance for it to be achieved in the short term but requires adherence to tight and challenging timescales. S106 funds collected to improve air quality in Cullompton and for the relief road scheme itself have been utilised to date, supporting the County Council's ongoing work to draw up and submit a planning application. Initial drawdown of HIF funding has also now taken place for each scheme.

The need to meet agreed project milestones and the fund availability cut off dates remain a significant risk. The grant agreements contain milestone date targets for key stages of each project with the ultimate requirement that the infrastructure be completed by 30 September 2022 (Tiverton) and 31 March 2023 (Cullompton) in order to meet funding availability periods. Maintaining progress on the projects and ultimately securing their delivery within the requirements of the grant fund agreements including timescale will be challenging. Close liaison has taken place with the County Council with the aim of ensuring that the programme and hence milestones for both schemes whilst ambitious (to reflect the urgency of Homes England), is nevertheless achievable. The grant agreement contains fund clawback provisions. Officers from both Councils will continue to work to de-risk the projects, liaise with Homes England and seek their delivery in accordance with the grant agreements. It should be noted that this does not prejudice or predetermine the assessment and decision making process on the current planning application for the Cullompton relief road project.

The risks associated with the Tiverton A361 junction project is considered less than with Cullompton as planning permission has already been granted and a signed S106 is in place between the landowner and County Council over licenses and land transfer.

There remain particular risks with the Cullompton relief road project. Significant technical work has now been undertaken to support the planning application and its accompanying environmental statement. However more technical work will be needed to support the detailed design and delivery phases post planning. At this time the planning process has not been completed, land remains to be assembled, affected sports facilities moved and replacement sports and recreation space provided. These together with the construction phase result in a very tight timescale.

The recovery of forward funding by the Council via developer S106 agreement payments is dependent upon housing schemes coming forward within the timescale anticipated. The Council's adopted Local Plan and the Local Plan Review set out the policy framework for this. The housing trajectory within the Local Plan Review does not assume that any homes that the relief road will unlock will be delivered within the first five years of the plan. Risk to achieving the required housing delivery rate is therefore reduced. Other forms of risk reduction include proactive working to support activities such as masterplanning that will aid the delivery of the key housing sites in question. Officers will continue to work proactively to deliver these planned for sites, but this is ultimately not under the Council's control. Planning applications for some of these schemes have been received. Again, this does not prejudice or predetermine the assessment and decision making process on these applications.

The impact of COVID-19 upon the economy, the construction industry and housing market are at the time of the writing of this report not fully known and currently present a further risk to achieving project milestones, the delivery of homes and therefore the recovery of HIF funding and the Council's forward funding within the initially expected timescales. Homes England is alive to these risks and has engaged with the Council upon them. It is expected that the impact of COVID-19 will form part of the considerations under the quarterly monitoring requirements for each of the projects. The intention of this monitoring being to have ongoing project engagement and management, to anticipate and respond accordingly to address any concerns and reduce risk of project non delivery or grant fund clawback. These quarterly monitoring returns also include examination of project level risk assessments.

**Equalities Assessment:** There are none directly arising from this report. For Cullompton, the impacts have been assessed to date as part of the previous substantive decisions – for example on the route of the relief road - and will also come into play when the planning application is made. It is acknowledged that there is an impact upon sport and recreation – therefore most likely to be an age-related impact for young people which are involved in the sports clubs which make use of the land over which it is expected the relief road will run – and also for those who prefer to walk on ground which is largely flat and which includes level pathways through it e.g. the elderly, those with young children and those with disabilities.

**Impact on Climate Change:** The two HIF schemes in question relate to highway infrastructure projects- a new road and a new highway junction. On the face of it, they may appear at odds with the Council's climate change declaration and the target of net-zero carbon emissions by 2050. However the Cullompton relief road will deliver wider improvements to air quality within the Cullompton Air Quality Management Area as well as resultant opportunities for improvements to the town centre environment by reducing town centre traffic. Idling cars in queues of traffic waste fuel, impact on air quality and contribute to climate change. The schemes and strategic scale development that they will unlock have / will be subject to environmental impact assessment which will seek to reduce or mitigate impact. Both schemes are important to the delivery of development within the Local Plan Review which provides for sustainable development up to 2033 and contains policies for the protection and enhancement of the natural as well as the built environment.

