

- steps back from the role of Scheme Promoter, following the completion of Stage 3 of the Highways England approval process, which is the only currently funded aspect of scheme development work;
 - does not take on the role of the Delivery Body for the M27 Junction 10 Improvement Scheme, given the high level of financial risk and uncertainty for which the Scheme Delivery Body would be responsible; and
 - reiterates the consistent position that it is not prepared to take on any financial risk associated with this scheme.
4. That the County Council should continue to explore ways in which it could use its experience, professional and technical capacity to support the delivery of the M27 Junction 10 Improvement Scheme, provided any arrangements are consistent with established County Council policy for involvement at Welborne, including, in particular, a stipulation that there are no financial liabilities for the County Council from involvement in the scheme.

Executive Summary

5. The County Council has been acting as Scheme Promoter for the development work for the M27 Junction 10 improvement scheme, since January 2018, following a request from the Rt Hon Chris Grayling the then Secretary of State for Transport and subsequently the Rt Hon Robert Jenrick, Secretary of State for Homes, Communities and Local Government. In keeping with the County Council's established policy on Welborne, progression of the scheme development work has been subject entirely to the availability of third-party funding. Securing external funding to progress with this work has proved challenging and time consuming to date, with initial funding coming entirely from the DfT. On 29 September 2020 a report to Cabinet advised that the £4.65million of available development funding which had been provided in stages by DfT had been fully utilised and recommended the suspension of all ongoing development work, in the absence of additional development funding.
6. On 15 September 2020 the Solent LEP Board allocated up to an additional £900,000, from the Solent LEP DfT retained, Local Growth Fund, to help secure the completion of development work up to Stage 3 of Highways England's Product Control Framework (PCF) approval process. This was reported verbally at the Cabinet meeting, given the timescale following the report deadlines, and meant that development work was able to continue up until March 2021 which is the LEP's deadline for spending the funding.
7. In light of challenges associated with securing development funding and particularly delivery funding for the scheme, the Cabinet report further recommended that the County Council moves to review its continued role as Scheme Promoter following the completion of Stage 3 of the Highways England's Product Control Framework (PCF) Approval Process, rather than reviewing the position following the completion of all of the development work, at Stage 5 of the PCF process and the completion of the Full Business Case process.

8. Since the September Cabinet report, significant progress has been made to advance through Stage 3 of the PCF process and a Stage Review is planned to be undertaken by February 2021, allowing February and March to resolve any outstanding matters. Following the completion of the Stage 3 Review there can be no further progression without confirmation of a Delivery Body, who would need to procure contractors to complete the design, so this was identified as a timely break point for the County Council to consider its position. Fareham Borough Council has recently requested that the review date be brought forward and that the County Council provide a formal view on whether it will take on the role of Delivery Body before the end of February 2021.
9. Since the September Cabinet report there have been other material developments regarding the delivery funding, which need to be considered. Firstly, scheme costs have been refined and current estimates are in the region of £75.5million, subject to a final tender price being returned, plus risk costs in the region of £5 to £10million. To help meet the indicative costs Homes England have identified additional Housing and Infrastructure Funding (HIF) towards the scheme, to provide a potential £30million contribution towards scheme delivery. In addition, Buckland Development Ltd is in dialogue with Fareham Borough Council regarding a potential increased Section 106 offer to provide a £40million contribution towards scheme delivery. £5.55million has already been drawn down from DfT and the Solent LEP towards the total cost.
10. In light of these developments there is a growing assumption that all the funding is now in place to deliver the scheme, however in reality the precise costs, and therefore the amount of funding required cannot be confirmed without the final tender price. This is why the Full Business Case stage of projects is usually required before funding can be finalised. The potential additional funding allocations are a positive step forward, however both funding agreements are complicated, and need to be signed prior to the end of February. Both are also dependent upon there being a named Delivery Body. For this reason Fareham Borough Council has requested a formal position from the County Council in respect of its role as Scheme Promoter and potential Scheme Delivery Body going forward.
11. This report summarises the recent developments in more detail and presents the evidence for and against the continuation of the County Council's role in the Scheme beyond the completion of the Stage 3 review, to help steer and formalise the position. On balance the report recommends that following the completion of the Stage 3 review, the County Council steps back from the role of Scheme Promoter and that the County Council does not go on to become the Delivery Body, as the only way to mitigate the significant financial risks to the County Council in continuing as scheme promoter and particularly taking on the scheme Delivery Body role.
12. Notwithstanding this position the County Council remains fully supportive of the scheme which will help bring forward the important Welborne Garden Village development. It is therefore suggested that the County Council should

commit to further explore other ways for the County Council to help bring forward the Scheme.

