

**M5 JUNCTION 10 IMPROVEMENT SCHEME: REVENUE BUDGET APPROVAL AND HOMES ENGLAND CONTRACT CONDITIONS AGREEMENT**

<b>Cabinet Date</b>	17 June 2020
<b>Environment &amp; Planning</b>	Cllr Nigel Moor
<b>Key Decision</b>	Yes
<b>Background Documents</b>	<ul style="list-style-type: none"> <li>• M5 Junction 10 webpage</li> <li>• Adopted Local Transport Plan (LTP3 2016)</li> <li>• Gloucestershire Strategic Economic Plan 2014</li> <li>• Adopted Joint Core Strategy</li> </ul>
<b>Location/Contact for inspection of Background Documents</b>	<a href="https://www.gloucestershire.gov.uk/highways/major-projects-list/m5-junction-10/">https://www.gloucestershire.gov.uk/highways/major-projects-list/m5-junction-10/</a> <a href="http://www.gfirstlep.com/">http://www.gfirstlep.com/</a> <a href="http://www.gloucestershire.gov.uk/ltp3">http://www.gloucestershire.gov.uk/ltp3</a> <a href="https://www.jointcorestrategy.org/">https://www.jointcorestrategy.org/</a>
<b>Main Consultees</b>	<ul style="list-style-type: none"> <li>• GCC Strategic Communities and Infrastructure Members Board (SCIMB)</li> <li>• Tewkesbury Borough Council</li> <li>• Cheltenham Borough Council</li> <li>• Gloucester City Council</li> <li>• Gfirst LEP</li> <li>• Ministry for Housing, Communities, Local Government (MHCLG) (Cathy Francis, Director of Land and Housing Delivery and (then) Secretary of State James Brokenshire)</li> <li>• Homes England</li> <li>• Highways England</li> <li>• MPs Laurence Robertson, Alex Chalk, Richard Graham</li> <li>• Department for Business, Energy and Industrial Strategy</li> </ul>
<b>Planned Dates</b>	<p><u>Proposed M5J10 programme:</u></p> <ul style="list-style-type: none"> <li>• Homes England Funding Grant Determination Agreement signing– July/August 2020</li> <li>• Public consultation - Autumn 2020</li> <li>• Preliminary design– Autumn 2020 – Spring 2022</li> <li>• Planning – Spring 2022 – Spring 2023</li> <li>• Detailed design – Summer 2022 – Spring 2023</li> <li>• Procurement – Autumn 2022 – Spring 2023</li> <li>• Construction – Spring 2023 – Spring 2025</li> </ul>

<b>Divisional Councillor</b>	Cllr Phil Awford  Cllr Simon Wheeler
<b>Officer</b>	Simon Excell – Lead Commissioner; Strategic Infrastructure <a href="mailto:simon.excell@gloucestershire.gov.uk">simon.excell@gloucestershire.gov.uk</a> 01452 328487
<b>Purpose of Report</b>	<ol style="list-style-type: none"> <li>1. To ask Cabinet to authorise the underwriting, at risk, of an additional £2,150,000 of revenue funding between April to the end of September and up to £6,479,000 between October to March 2021 to fund the work required to enable GCC to enter into contract with Homes England and MHCLG.</li> <li>2. To delegate authority to the Executive Director Economy, Environment and Infrastructure in consultation with the Executive Director Corporate Resources Section 151 Officer) and the Cabinet Member; Environment and Planning Executive to:</li> </ol> <p>Authorise Gloucestershire County Council to enter into a Grant Determination Agreement (GDA) together with any associated agreements and supporting documentation, with Homes England in relation to the M5J10 Improvement Scheme.</p>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That Cabinet: <ol style="list-style-type: none"> <li>1.1 Underwrite, at risk, an additional £2,150,000 to the 2020/21 revenue budget to cover the period of April 2020 to September 2020;</li> <li>1.2 Underwrite, at risk, up to an additional £6,479,000 to the 2020/21 revenue budget to cover the period of October 2020 to March 2021 should there be a delay in signing the J10 GDA and to enable the J9 OBC to continue.;</li> </ol> </li> <li>2. That Cabinet delegates authority to the Executive Director Economy, Environment and Infrastructure in consultation with the Cabinet Member; Environment and Planning and the Executive Director of Corporate Resources (and Section 151 Officer)to:</li> <li>3. Agree the terms and conditions which give rise to the GDA between GCC and Homes England in relation the M5J10 scheme, including the Heads of Terms.</li> <li>4. Authorise the County Council to execute the GDA between GCC and Homes England by affixing the council’s seal thereto.</li> <li>5. Authorise the execution of any supplemental documents or agreements necessary to facilitate the delivery of the M5J10 scheme.</li> </ol>
<b>Reasons for recommendations</b>	Additional revenue funding enables GCC to continue work on key highway infrastructure schemes that are a priority for the council. On M5J10, entering into the GDA with Homes England and continuing to fund programme critical work, will provide the best opportunity to meet the timescales for project delivery. Contract sign-off will trigger the drawdown of funding to deliver £219.8m scheme improvements.