**Relationship to Corporate Plan:** These infrastructure projects are considered vital to enable development identified in the Local Plan Review to come forward and

make a valuable contribution to delivering the priorities of the Corporate Plan 2020 to 2024; Economy, Homes, Community and Environment. In his examination of the Local Plan Review the Inspector was keen to understand the likelihood and timescale for the delivery of the Cullompton town centre relief road and clearly saw it as being crucial to unlocking development planned for in the Cullompton area.

## **1.0 Background: Housing Infrastructure Fund.**

1.1 In July 2017 the Government launched its £2.3 billion Housing Infrastructure Fund to finance infrastructure to unlock housing delivery. This funding to be awarded on a highly competitive basis. The Government has made this fund available to:

- Deliver new physical infrastructure to support new and existing communities;
- Make more land available for housing in high demand areas, resulting in new additional homes that otherwise would not have been built;
- Support ambitious local authorities who want to step up their plans for growth and make a meaningful difference to overall housing supply; and
- Enable local authorities to recycle the funding for other infrastructure schemes, achieving more and delivering new homes in the future.

1.2 This Council made two bids for HIF funding with proposals under this fund capped at £10m each. The two schemes relate to highway infrastructure schemes which will unlock development sites identified within the adopted Local Plan and the Local Plan Review which is at a pre-adoption stage. The Council's HIF bids were considered and agreed at the meetings of Cabinet on 31<sup>st</sup> August 2017 and 23<sup>rd</sup> May 2018 with authority granted to make the bids and prioritise that relating to Cullompton.

1.3 The funding was offered on the basis of a locally recoverable grant. There is a requirement to recover the HIF funds from development. This Council will retain those funds locally (rather than return them to Homes England) and will need to recycle them into projects or schemes that achieve further accelerated housing delivery. Cabinet at the meeting of 30<sup>th</sup> May 2019 agreed to enter into the grant find agreements and granted delegated authority for their finalisation and signing.

## **2.0 Background: Tiverton HIF project: Northern element of A361 junction east of Tiverton**

2.1 Construction of the first of two phases of the new junction off the A361 to serve the Tiverton Eastern Urban Extension has been completed on site. This first phase provides southern-side slip roads. The second phase of the junction is required to deliver Area B of the urban extension. (Further masterplanning of Area B now at an advanced stage). The phase two junction works are for the bridge across the A361, the north side slips and associated landscaping. Planning permission has been granted for the full junction. HIF funding of £8.2m will deliver the northern phase of the junction.

- 2.2 The Tiverton Eastern Urban Extension is a strategic scale development allocation within the adopted Local Plan and the Local Plan Review, the build out of which is significant to the delivery of these Plans. In the absence of the second phase of the junction, the homes in Area B will not come forward. The HIF bid had the support of Devon County Council, Tiverton Town Council, the Local Enterprise Partnership and Neil Parish MP.

### **3.0 Background: Cullompton HIF project: Cullompton Town Centre Relief Road**

- 3.1 At Cabinet on 23<sup>rd</sup> May 2018 it was agreed to proceed with the £10 million Cullompton HIF bid on the basis of delivering a town centre relief road to the east of Cullompton, which will improve capacity at the motorway junction together with achieving a reduction of traffic flows through the town centre resulting in air quality and town centre amenity benefits. The overall project cost was expected to be £15 million, £10 million of which would be through HIF with £5 million from Council forward funding. The HIF bid for Cullompton infrastructure had the support of Cullompton Town Council, Cullompton Neighbourhood Plan Group, Devon County Council, the Local Enterprise Partnership and Neil Parish MP.
- 3.2 Devon County Council and Highways England have raised concerns regarding the capacity of Junction 28 for the M5 and its ability to accommodate additional traffic movements arising from planned developments. Whilst a longer term solution is planned comprising a strategic motorway junction improvement, the delivery of a town centre relief road for Cullompton will more quickly increase capacity at the motorway junction as a first phase of wider improvements. The relief road will facilitate more immediate development proposals to come forward comprising 2,000 homes planned for within the adopted Local Plan and Local Plan Review including a first release of approximately 500 dwellings east of Cullompton which will form part of the Garden Village.
- 3.3 The delivery of the town centre relief road has also been a long held aspiration to reduce traffic flows through the town centre. Cullompton town centre is a designated Air Quality Management Area. The adoption and implementation of an Air Quality Action Plan (where an authority has designated one or more Air Quality Management Areas) is a statutory requirement under Part IV of the Environment Act 1995 for Local Air Quality Management (known as the LAQM regime). Under the regime, Local Authorities have a duty to pursue measures which are designed to improve air quality. The Council's Air Quality Action Plan includes the delivery of a Cullompton town centre relief road as an air quality mitigation measure.
- 3.4 The relief road will reduce traffic through Cullompton town centre, resulting in environmental improvement. The town's Conservation Area is included in the Historic England 'Heritage at Risk' Register where its condition is assessed as being very bad and deteriorating. The Cullompton Heritage Action Zone scheme depends upon the delivery of the relief road to implement the full range of proposals and Historic England has clearly indicated the importance

