Report title: M5 J10 Funding Agreement - Infrastructure Recovery Strategy Progress Report

Cabinet Date	24th March 2021
Cabinet Member	Cllr Nigel Moor Environment and Planning
Key Decision	Yes
Purpose of Report	To set out the intention and purpose of adopting an Infrastructure Recovery Strategy (IRS) to recover monies from development sites benefitting from publicly funded infrastructure improvements, such as M5 Junction 10. The Cabinet report will also detail feedback received from a public consultation into the IRS and seek approval to draft a consultation report, revise the IRS accordingly and determine appropriate next steps.
Recommendations	To delegate authority to the Executive Director of Environment, Economy and Infrastructure to: 1. Progress with the development of an Infrastructure Recovery Strategy, taking account of the responses received to the public consultation held between 28th January and 11th March 2021. 2. Conduct a competitive procurement process in respect of a 2 years contract for the provision of advisors to support the delivery and implementation of an IRS and award such contract to the preferred tenderer.
Reasons for recommendations	- Allowing the process of developing an IRS to continue will provide greater opportunity for GCC to recover funds. - The drafting of a consultation report allows officers to evidence feedback and adequately address comments raised during the consultation process and make necessary changes to the IRS. - Addressing consultation comments will help ensure any IRS has been written openly and fairly and reflects the needs of GCC and stakeholders. - Procuring external expertise allows the implementation of an IRS at the earliest opportunity once approved.

Resource Implications	• Officer time – required and provided from within existing resources. • One off external support to review and develop methodology funded from existing revenue resources. • External legal advice for consultation feedback funded under the M5 Junction 10 contract. • External support to undertake IRS negotiations – this will be charged against the M5 J10 fund award, but if recovery monies are secured this external support will become self funding. • The IRS could reduce the financial receipts received by GCC as a land owner where the Council has land that it is selling for development.
Background Documents	Appendix A - Draft Infrastructure Recovery Strategy (Consultation document)
Statutory Authority	Section 106 of the Town and Country Planning Act 1990 (as amended); Section 111 of the Local Government Act 1972; and Section 1 of the Localism Act 2011
Divisional Councillor(s)	The Infrastructure Recovery Strategy will be relevant to all divisional councillors.
Officer	Name: Colin Chick Tel. 01452 328470 Email: colin.chick@gloucestershire.gov.uk Name: David Simmons Tel. no: 01452 425651 Email: dave.simmons@gloucestershire.gov.uk
Timeline	• 24th March Cabinet • 26th April Strategic Communities and Infrastructure Members Board (SCIMB) outline consultation feedback and seek approval to submit strategy to Scrutiny/Cabinet. • Draft consultation report and revise IRS based on consultation feedback (April – June) • April Officer review group meeting to discuss consultation feedback and drafting of a consultation report and associated revisions to the IRS. Subject to full review of consultation responses: • Scrutiny (16th June) • 21st July Cabinet,

Background

1.1 The need for an Infrastructure Recovery Strategy (IRS) resulted from the Housing Infrastructure Fund (HIF) award for M5 Junction 10 improvements/works. The premise of the IRS is to recover funds from development sites that benefit from publicly funded infrastructure through an uplift in land value. The following sets out the history of the bid and the development of the Strategy to date.

1.2 In 2017 Homes England announced a £2.3bn HIF for new physical infrastructure which will unlock sites in areas of great housing demand. Gloucestershire County Council (the ‘council’) was successful in their Housing Infrastructure Fund Forward Funding bid for an ‘All Movement’ improvement at M5 Junction 10. The improvement will facilitate improved access to and from the M5 motorway northbound and southbound. This will support growth plans both locally and throughout Gloucestershire as well as solving long standing traffic and travel issues in the area.

1.3 The Homes England HIF award for the Council was circa £250m, awarded on a funding agreement basis. The fund award is a recoverable grant, whereby the Council is required to use all reasonable but commercially prudent endeavours to secure recovery of the funding award from developer/third parties. This is to ensure that public funds do not subsidise developer/third party profit. Instead recovered funds are re-invested back into the county delivering growth where it is most needed to the benefit of the residents of Gloucestershire.