Work to develop the outline business case for M5J9 must be undertaken in 2020/21 if GCC are to submit a strong and timely outline business case to continue to be part of the Large Local Majors funding process and secure future funding for the development of this scheme (as demonstrated with M5J10).

**Resource Implications**

On March 12<sup>th</sup> 2020, MHCLG confirmed funding of £219.8m via Housing Infrastructure Funding (HIF) for the M5 J10 Improvements scheme and GCC will be contributing £4m making a total scheme value of £223.8m. However GCC can only access the HIF funds in monthly arrears after the GDA has been signed and therefore will be spending revenue “at risk”.

Forward funding costs are classed as revenue until the GDA is signed at which stage the majority of costs can be capitalised against the project and be funded from the £219.8m Capital grant. Therefore when we say “at risk” it means that if for some reason, the contract does not get signed, we have to show the sunk costs as revenue, and EE&I are unable to repay Corporate Resources.

The table below provides a summary of the revenue shortfall, showing the financial implications of funding £3,521,000 for M5J10 from the existing GCC major transport schemes revenue budget of £4 million alongside the commitments for M5J9 and other commitments;

Project	20/21 forecast (April 2020-end September 2020) £
J10 (April 2020 - end September 2020 only)	3,521,000
J9 (April 2020 – end September 2020 only)	2,314,000
Other committed business case expenditure	315,000
TOTAL revenue needed April 2020 – end September 2020	6,150,000
Budget available	4,000,000
<b>Shortfall (April 2020 to end September 2020)</b>	<b>2,150,000</b>

To meet the shortfall, the intention is to underwrite £2,150,000 revenue funding from Corporate Resources to cover the period April to end of September 2020. Assuming that GCC enters into M5J10 GDA by August 2020, as anticipated by Homes England, then capital funding can be claimed monthly in arrears from this time. The first claim will allow the £2,150,000 to be returned to Corporate Resources.

J10 and J9 expenditure for the period October 2020-end of March 2021 is set out below.

Project	20/21 forecast October 2020 – end March 2021)
J10 (October 2020 – end March 2021)	£5,087,000
J9 (October 2020 - end March 2021)	£1,392,000
TOTAL revenue needed October 2020 - end March 2021	£6,479,000

If the speed getting into the M5J10 contract cannot be met then there will be a delay with draw down, and no certainty of any funding for M5J10 October 2020 onwards. Based on current cost profiles this would equate to, approximately £5,087,000 for the 6 month period. Once J10 contracts have been signed the full £5,087,000 can be claimed from government, along with the £3,521,000 spent on J10 in the period from April to end of September 2020.

Work also continues with 3rd parties to investigate the opportunity for funding the current shortfall, including Homes England, Department for Transport, District Councils and the Gfirst LEP.

Once GCC are in contract we will only have to manage a cash flow issue caused by the difference between M5J10 expenditure being incurred and claiming in arrears which can be managed from within existing GCC resources.

Entering in to the GDA will leave GCC liable for any cost overruns on the £219.8m project which is standard practice for government funding. Therefore we will seek to limit the financial liability of cost overruns by only committing to deliver a scheme up to the available budget and deliver what is possible within the available funding envelope.