of addressing traffic levels in the town centre via the road and it is a pre-requisite to investment in the heritage and town centre environment of Cullompton. The Council has also commenced a masterplanning exercise for the regeneration of the town centre.

- 3.5 At the Cabinet meeting of 31<sup>st</sup> August 2017 a decision was made to give the Cullompton bid highest priority out of Mid Devon's two HIF schemes.
- 3.6 Public consultation between September and October 2018 established a preferred route for the relief road route and the meeting of MDDC Cabinet on 31<sup>st</sup> January 2019 resolved that Option B to the east of the motorway adjacent in part to the railway line be recommended to Devon County Council as the preferred route. Devon County Council undertook a second stage of consultation and has now submitted a planning application for the new road supported by technical evidence and an environmental statement. This planning application is yet to be determined.

#### **4.0 Grant funding agreements with Homes England**

- 4.1 Grant funding agreements with Homes England have been entered into for both schemes on 29<sup>th</sup> November 2019 (Tiverton) and 4<sup>th</sup> December 2019 (Cullompton). Separate agreements will also be needed with Devon County Council to deliver the infrastructure in question.
- 4.2 The grant funding agreements are set out in a standard form, but allow for project specific circumstances and milestones to be included. Officers, including the Head of Legal (Monitoring Officer) have reviewed and negotiated with Homes England over the wording of the draft agreements. As drafted the agreements are structured as follows:

##### **Section 1**

This includes details of the project and funding programme (HIF) and the parties entering into the agreement together with recitals within which Homes England agrees to make the grant funding available. The Local Authority may either directly procure for the delivery of the infrastructure project or provide funding to developer parties or third parties. In this instance the County Council is the proposed delivery partner.

Key principles for the funding of the project are set out including the total amount (£8.2m Tiverton and £10m Cullompton) including definitions of the HIF funded infrastructure and the wider project. The latter being the homes that will be unlocked as a result of the infrastructure. The funding is available until 31<sup>st</sup> December 2022 (Tiverton) and 31<sup>st</sup> March 2023 (Cullompton). Project completion target dates are 30<sup>th</sup> September 2022 (Tiverton) and 31 March 2023 (Cullompton).

Conditions precedent to each claim for funding relate to how and when the claims are presented and Homes England agrees to pay the funding in accordance with the terms of the agreement. Claims require sign off by the Council's S151 Officer. The Local Authority agrees to meet quarterly monitoring and progress report requirements and repay any overpayments. This section also addresses communication details between the Council and



Homes England, procedures for amendments and termination of the agreements.

## **Schedule 2**

This section sets out standard terms and conditions of the funding and definitions used. Homes England agrees to make the funding available subject to pre-conditions being fulfilled. Pre-condition submissions have been made to Homes England for both schemes and relate to project information such as project programme, cashflow, land assembly approach (Cullompton), recovery mechanism for the HIF funding and obtaining independent state aid advice.

The Local Authority agrees to a series of warranties and representations and will be the accountable body for these projects. Of note is the requirement for the Local Authority to recover the HIF funding from developers or site owners. Recovered HIF money may be retained by the Local Authority and recycled so it is used for further housing delivery. The mechanism proposed by the Council for recovery of HIF funding is via S106 agreements in connection with the associated housing developments.

Given that the County Council will deliver and hence procure and run the contracts for the construction of the road and junction in question, the separate agreement to be drawn up between this Council and the County Council will seek to ensure compliance with the relevant funding agreement warranties.

The arrangements and requirements for the payment of the funding are set out in this schedule, for example the arrangements and format for the submission of claims. This Council will seek agreement with the County Council that it will prepare and evidence the claims for checking and submission by this Council. Claims will require Section 151 Officer sign off.