Scheme Development

13. Since the September Cabinet Report there has been significant progress in advancing the approval of more than one hundred documents or products through Highways England's Product Control Framework (PCF) Approval process. The process has been both challenging and time-consuming and has involved refreshing much of the documentation submitted as part of the Welborne Garden Village Planning Application associated with the detailed application for M27 Junction 10, and re-working documents in accordance with the Highways Act process rather than the Planning Act processes. The PCF process is designed specifically for Highways England's schemes and doesn't fit well with third party projects, hence has involved an ongoing dialogue in respect of each and every product.
14. The Stage 3 Review will take place at the end of January 2021, with follow up actions being progressed in February and March. A verbal update will be provided at the Cabinet meeting. On the assumption that the Stage 3 Review is passed then there can be no further progression to Stages 4 and 5 of Highways England's approval process without agreement of a Delivery Body for the scheme (see below) and further scheme development funding.
15. Stages 4 and 5 of the PCF process will involve the completion and approval of the detailed design, which needs to be undertaken following the procurement of an appropriately experienced contractor for constructing complex and technically challenging, motorway under-bridges, probably through a two-stage open book design and build type contract which will lead onto procurement for main works. These stages of the PCF process also involve advertising Road Orders which are progressed in different ways dependent upon who the Delivery Body will be.

Scheme Delivery

16. There are likely to be only four potential bodies who would have any business or financial interest in becoming or commissioning others as the Delivery Body, namely: Highways England; Hampshire County Council, Fareham Borough Council or the developer, Buckland Development Limited (BDL). The key implications for each body need to be considered to help inform a way forward and are summarised below.

Highways England as Potential Delivery Body - Key Issues

17. Highways England is arguably the most appropriate body to progress works of this scale on its Strategic Road Network, A formal position is being sought from Highways England regarding the level of its intended involvement in the scheme delivery, either as a supervisory / approving body or as delivery body for the parts of the scheme that are on Highways England's strategic road

network. Interim advice is that Highways England would not want to take on the leading role of the Delivery Body for the parts of the scheme on its network and would have no interest in becoming the Delivery Body for the parts of the scheme on the local network. The scheme is a development related scheme and seen as necessary only to facilitate the Welborne Development; it is not a Highways England scheme.

18. If Highways England were to agree to take on the role of Delivery Body, then the implications are that the ability to deliver the scheme in the timescales of the HIF funding could potentially be lost, hence additional funding to replace the £30m may need to be found. Black Dam roundabout, a Highways England scheme at Junction 6 of the M3, is a relatively recent example of a similar scale scheme which experienced cost and time over-runs, demonstrating the significant impacts and costs of any additional disruption to planned large scale works on the strategic road network. This is likely to have a direct bearing upon the ability to progress the regionally significant development at Welborne Garden Village in the shorter term in accordance with its planned delivery programme.
19. Highways England has advised that if it were not to take on the role of Delivery Body it is most likely that it will demand to supervise the design and construction at the expense of the scheme. Highways England will also require the local Highway Authority to act as its agent for any work on its network. Following dialogue with Highways England, it is understood that it would have an expectation that only one contractor would be working on a scheme of this scale across both highway networks and it would not permit two contractors to be working in the same space, hence the procurement process would need to take this into account.

Hampshire County Council as Potential Delivery Body

20. The County Council has consistently set out key conditions that would need to be maintained if it were to become the Delivery Body. In particular, there can be no financial outlay by, or financial risk to the County Council in relation to this scheme; this remains a fundamental red line.
21. On the assumption that all risks could be addressed, the County Council is reasonably well placed to take on the role of Delivery Body for either the entire scheme or just for the sections of the scheme which will ultimately become part of the local highway network. Given the importance of continuity to date in the design and development process, the County Council's strong relationship with Highways England and its role as Highway Authority for the local highway network, it can be argued that the County Council is well placed to take this role on. The County Council would also be best placed to procure the works as a single contract, which is the optimum way of delivering the works for several reasons, utilising the Gen 4 Framework and appropriately experienced contractors. The County Council would probably be able to deliver the scheme in the most cost-effective way. The Gen 4 Framework

could be utilised with a two-stage open book, partial design and build contract to complete the scheme development and then, subject to agreement, undertake the delivery.