1.4 Council officers have sought legal advice on the means of recovering funds for this purpose. Based on advice received, imposing a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended) on development sites is regarded as the most likely and preferable means of recovering the funds successfully. Such a planning obligation would be negotiated as part of the planning process when a site is brought forward for development with the amount of the contribution sought dependent on the particulars of the development and viability considerations affecting the site. Awareness of the IRS will be raised to interested parties such as land owners and developers by Council and district officers at the earliest opportunity. Although the IRS will primarily seek recovery funds via the section 106 approach it does also support alternative recovery means, if agreed during negotiations, such as agreements pursuant to section 111 of the Local Government Act 1972 or section 1 of the Localism Act 2011. An (IRS) will outline the need and means of recovery funds.

1.5 The IRS will set out the policy justification and mechanism for recovering funds. The status of the document is to be regarded as guidance only and not a supplementary planning document. However if the IRS is adopted by Cabinet, it will ensure it is afforded weight, which will help during planning negotiations. As the Council is not the local planning authority (LPA) in respect of housing and employment development, it will be for the district councils as LPA’s to attribute how much weight the IRS is given on a case by case basis when determining planning applications. The longer term aim, through collaboration with district council colleagues will be to seek integration of the IRS into District Council Local Plan/Supplementary Development Plan documents.

1.6 The IRS will initially aim to recover funds from development sites in proximity to M5 Junction 10 on the basis that it will be those sites which recoup the most benefit from the improvements. However, the methodology within the strategy will provide a basis for recovering funds from future development sites that benefit from recovered J10 monies and future successful HIF bids, as well as potentially other future public funding streams aimed at delivering large scale infrastructure across the county that require recovery of funds.

1.7 The IRS is aligned with the District Councils' planning policy as well as policy contained within Council adopted/emerging documents such as the Local Developer Guide (LDG) and Local Transport Plan (LTP).

1.8 The IRS negotiations will be undertaken by external specialists alongside GCC officers. The recoverable funds will be sought via contributions made pursuant to section 106 of the 1990 Act although other means, as previously discussed, can be agreed during negotiations.

1.9 The IRS's recovered funds will be retained by the Council for a period to be agreed and used to help support further infrastructure delivery which will unlock or accelerate additional future growth across the county. Recovered funds could be used to provide highway capacity improvements, public transport improvements, other sustainable transport infrastructure improvement, or other ad-hoc infrastructure as deemed relevant to the delivery of further growth on a case by case basis.

1.10 The development, adoption and implementation of the IRS will have positive future implications for the County. The funds the IRS helps to recover, and their subsequent investment into infrastructure to support growth delivery, will help to unlock additional housing elsewhere in the county.

Options

2.1 There are two potential options;

2.1.1 Option 1: To continue development of an Infrastructure Recovery Strategy, taking into consideration public consultation feedback.

2.1.2 Option 2: Not to pursue with the development of an Infrastructure Recovery Strategy.

2.2 Should Option 1 be pursued the County Council will have greater negotiating powers to seek and secure contributions from development sites that benefit from large publicly funded infrastructure projects such as M5 Junction 10. This will enable delivery of growth enabling infrastructure elsewhere within the county. This option will demonstrate to Homes England (HoE) that GCC is using all opportunities to recover grant provided by HoE for infrastructure, and will strengthen GCC's case for further inward investment of government grant in the future.

2.3 Should Option 2 be pursued; the County Council will not have an adopted document to set out the mechanism for securing recovery contributions. This will potentially weaken the County Council's ability to secure funds that can be used to deliver infrastructure elsewhere in the county, therefore potentially missing out on significant amounts of recoverable funds as well impeding further growth delivery. This option will potentially weaken GCC's case for further government funding for infrastructure in the future, as the likelihood of recovery is low.

Risks

3.1 Failure to adopt an IRS will mean that GCC will not be able to recover, as easily, multi-millions of pounds from the development sites benefitting from publicly funded infrastructure.

3.2 It may still be possible to negotiate a fee with developers but without an adopted IRS it will be more difficult and result in a greater chance of failure to secure contributions.

3.3 The impacts of not being able to secure recovery funds, is the potential inability to fund infrastructure requirements to unlock land elsewhere for growth. This will delay and/or block future growth ambitions of the County and District Councils.

3.4 Failure to have appropriate resources or skills may impact upon the delivery of the strategy and securing of recovery funds.

Financial implications

4.1 The development and implementation of the IRS will afford greater weight towards negotiating a recovery fee from third parties. Without an IRS, negotiations could take place but without the IRS as a material consideration, lesser weight can be afforded to negotiations and any justification in statutory officer responses to, for example, planning applications by the LPA or Planning Inspector. This therefore increases the risk of unsuccessful negotiations and GCC suffering a significant loss of potential recoverable funds from those sites benefitting from the M5 Junction 10 improvements and other future infrastructure.