Unless agreement is gained to vary, the Local Authority is to ensure the project commences by the start date and is carried out in accordance with the milestone dates and cashflow to be agreed with Homes England. Clawback on default provisions are included to safeguard the position of Homes England, as is the ability to require repayment or recover funds if required under state aid provisions. This Council has already gained independent state aid legal advice for each project which has not raised any concerns.

This section also includes requirements over reporting of progress, inspection, audit, conduct, insurance, confidentiality, freedom of information, data protection, insurance, indemnity, VAT, project changes, access to information and publicity. Many of the obligations within this schedule are expected as part of a standard funding agreement in order to set out the obligations on each party and safeguard the position of each.

## **Schedule 3**

This schedule sets out milestones (agreed key events and stages for the projects) in relation to both the HIF infrastructure and the associated wider housing developments. These milestones relate to establishing a series of agreed dates, such as project start and completion, planning permission,

procurement and first claim for funding. The County Council has programmed the delivery of both projects and this information has informed those discussions. The measure for outputs will be the number of homes delivered.

#### **Schedule 4**

This schedule will set out a series of pre-conditions to be satisfied before the drawdown of funds. Standard pre-conditions include non-breach of the agreement, state aid advice, land title provisions, the appointment of suitable contractors and approval of the project cashflow.

Project specific pre-conditions are also included relating to agreement of the recovery mechanism (S106 proposed), title/land assembly, planning permission and contractor procurement.

#### **Schedule 5**

Project specific clauses have been drafted by the Head of Legal (Monitoring Officer) to safeguard the interests of the Council and to reflect the existence of a delivery partner (the County Council) in relation to responsibilities/obligations set out in other parts of the agreement. However there has been reluctance by Homes England to build in project specific clauses within this section of the agreement, instead the approach being to deal with these matters elsewhere such as the pre-agreement and pre-drawdown conditions in schedule , the milestones and outputs in Schedule 3 and the documents appended to the agreement including the cashflow and the title letter.

- 4.3 Through the negotiation on the agreements it has been very clear that the majority of the contents and hence requirements of the funding agreements are standard and deliberately so with very limited opportunity to vary from that standardisation. However on each grant fund agreement officers negotiated with different Homes England advisers and legal teams. This resulted in variation on the approach between agreements and some project specific content.

### **5.0 Matters common to both schemes and agreements**

#### **5.1 Recovery mechanism**

- 5.1.1 The Council has to recover the grant amount. The mechanism for this is via S106 agreements (planning obligations) with the developers of the housing to be unlocked by the projects. These will need to be negotiated at the time planning permission is granted. Failure to secure an agreement would lead to a shortfall in recovery. The purpose of recovery is to recycle the funding into the delivery of further housing. Any prospect of under recovery would be a matter for discussion with Homes England in advance and there would be a need to show how recovery can be maximised or further housing delivered. It is likely that Homes England would seek to check development viability and assumptions via the quarterly monitoring process. The Council has been clear that whilst full recovery will be sought it is likely to be difficult to achieve.

#### **5.2 Wider projects**

- 5.2.1 The purpose of the funding is to release new housing. Naturally, Homes England is therefore interested in the number of houses to be released,

including timescales. Planning permission has yet to be granted for the housing that will be unlocked through the delivery of this infrastructure. Until it is in full, the final housing numbers to be unlocked will retain an element of uncertainty. Funding recovered is expected to go towards further housing.

### 5.3 Delivery partner and future procurement

- 5.3.1 Devon County Council will be the delivery partner for both projects, as they involve highway schemes. DCC will therefore not only need to acquire the land, but also procure contractors. The Council has identified the need to enter into agreements with DCC to ensure that they do not put this Council at risk of breaching the funding agreements. Drafting of the agreements is now advanced and it is anticipated they will be entered into shortly. A range of matters will be covered off within these agreements such as compliance with procurement requirements. A mechanism is proposed for inclusion to ensure that contracts (at a higher price) are not entered into without this Council's agreement.