22. However, based on the established County Council policy, in the absence of any guarantee that all financial risks will be addressed or underwritten without any County Council liabilities arising, the County Council could not take on the role of Scheme Delivery Body.
23. It may be possible for the County Council to continue to act in a supporting role commissioned by another party who would be acting as Delivery Body, and who would carry the associated financial and other risks. Whilst every effort has been made to cost the scheme and risks as accurately as possible at this time, the detailed scheme cost cannot be confirmed until a final tender price has been returned. Current works cost estimates are in the region of £75.5m (excluding risk costs). Every effort has been made to cost all known risks, however, on a scheme of this scale there will always be a degree of risk which could have potential to add to the delivery costs and programme as portrayed by the Black Dam example referenced above. The risk costs are estimated between £5m to £10m with sizeable variables such as possible Public Inquiries being unknown at this time. (Information upon funding is included further on in the report). On schemes of this scale there are always risks which need effective mitigation and management. The current funding envelope, including the increased developer funding proposal, and the additional HIF money, makes no provision for any contingencies beyond the current estimated £75.5M costs; there is no identified funding or underwriting arrangement for this additional £5M-£10M risk.
24. For the County Council to agree to become the Delivery Body, there would need to be absolute assurance that all funding is in place, would be available to the County Council upon request and that there was an underwriter for any potential cost increase which may arise from any of the scheme risks throughout scheme delivery (whatever that may be). The issues experienced in securing development funding to date do not provide any confidence that this can be achieved. In addition to the financial risks there are other risks which the County need to be mindful of including the risk to reputation if the scheme cannot be delivered to programme or Highways England do not approve at any stage.
25. If the County Council does not become the Delivery Body there are likely to be significant risks to the progression of the scheme and likewise the current programme for delivery of the 6000 homes and 5000 jobs at Welborne Garden Village, unless an alternative way forward can be quickly identified. If another body took on the completion of the design, it is highly likely that the conditions and timescales for spend of the Housing Infrastructure Funding may not be met, and therefore that the £30m HIF funding may not be available to the scheme. Government advice reflects the position that further funding of this magnitude will be very difficult to secure given the current financial situation and the foreseeable future.

26. Other ways to maintain the County Council's involvement in the scheme could be explored to ensure the continuity, expertise and procurement mechanisms of the County Council could potentially still be utilised possibly in some form of consultancy role.

Fareham Borough Council as Potential Delivery Body

27. It is assumed that Fareham Borough Council could act as Delivery Body if it were to sub-contract another party with the relevant professional capacity and experience to act upon its behalf, which could be the County Council or other party. With this approach the County Council's procurement framework could be used and an effective joint project team could be set up utilising resources from the County Council, Highways England, and expert consultants, alongside financial auditors from the Borough Council and BDL. In this scenario the Borough Council would take the risk of any financial increase and would need to address the underwriting issue to ensure its own position remained tenable.
28. Conversely if the Borough Council does not act as Delivery Body (assuming neither Highways England nor the County Council or other party are prepared to take on this role), the downside is that Welborne may not progress in the shorter term and that the recently increased housing numbers may need to be met via the allocation of less favourable sites in both planning and transport terms.

Buckland Development Ltd (BDL) as Potential Delivery Body

29. The formal position of BDL is unknown, it is assumed that BDL would be able to act as a Delivery Body to procure contractors to progress the works that would ultimately form part of the local road network, subject to approval by the County Council. It is understood that Highways England would be unlikely to permit BDL to act as Delivery Body for the works on the Strategic Network and further Highways England has advised that it would expect the entire scheme to be delivered as a single contract. The procurement of two different contractors working in the same space is not an optimum way forward for a complex scheme of this scale. Direct procurement by BDL would need to go through the emerging replacement OJEU process and would add time to the programme over the much-shortened Gen 4 process. Procurement by BDL would also attract almost £7million VAT applied by Highways England to non local authority parties.
30. Arguably, BDL maybe the most likely organisation to be able to fund any potential cost over-runs and to underwrite any risks associated with such. Underwriting may be more acceptable to BDL if they had some degree of control over the scheme delivery. If BDL were to act as Delivery Body for the scheme, then they would have a degree of control over costs and potential cost over-run. However, they would need to procure the works in a way that is acceptable to and fully involves both Highway Authorities.