4.2 The IRS negotiations will be undertaken by external specialists alongside GCC officers. External experts will be procured to enable their expertise to be called upon on an ad hoc basis as needed.

4.3 The external resource costs can be met by the M5 Junction 10 fund in the first instance. Once monies have been recovered the costs of the external support can then be taken from this or agreed as part of the recovery fee being sought.

4.4 The IRS could reduce the financial receipts received by GCC as a land owner where the Council has land that it is selling for development. Although this is a possibility, the money lost on selling land available for development due to recovery charges would still come back to the council, albeit via a different channel for infrastructure use. Furthermore, the money that comes back to the Council via this channel would present a small proportion of the total received from all other developments that the IRS would be recovering against. Furthermore, without the public funding for M5 J10 for example and this IRS it is unlikely that development would have come forward in the areas in which GCC has an interest as a land owner.

Climate change implications

5.1 The use of any recovered funds would depend on the terms on which any public funding was provided or granted but could be used to provide highway capacity improvements, public transport improvements, or any other sustainable transport infrastructure improvement, or other ad-hoc infrastructure as deemed relevant on a case by case basis. These may have the ability to reduce congestion, improve air quality or encourage and sustain mode shift.

5.2 If the IRS is not adopted GCC may be unable to recover funding which may in turn impact on GCC's ability to provide infrastructure as easily, that enables sustainable development or travel behaviour. In turn this could have implications for GCC's climate change agenda and delivery of change.

Equality implications

Has an Equalities Impact Assessment (EIA) been completed? Yes / ~~No~~

If an Equalities Impact Assessment has been completed the following statement should also be included in this section:

6.1 Cabinet Members should read and consider the Equalities Impact Assessment in order to satisfy themselves as decision makers that due regard has been given.

6.2 The IRS in itself does not have any immediate or direct impact upon protected groups above or beyond what has already been assessed as part of the M5 Junction 10 Improvements Scheme.

6.3 Any future bid proposals and or infrastructure improvements will need to undertake their own EIA assessments at that time.

6.4 As this strategy will be utilised countywide, the evidence for protected groups has been utilised for those used as part of the emerging Local Transport Plan.

Data Protection Impact Assessment (DPIA) implications

7.1 None

Social value implications

8.1 None

Consultation feedback

9.1 A wide ranging formal public consultation commenced on 28th January and ended on 11th March 2021.

9.2 The consultation was open to all to respond with consultation notifications sent to a range of national, regional and local stakeholders, interest groups, organisations and consultancies. Media posts were also published via GCC's media channels and notifications sent to those who have signed up to GCC's consultation portal. A further email was sent to specific stakeholder groups as a reminder that the consultation was underway and that GCC officers welcome their feedback. The aim was to ensure that the consultation was as wide ranging as possible to allow interested parties to comment. A wide ranging consultation also minimises risk of legal challenge.

9.3 The public consultation has received 47 responses, of which 39 respondents left feedback. Of those 39, 31 were relevant to the strategy. 8 respondents provided feedback that was not relevant to the strategy and the information within but in relation to M5 J10 as a concept itself or other non-IRS issues.

9.4 57% of respondents were members of the public, 9% were local councillors with 12% being local government officers responding on behalf of their authorities. 11% of respondents were charities or organisations that have an interest in planning. 9% of respondents were housebuilders, land owners or promotors. 2% were transport related organisations.

9.5 Focus of representations received:

The majority of relevant responses received were supportive of the principle of an IRS and understood the Council's ambition and reasons for producing one, but raised comments relating to the IRS content, that could be classified under the following key theme headings:

1. Environment and infrastructure
2. Growth
3. IRS document wording
4. Site viability/selection
5. Fairness/appropriateness of method
6. Collaboration/further consultation
7. Development Pace

Theme 1 – Environment and infrastructure:

The vast majority of the comments received were supportive of the principle but made reference to environmental implications and/or the type of infrastructure to be delivered by recovered funds.

The IRS's principle aim is to recover funds to enable additional growth through infrastructure delivery. A number of respondents were not supportive of further highway infrastructure delivery or improvements that increase capacity.

The focus of the recovered funds spend should be, in the views of these respondents, on sustainable infrastructure improvements such as Public Transport, walking, cycling and green infrastructure, or where highway capacity is required it can be offset by acquiring land for environmental or recreational purposes to create a biodiversity net gain. An environmental percentage levy taken from the recovered funds was highlighted as a mechanism for providing resilience to climate change. These respondents could therefore see the potential positive outcomes of the IRS if funds are recycled appropriately.