## MAIN REPORT CONTENTS

### 1. Background

#### Scheme funding

On the 12<sup>th</sup> March 2020, MHCLG wrote to Gloucestershire County Council (GCC) confirming the successful HIF bid of £219.8 million for the M5J10 Improvements scheme. Alongside this, there was the approval from DfT to proceed to the Strategic Outline Business Case stage for the M5 J9/A46 Large Local Majors (LLM) scheme. The progression of both schemes is welcomed by GCC, but in the immediacy, further funding is required too support the progression of these suite of schemes.

#### M5J10 Improvement Scheme

For J10, MHCLG has confirmed that there will be no draw down from the £219.8M capital funding until GCC has entered into the GDA. A very ambitious GDA signing timetable has been proposed by our Homes England Contract lead. The ambitious timetable is that GCC signs the GDA in July 2020 and draws down the first payment in August 2020.

The contract conditions have now been issued by MHCLG to GCC. The GDA will evolve from the Head of Terms currently being agreed. Draw down on the HIF funding is predicated on all pre-contract conditions being discharged.

Alongside the contract conditions, Homes England have also asked GCC to complete an extension request proforma (sent to all HIF bidders). GCC will be requesting a programme extension up to March 2025, citing the delay in receiving funding confirmation and the ongoing implications of the global CV-19 pandemic. If this request is successful it will be reflected in the final conditions.

Homes England has set a very ambitious target to get into contract to enable the first draw down from the 5 August 2020. It is more realistic to expect this process to take a minimum of 6 months and on this basis a high-level cost profile has been produced setting out the breakdown of expenditure for the 6 month period April 2020 to end of September 2020. This assumes that GCC will need to forward fund the 6 month period between April 2020 to September 2020 to continue with programme critical works and the resource required to enter into contract with Homes England and MHCLG.

GCC's consultants have produced a high level cost profile for the project, which identifies that a sum of £3,521,000 is required between April 2020 and end of September 2020 for the J10 scheme. However the current business case revenue budget for all major schemes in 2020/21 is £4M.

The below table provides a summary of the revenue shortfall, when assessing the financial implications of funding the J10 scheme alongside the project commitments for M5J9;

Project	20/21 forecast
J10 (April 2020 -end September 2020 only)	3,521,000
J9 (April 2020 –end September 2020 only)	2,314,000
Other committed business case expenditure	315,000
TOTAL revenue needed April 2020 –end September 2020	6,150,000
Budget available	4,000,000
<b>Shortfall (April 2020 to end September 2020)</b>	<b>2,150,000</b>

To meet the shortfall, the intention is to underwrite £2,150,000 revenue funding from Corporate Resources. Assuming that GCC enters into J10 contract by August 2020, as anticipated by Homes England, then capital funding can be claimed monthly in arrears from this time. The first claim will allow the £2,150,00 to be returned to Corporate Resources.

### **M5J9/A46 scheme**

For J9, DfT has only assessed GCC's Pre-Strategic Outline Business Case (SOBC) submission, and has not assessed the SOBC submission. DfT has a clear priority order for working with local authorities on their bids. We are in the 'announced Pre-SOBC' tranche, behind 'announced OBC' and 'announced SOBC' tranche. Therefore, there is little chance of any support or funding from DfT in the next 6 months. To keep to the current LLM scheme delivery deadline GCC must undertake a significant amount of the OBC this year, otherwise GCC may have to withdraw from the LLM funding process. There is no other fund currently available for the J9 scheme to secure funding and delivery.

In addition, from October 2020 – March 2021, the J9 OBC requires a further £1.4m to continue work.

### **Homes England Contract Conditions;**

The positive announcement in March 2020, was shortly followed by the issuing of contract conditions from MHCLG for M5J10. These include both standard conditions for all HIF schemes and bespoke conditions for specific to our project. These funding conditions will be agreed through the initial establishment of Head of Terms between GCC and MHCLG and will evolve into a GDA. In addition, GCC will sign up to an Assurance Framework, which is proportionate for the size and complexity of this scheme.