Update on Development Costs and Funding

31. Of the £5.55million that has been allocated to scheme development from DfT retained Local Growth Funding and also Solent LEP Local Growth Funding, £5.4million was spent, fully committed or allocated by the end of January 2021. It is anticipated that the £5.55million will be fully spent by the end of March 2021.
32. In order to complete the two further stages 4 and 5 of the Highways England review process then it will be necessary to draw down up to £3.5million to complete these stages. These costs currently allow for a possible Public Inquiry into Orders should this be required and include an allowance for further advanced works. It is understood that these costs could be drawn down from the £30million HIF funding, subject to the Funding Agreement being in place.
33. The table below indicates the funding currently allocated from each source and approximately when draw down of funding will be required, subject to the scheme development keeping to an already challenging programme. The table is based upon an assumption that the scheme costs will be £75.5million (which cannot be confirmed until a final tender price is returned) with no risk allowance.

Indicative Draw Down Profile

YEAR	DFT/SLEP LGF SECURED £m	HIF – ASK £m	S106 – ASK £m
20/21	5.55	-	-
21/22	-	3.5	-
22/23	-	19	12
23/24	-	7.5	14
24/25	-	-	14
TOTAL	5.55	30	40

Update on Delivery Costs and Funding

34. The current estimate for works and fees excluding any risk costs and subject to a final tender price return is in the region of £75.5million as mentioned above. As more of the risks become known and are costed they are added to the total scheme cost and the risk value is reduced. Where best or worst case risk scenarios are identified then the risk value takes this into account as a range. Risks are currently estimated in the region of £5 to £10million.

Housing and Infrastructure Funding

35. In order to help close the funding gap and to help replace the reallocated £24.4million Local Growth Funding, Homes England have now allocated

£30million funding from the Housing and Infrastructure Fund (HIF) towards the scheme costs (including the £10million that was originally allocated as HIF Marginal Viability Funding), but this remains subject to Agreement. It is understood that the new allocation will be a hybrid arrangement utilising the Forward Funding Agreement, which was more specifically set up for upper tier authorities. The funding will be in the form of a repayable grant which enables the funding to be recycled back into the development when agreed levels of profit margins have been met. There are a number of conditions aligned to this which have been the subject of much recent dialogue between Homes England and Fareham Borough Council. It is understandable but regrettable that the County Council has not been involved in this dialogue given the nature of the conditions which would have to flow down to the Delivery Body and the Housing Developer. Viability reviews and profit share associated with the wider Welborne are key matters being complicated by the nature of the HIF Agreement and a Homes England requirement that the Section 106 contains details of how the HIF will be recycled into the scheme linked to profit share. Homes England is requiring Fareham Borough Council to have the Agreement concluded before the end of February 2021. The Agreement includes a significant number of conditions which would need to flow down to the Delivery Body. Without an understanding of who the Delivery Body will be then a view on how acceptable the flow down conditions are cannot be provided. Homes England has advised that break clauses and stage gate points could be applied to the Agreement to ensure that no party takes on undue risks and at any point the project could be stopped if risks including financial became unacceptable to any party. Fareham Borough Council is seeking a formal position from the County Council to confirm whether it will take on the role of Delivery Body.

36. There are three pre-conditions aligned to the signing of the HIF Agreement and confirmation of the £30million contribution which would need to be agreed by the relevant parties before the end of February 2021:
- details of the cost over-run strategy and of who will under-write any potential cost increases over and above the current estimate of £75.5million, need to be provided before Homes England will sign the Agreement;
 - details of the named Delivery Body/Scheme Promoter need to be provided before Homes England will sign the Agreement; and
 - confirmation that the HIF funding contribution should be directed to Fareham Borough Council (unless there is a case for it to go directly to Hampshire County Council). Homes England sees this as potentially influencing the County Council's decision to be Scheme Promoter. In either case back to back agreements would probably be required given the obligations for the funding to be recycled back into the development via a mechanism with the Borough Council, even if the funding was directed to the County Council.
37. The issues aligned to the above from the County Council's perspective are that even if the County Council was to become the Delivery Body, there is inadequate time to consider fully the flow down conditions, many of which are