### 5.4 Project milestones and funding availability period

- 5.4.1 Each project has its milestones set out in Schedule 3. A failure to achieve a milestone is an event which could trigger termination and clawback. They have therefore been drawn up carefully, working closely with Devon County Council. Having said that, Homes England has been quite clear that changes can be made to these milestones by agreement and that their interest remains in securing the delivery of housing. Due to COVID-19, Devon County Council submitted the planning application for the Cullompton relief road shortly after the milestone date of 31 May 2020. Officers discussed this in advance with Homes England. There has been no suggestion of termination and Homes England remains focussed on housing delivery as facilitated through the delivery of the infrastructure in question. Nevertheless the projects will need to maintain a keen focus on meeting key milestones.

### 5.5 Claims and drawdown of funding

- 5.5.1 Claims are made quarterly and the grant fund agreements set out when claims may be made, the period to which they relate and how claims are made. The drawdown tranches have been carefully worked up with Devon County Council to reflect anticipated amounts and timing of project spend in order to ensure a flow of funding when it is required and to reduce any need for forward funding until HIF funds are received. Funding claims have now been made and evidenced for both projects.

### 5.6 Clawback, repayment and termination

- 5.6.1 The agreements include provision for termination and clawback on default. Key will be ongoing liaison with Homes England over the progress of both projects including the quarterly returns as part of the monitoring process in order to anticipate and seek to resolve any issues before they arise.

### 5.7 Other matters

5.7.1 Recovered HIF funds (via S106 agreements) may with the approval of Homes England be retained, but must be used for further housing delivery, details of which require agreement in advance.

5.7.2 External solicitors were commissioned to provide state aid advice and confirmed that the funding complies with state aid law.

## **6.0 Matters arising from the Cullompton town centre relief road agreement**

6.1 The land assembly required in order to deliver the project is yet to take place and forms a project risk as the land is in multiple ownerships. Devon County Council is in discussion with landowners and will undertake the negotiation and acquisition process. It has always been known that the compulsory purchase order (CPO) process could be required although land assembly by negotiation will be sought. CPO takes time and would pressure the already tight project timescale. The CPO process has been built into the project timescale and preparation work will be undertaken in parallel with other project activities to reduce risk of delay.

6.2 This project will require the provision of alternative open space and replacement sports facilities to off-set the impact of the line of the road. This is a planning requirement. The County Council has been working closely with landowners and sports providers over this aspect. Negotiations are taking place to secure arrangements for the delivery of alternative provision so that this may form part of the planning assessment. Success in resolving this issue is critical to the delivery of the project in order to avoid delay and missed milestones.

6.3 This is a complex project, attracting risk of increased project costs above the initially anticipated £15m. As the project progresses through key stages, greater certainty will be gained over costs of construction and land assembly in particular. Project cost estimates will be reviewed and updated.

## **7.0 Matters arising from the Tiverton agreement**

7.1 Acquisition of land has already been dealt with in the existing section 106 agreement. The section 106 agreement provides a mechanism to secure a licence to the land to carry out the works and, following completion of the works, the transfer of the land to Devon County Council.

7.2 Masterplanning of Area B of the Tiverton Urban Extension has not yet been completed and will consider in more detail the number and distribution of homes across that part of the site. Until it has been completed and planning permission granted there remains some uncertainty over the final housing numbers to be delivered.

7.3 Highway access between the junction on the A361 (of which the HIF scheme will deliver the final section) and the local highway network on Blundells Road involves the construction of a short section of linking road which has yet to be delivered. A signed section 106 agreement provides a mechanism for its delivery, but delay could have a knock-on impact for the timescale of the HIF

scheme and its milestones. The availability of highway connections is an important issue.

## 8.0 Project baseline and monitoring

- 8.1 Homes England has signed off a baseline of information for each project. This covers issues such as amount, risks, milestones, key dates and dependencies. Quarterly monitoring returns are required for each project. Those for the period April - June 2020 require submission by 14<sup>th</sup> July 2020 and at the time of writing this report are currently being prepared. Monitoring returns require the sign off of the Council's S151 Officer.