Upon receipt of the contract conditions, GCC are now engaged directly with Homes England on a weekly basis, working through the contract and drawing in the necessary support from GCC Legal and Finance.

The conditions are split; pre and post contract. As the Grant Recipient, GCC will be required to discharge all pre-contract conditions before it can begin drawdown on the £219.8m. It remains imperative to discharge these conditions as quickly as possible, to relieve pressure on GCC revenue funding that is currently sustaining the project. GCC will be able to make the first application for draw down of funding one month in arrears of entering into contract. This initial drawdown will include claw-back of monies spent on work 'capital in nature' post bid submission in 2019/20 and 2020/21.

MHCLG have set out a programme timeline (overleaf), which culminates in the GDA being in place by end July 2020 and the first draw down at the start of August 2020. Whilst both GCC and Homes England recognise the ambitious nature of the programme, both parties are keen to do ensure that best endeavours are made to achieve these dates.

MHCLG GDA timeline:

<b>Task(s)</b>	<b>Target Date</b>
HOTs agreed	29-May-20
Draft GDA issued	29-May-20
Pre-contract conditions satisfied	12-Jun-20
GDA agreed	10-Jul-20
GDA circulated for signature	17-Jul-20
GDA in place	24-Jul-20
First draw down	05-Aug-20

## 2. Options

- Option A: To authorise the Executive Director Economy, Environment and Infrastructure in consultation with the Cabinet Member; Environment and Planning and the Executive Director of Corporate Resources (and Section 105 Officer) to action the recommendations as set out in this report;
- Option B: Decline authorisation for the Executive Director Economy, Environment and Infrastructure in consultation with the Cabinet Member; Environment and Planning and the Executive Director Corporate Resources and S151 officer to action the recommendation set out in this report and consequently delay the discharge of the contract conditions and compromise a works programmes on M5 J9 & 10, which in turn may see the withdrawal of support for the project from Homes England and the DfT.

## 3. Risk Assessment

An up to date quantified risk register for the scheme was produced as part of the HIF bid and is subject to regular updates by the risk lead for the project, in line with the GCC Risk Management process, in order to investigate, manage and mitigate key risks.

It is not the intention for this report to re-list the key risks on a risk by risk basis; this was comprehensively set out in the November 2019 GCC Cabinet Report. These risks, whilst set against a pre-bid announcement backdrop in November 2019, remain key risks to the project and are tracked and managed appropriately.

However, aligned specifically to the recommendations in this report, it is worth reiterating the key risk; that of the requirement for GCC to forward fund work on M5J9 & J10 in advance of the GDA being signed and the first draw down being made. MHCLG have reiterated their national policy that they will not forward fund any scheme works in advance of the GDA being signed. If the speed getting into contract cannot be met then there will be a delay with draw down, and no certainty of any funding for M5J10 October 2020 onwards. Therefore we will seek to limit the financial liability of cost overruns by only committing to deliver a scheme up to the available budget and deliver what is possible within the available funding envelope.

To re-iterate the funding GCC are proposing to set aside to deliver the scheme up until the GDA is signed will not get re-paid until such time that GCC are in contract, the monies used to get in to contract for Junction 10 are also needed to complete the initial work to develop

Junction 9. We are working the funds available to achieve two objectives. It is a risk that is being actively managed, and is under constant scrutiny from within the Project teams and Executive.

Once in contract as scheme promoter GCC would be responsible for all aspects of scheme delivery, including risks such as cost overruns and how to manage the project back to the available grant funding. Before entering into contract with Homes England to deliver the scheme, GCC will ensure that a rigorous assessment of cost of the scheme has been applied.

In the event that any cost overruns did take place, GCC would work with Homes England and the Treasury to reduce the impact that the cost overrun could potentially have on the scheme and identify ways of bringing the scheme back within the available budget.

GCC will also work with partners including Homes England, Highways England, District Councils, the Gfirst LEP and developers to offset any over expenditure which can't be managed down to the budget for the project.