dependent upon factors which would remain outside the control of the County Council. The Agreement is generic in nature and there are significant risks aligned to the Agreement in its template format as currently drafted. Even if adjustments are inserted to specify break clauses associated with financial or other risks and red lines, the County Council would need to consider aligned commitments to the procurement process which cannot be commenced without a guarantee that all funding for the scheme is in place including risk funding. The funding guarantee requires broader considerations beyond the HIF Agreement as ultimately the County Council would have to enter into contractual commitments for the infrastructure works if it was to become the Delivery Body.

Section 106 Funding

38. In addition to the increased offer from Homes England and to help close the funding gap, BDL is considering increasing its original Section 106 funding contribution of £20million to £40million. There are certain implications and conditions associated with this linked to the wider Welborne development related to the associated viability work and levels of social housing, and it is understood there has been much recent dialogue around this between Fareham Borough Council and BDL.
39. It is understood that Fareham Borough Council and Buckland Development Limited are reaching a point of common ground and that BDL re-submitted its further modified (3rd) application, as part of which its enhanced offer of £40million contribution will be included, in December 2020. Fareham Borough Council commenced public consultation on the revised application after Christmas in parallel with a review of the viability work. The date of the Planning Committee was 27 January 2021 and consequently a verbal update will be provided at the Cabinet meeting as the decision is critical to the conclusion of HIF Agreement prior to the end of February.
40. The timescales for Agreeing the Section 106 are now critically aligned to the HIF Agreement and the end of February 2021 date for conclusion of both Agreements as summarised above, leading to the subsequent award of full detailed Planning Permission for the scheme and outline planning permission for the wider development. The County Council is involved in helping to progress the Section 106 Agreement in a number of ways including:
- the statutory functions linked to education;
 - rights of way; and
 - particularly in the role as Statutory Highway Authority; as well as in the role of Scheme Promoter for Junction 10.

Potential Way Forward

41. There can be no guarantee at this time that all funding is in place to deliver the Scheme, and cover the financial risks associated with potential cost escalation. This remains a fundamental red line for the County Council, which means that it would not be possible for the County Council to take on the role

of Delivery Body. The risks to the County Council associated with becoming the named Delivery Body, in both financial and reputational terms are very significant, and the County Council is not in a position to take such risks on.

42. The County Council remains fully supportive of the Scheme and the wider Welborne Garden Village including 6,000 new homes and 5,000 new jobs. It is recognised that to have no Delivery Body identified by the end of February is likely to have a significantly, detrimental, potentially show-stopping impact upon the development of the wider Welborne, with the likely loss of £30million HIF funding and this would be contrary to the messaging which has been reiterated at the highest level over the last three years, consequently an alternative way forward is urgently needed.
43. The County Council is willing to continue to be involved and to work with partners to support the delivery of the Scheme, noting that the County Council is well placed to progress the scheme through the final stages of development and to most easily procure appropriately experienced contractors to progress the completion of the design and scheme delivery, possibly through an open book two stage Gen 4 Framework, however this would need to be in a sub-contractual/supporting role rather than as Delivery Body.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes

Other Significant Links

Links to previous Member decisions:	
<u>Title</u>	<u>Date</u>
EMET – M27 Junction 10	15 Jan 2019
EMETE – M27 Junction 10 Update	14 Jan 2020
Cabinet – M27 Junction 10 Scheme Update	29 Sept 2020
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

<u>Document</u>	<u>Location</u>
Fareham Borough Council Planning Decision on Welborne Garden Village October 2019	Planning Portal /Fareham Borough Council website

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

The impact of this decision has been assessed as neutral as it relates to development work and the future involvement of the County Council rather than delivery. However, as and when the Scheme is delivered, it will benefit all transport users, catering for cars, Bus Rapid Transit links, and including significant pedestrian and cycle provision. It will provide the key access to Welborne Garden Village and associated 6000 new homes and 5000 new jobs, which will benefit the whole community. More detailed equalities impact assessments will be carried out if and when the County Council moves into the delivery phase of the project.