## 9.0 Project funding and cash flow

- 9.1 For the Cullompton scheme, total project cost has been estimated to be £15 million, £10 million of which will be forward funded by Homes England via the HIF programme. The Council will seek to fund both the £5 million shortfall and locally recover HIF funding through S106 agreements as part of development planning applications. However, the timescale within which S106 payments would be expected lags behind the need to deliver the road scheme quickly to meet Homes England requirements. Accordingly there is a need for the Council to forward fund (cash flow) the £5 million shortfall until S106 funds are received. This has been included in the Council's capital programme for 2020/21 and the medium term financial plan capital programme to 2023/24. It is expected that S106 funds will be received during the next 12 year period, aligning with the Local Plan Review's plan period which goes up to 2033.
- 9.2 Main modifications following the Local Plan Review examination hearings included an updated housing forecast (Main Modification 01). This housing trajectory indicates an anticipated timescale for housing coming forward on the North West Cullompton (CU1) and East Cullompton (CU7) allocations. A planning application for 105 homes on the site of Colebrook (CU21) has also been received and refused (19/00118/MOUT). The appeal has recently been refused and any implications of this will need to be considered. Applications from these sites would be expected to make financial contributions towards the relief road. Note that only the first 500 homes at East Cullompton have been included as these will be unlocked by the relief road. The remainder of homes at East Cullompton will require a further, more substantial motorway junction upgrade.

Site	Policy	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	TOTAL
NW Cullompton	CU1	49	100	100	150	150	176	100	100	100	100	100	100	25	1350
East Cullompton	CU7				50	125	175	150							500
Colebrook	CU21	12	25	25	38										100

- 9.3 Similarly, build out of the Tiverton EUE housing would also be expected to take place up to 2033, also indicating an approximately 12 year period within

which S106 monies would be expected to recover HIF funds, however in this case Council forward funding of this type is not anticipated.

- 9.4 Officers have previously identified a further area where more short term Council forward funding may be required which applies to both projects. The grant funding agreements with Homes England for each project specify that the HIF funds will be drawn down in accordance with a programme of payments that has been agreed with Homes England. Whilst these payment claims are programmed by quarter and can for the first three quarters be in advance of spend, it is still possible that the Council will be required to bear project costs in the short term until the quarterly HIF draw down payment is claimed and made. The Cabinet resolution of 30<sup>th</sup> May 2019 made allowance for this eventuality.
- 9.5 Initial drawdown claims for both projects have been submitted to Homes England together with supporting documentation.

#### **Tiverton £8.2 million**

Period	Funding
19/20	£50,000 (first tranche)
20/21	£250,000 (first tranche)
21/22	£4,700,000
22/23	£3,200,000

#### **Cullompton £10 million**

Period	Funding
19/20	£650,000 (first tranche)
20/21	£1,827,500
21/22	£2,807,046
22/23	£4,715,454

- 9.6 Both agreements specify initial payments that are termed first tranche or early release funding which are for specified purposes such as planning and design fees. Initial claims for this funding or part of this funding were required to have been made by specific milestone dates in March 2020. To date claims made under each project total £78,522.95 (Tiverton) and £340,800.40 (Cullompton).

## **10.0 CONCLUSIONS**

- 10.1 The grant fund agreements have been entered into in accordance with the resolution of Cabinet. Other project activity has involved agreement of project baselines with Homes England, work on pre-conditions, the commencement of quarterly monitoring returns and the submission of first funding drawn down requests for each scheme. In addition a planning application for the Cullompton town centre relief road scheme has recently been submitted following extensive preparation by Devon County Council. Separate agreements between this Council and Devon County Council are expected to be entered into shortly. Both projects can therefore show progress which will need to be maintained in order to meet future project milestones and keep

delivery of these important items of infrastructure on track. Emphasis must also rest on the delivery of the homes that the infrastructure will unlock, this being both the purpose of the HIF funding but also important to the delivery of the Council's Local Plan and in the recovery of the HIF funds from that development via S106 agreements to be negotiated through the planning process.

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<b>Background Papers</b>	<p>Cabinet November and December 2014; Council January 2015; Council 27<sup>th</sup> April 2016; Cabinet 15<sup>th</sup> September 2016; Council 22<sup>nd</sup> September 2016; Cabinet 21<sup>st</sup> November 2016 Council 1<sup>st</sup> December 2016 Cabinet 31<sup>st</sup> August 2017 Cabinet 23<sup>rd</sup> May 2018 Cabinet 30<sup>th</sup> August 2018 Cabinet 31<sup>st</sup> January 2019 Cabinet 30<sup>th</sup> May 2019</p> <p>MHCLG <a href="https://www.gov.uk/government/publications/housing-infrastructure-fund">https://www.gov.uk/government/publications/housing-infrastructure-fund</a></p>
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