Once the contract with Homes England is signed GCC take ownership of the project in its entirety, the full delivery becomes GCC's to deliver against the terms set out in the contract, as per any contract. The ones that are the most onerous to GCC are that of delivering to the agreed timeline and delivering the scheme within the budget available. If either are not met then GCC will need to either find the resource to bridge any gap or work with the cooperation of Homes England to review the outcome agreed within the contract to fit to the budget availability. For example; down scope the scheme but still meet the objectives. With a scheme of this value the gap could reach 10's of millions, which for an organisation of GCC's size is not insurmountable, but is a risk that will need constant vigilance to ensure it is not realised.

#### **4. Officer Advice**

That Cabinet approve Option A (described in Section 2 of this Report) and the recommendations set out in this report.

#### **5. Equalities considerations**

A Due Regard Statement (DRS) was produced and submitted with the November 2019 Cabinet Report. The DRS will be reviewed and updated on completion of work packages (i.e. on completion of design, procurement, on completion of construction, after opening etc) to ensure a continuing duty of regard for equality impacts on groups with protected characteristics.

The DRS demonstrates that 'due regard' has been shown to the three aims of the public sector equality duty (section 149 of the Equality Act 2010) during the development of the 'policy'.

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic

#### **6. Consultation feedback**

Public consultation for the scheme is proposed for Summer/Autumn 2020 but it is recognised that the current global pandemic will impact on both the method of the delivery and programme



of events, statutory consultation will follow as part of the wider planning process, once a preferred route has been announced. Since the bid announcement, GCC has continued to liaise with the project's tier 1 stakeholders either directly through project board and progress meetings or by way of updates through letters and emails. Tier 1 stakeholders for this phase of the project, are as follows;

- GCC Cabinet Members
- Cheltenham Borough Council
- Tewkesbury Borough Council
- Gloucester City Council
- GFirst LEP
- MHCLG (Homes England)
- Highways England
- DfT
- Environment Agency
- Historic England
- Natural England
- MPs
- Members of the North West Cheltenham Strategic Alliance
- Members of the West Cheltenham Strategic Alliance

In addition to the above, environmental survey work has continued (where social distancing guidelines can be observed) within the designated buffer zone around M5 J10. To enable this, affected land owners have been contacted to request their consent to permit data collection through non-intrusive surveys on their property / land.

## **7. Performance Management/Follow-up**

GCC have set up a clear and robust structure to provide accountability and an effectual decision making process for the management of the major projects. GCC-led monthly project boards, monthly standing reports to Lead Cabinet Members and monthly meetings of the Local Transport Plan Management Board, attended by the Commissioning Director; Economy, Environment and Infrastructure, have been in place since March 2019.

Weekly meetings are now in place with Homes England and fortnightly meetings with Highways England. These are supplemented by internal weekly progress meetings (GCC and consultant, Atkins).

In the event of a successful bid determination, a dedicated monthly financial monitoring meeting will be established with GCC finance lead. It is also expected that both quarterly and annual financial returns will form part of any contract conditions with Homes England.