Objecting respondents raised the issue that the strategy does not give any indication of the additional infrastructure projects contemplated and that there should be a public record of where the recovery funds will be used that can be publicly scrutinised. The objections further stated that GCC has an obligation to identify their infrastructure needs and total cost of the infrastructure.

Theme 2 – Growth/Investment:

Respondents stated that growth should be sustainable and to the benefit of the whole county with the recovered funds not focussed entirely on the central Severn Vale. A widespread recycling of recovered funds will enable growth where it is most required which will help reduce economic and community inequality across the county.

Those respondents who objected to the IRS suggested that it does not provide certainty or confidence within the planning system and is likely to deter investment in the County as a result of the further burden being placed on development sites.

Theme 3 – IRS document wording:

The consultation feedback raised concern that wording and/or language used within the document could be interpreted in different ways by different parties.

Some respondents, particularly those raising objections, felt that the wording and content of the document was vague. They required more detail of the need for an IRS; a justification for the methodology proposed; clarification as to which developments an IRS would apply to and why; and likely recoverable costs as well as detail as to where the recovered funds would be recycled. Respondents felt that including this information would help with transparency between GCC and the parties most interested in an IRS and its implications. Respondents felt that further detail would help with justification and address issues of fairness as outlined in theme 5 below.

Theme 4 – Development selection/viability

Respondents stated that the IRS could impact on sites with marginal viability which could affect their delivery. Some respondents also felt that sites for which the strategy applies should be clearly outlined with a defined threshold and/or a defined area of benefit drawn around the infrastructure in question and that sites falling within that area would be applicable to an IRS. Engaging with landowners will then help with implementation of the strategy and overcome any sense of unfairness or viability concerns.

Some respondents acknowledged and understood that the IRS would take account of all necessary s106 obligations first and would not seek a recovery fee if it negatively impacted upon those necessary obligations, for example affordable housing provision.

Theme 5: Fairness and Appropriateness of Method.

Some respondents have objected to the IRS stating that the recovery fee would be unfair and challenged how it can be implemented across a range of sites moving forward. This linked closely with theme 4 – viability. The respondents believed the IRS would not relate to all developments across the county and would not help mitigate site-specific impacts. As such the respondents believed that the IRS was an unfair charging regime contrary to the requirements of the local economy and community. Respondents also challenged whether reliance on planning obligations secured through section 106 agreements was an appropriate method of recovering funds and its compliancy with the CIL Regulations, particularly regulation 122. This could open legal challenge when negotiating the recovery fee. Respondents also criticised the IRS for not outlining costs of the infrastructure being recovered against and expected recovery amounts. The respondents suggested a charging schedule approach or collaboration with Local Planning Authorities to implement the IRS within development plans and devising a CIL payment accordingly.

Theme 6: Collaboration/further consultation

A number of respondents felt that the collaboration and engagement with interested parties on the development of the strategy to date was not sufficient and no collaboration was made to develop a realistic and deliverable charging schedule. Some respondents, despite objecting to the IRS, suggested the need for greater collaboration in order to determine a strategy and method that they deemed was fair, transparent and just. Suggestions were made for further engagement with developers, land owners and Local Planning Authorities and for a further round of consultation on a revised/updated IRS prior to adoption.

Theme 7: Development Pace

A number of respondents objected to the development of the IRS stating that the mechanism could result in prolonged negotiations which will ultimately slow the pace of development. They regarded this as being contradictory to the recent Government planning reforms which aim to accelerate growth delivery.

9.6 Next steps:

The consultation results and responses received will be fully analysed, actioned and responded to in a consultation report. If, during the review of consultation responses and amendments to the recovery strategy, it becomes apparent that further consultation is required, this will be undertaken.

These points will be considered fully within the consultation report and presented along with, where necessary, a reviewed/revised IRS.

Officer recommendations

10.1 Progress with the development of an Infrastructure Recovery Strategy, taking account of the responses received to the public consultation held between 28th January and 11th March 2021

10.2 To conduct a competitive procurement process in respect of a 2 year contract for the provision of advisors to support the delivery of the IRS and award such contract to the preferred tenderer.

Performance Management/Follow-up

11.1 Regular updates will be provided to Lead Cabinet Members detailing progress made. A review group has been formed which will provide feedback on strategy drafts. An IRS would be presented to Scrutiny and future Cabinet for adoption.