<b>Report Title</b>	ction 10 Improvement Scheme; Major Project Funding and Homes and Contract Conditions Agreement
<b>Statutory Authority</b>	Highways Act 1980 Traffic Management Act 2004
<b>Relevant County Council policy</b>	Adopted Local Transport Plan (LTP 3) 2016
<b>Sustainability checklist:</b>	
Partnerships	The delivery of the project aligns with strategic objectives held by a number of key project partners including: CBC, TBC, Highways England, Homes England and GFirst LEP. Future partnerships will be developed throughout the life of the scheme, including work with partner agencies such as the Environment Agency and Natural England. Early contractor involvement will also be key for scheme success and a productive, progressive partnership will be required to deliver this project.
Decision Making and Involvement	GCC's 'Code of Corporate Governance' underlines the management and delivery of the M5 J10 Improvements Scheme. Regular Project Board meetings, which include representatives from the County Council, local Borough Councils, Highways England and Atkins, ensures cross-organisation involvement, clear communication and transparency. For the strategic highways network, Highways England will be consulted prior to making a final decision. In terms of decision making, GCC has final sign-off on all decisions made at Project Board meetings.
Economy and Employment	In delivering the scheme, Gloucestershire's local economy will be supported through the creation of jobs in the west and north-west of Cheltenham (2020 – 2041). This will be as a result of the proposed scheme increasing network capacity, connectivity, and the accelerated delivery of new homes.
Social Value	Assuming an inclusive recruitment approach is adopted, construction of the scheme presents a good opportunity to maximise benefits for those seeking employment locally, including those from protected characteristics groups. It is anticipated that construction of the schemes will facilitate development in the immediate area. The employment land provided may also provide longer term employment prospects. During the scheme's operation it is expected to have a positive impact on the area local to junction 10 of the M5 through the creation of long-term, sustainable housing growth.
Built Environment	The proposed infrastructure will enable the accelerated delivery of new housing and employment land across north and north-west Cheltenham (up to 2041).
Natural Environment' including Ecology (Biodiversity)	To inform ongoing work on options assessment for Junction 10, ecological surveys on land within 500 metres of M5 J10 of the M5 have been taking place since May 2019 and will continue throughout

<p>Education and Information</p>	<p>2020. These surveys will ensure that any improvements to the highway network will have a minimal impact on the surrounding natural area, environment and local wildlife. The results of the surveys will help the Council understand the potential impacts of the scheme on the surrounding environment and will inform the final environmental mitigation design of the scheme.</p> <p>Early engagement with relevant stakeholders is already underway. This will continue throughout the delivery of the scheme and will begin to include a wider range of stakeholders and members of the public following a successful funding announcement. All materials and communications relating to the scheme will be clear and simple to understand to ensure it is accessible for all. Detailed strategies for stakeholder engagement and consultation are detailed in the Communications Plan.</p>
<p><b>Tackling Climate Change</b></p>	<p>Carbon Emissions Implications?      Positive/ Neutral/ Negative  Vulnerable to climate change?      Yes/ No/ Maybe</p>
<p><b>Due Regard Statement</b></p>	<p>Has a Due Regard Statement been completed?      Yes; for M5J10 scheme</p> <p>A copy of the full Due Regard Statement can be accessed on GLOSTEXT via <a href="http://glostext.gloucestershire.gov.uk/uuCoverPage.aspx?bcr=1">http://glostext.gloucestershire.gov.uk/uuCoverPage.aspx?bcr=1</a></p> <p>Alternatively a hard copy is available for inspection from Jo Moore, Democratic Services Unit, e-mail: <a href="mailto:jo.moore@gloucestershire.gov.uk">jo.moore@gloucestershire.gov.uk</a>.</p>
<p><b>Human rights Implications</b></p>	<p>None</p>
<p><b>Consultation Arrangements</b></p>	<p>Public consultation for the scheme is proposed for Summer/Autumn 2020 but it is recognised that the current global pandemic will impact on both the method of the delivery and programme of events. Statutory consultation will follow as part of the wider planning process, once a preferred route has been announced. Since the bid announcement, GCC has continued to liaise with the project's tier 1 stakeholders either directly through project board and progress meetings or by way of updates through letters and emails. Tier 1 stakeholders for this phase of the project, are as follows;</p> <ul style="list-style-type: none"> <li>• GCC Cabinet Members</li> <li>• Cheltenham Borough Council</li> <li>• Tewkesbury Borough Council</li> <li>• Gloucester City Council</li> <li>• GFirst LEP</li> <li>• MHCLG (Homes England)</li> <li>• Highways England</li> <li>• DfT</li> <li>• Environment Agency</li> <li>• Historic England</li> </ul>

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|  | <ul style="list-style-type: none"><li>• Natural England</li><li>• MPs</li><li>• Members of the North West Cheltenham Strategic Alliance</li><li>• Members of the West Cheltenham Strategic Alliance</li></ul> |
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In addition to the above, environmental survey work has continued (where social distancing guidelines can be observed) within the designated buffer zone around M5 J10. To enable this, affected land owners have been contacted to request their consent to permit data collection through non-intrusive surveys on their property / land.