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Division

ITEM 14

South Derby Growth Zone (SDGZ) and Infinity Garden Village (IGV) - use of Compulsory Purchase Order (CPO) powers and details of collaboration agreements

Purpose

- 1.1 Cabinet is asked to note progress towards delivery of SDGZ and IGV; in this case specifically the A50 junction and link road, to accept the Council's responsibilities and objectives in relation to two collaboration agreements; to approve the delegation of Compulsory Purchase Order (CPO) and highways powers within Derby city's administrative boundary to Derbyshire County Council ('The County Council'); **and** to approve a grant transfer of Homes England grant funding to the County Council.

Recommendation(s)

- 2.1 To note progress made towards delivery of SDGZ and IGV, including work on business case submission for the junction and link road, procurement, land assembly, funding and risk sharing.
- 2.2 To accept the Council's responsibilities, financial risk exposure and objectives, in relation to two collaboration agreements – (i) between public sector partners **and** (ii) between public sector and private sector partners, noting that approval to enter into those agreements has been previously delegated by Cabinet on 13 April 2022, minute reference 199/21 (see Appendices).
- 2.3 To delegate the Council's use of Compulsory Purchase Order (CPO) and highways powers within Derby city's administrative boundaries to the County Council, as lead for the project, in order for them to acquire the land required for the highways works and carry out the works.
- 2.4 To approve a capital grant of up to £0.700m to the County Council, funded from our £0.800m Homes England Garden Villages capacity funding that is on the approved capital programme, in order for them to finalise the Levelling Up Fund Business Case.

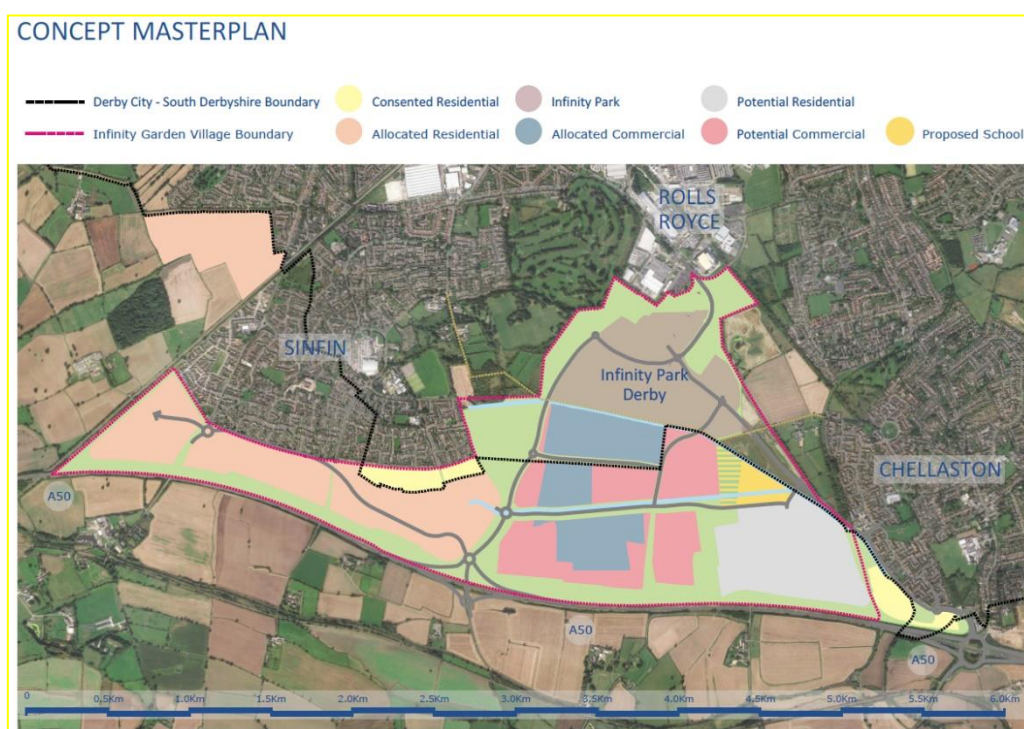
Reason(s)

- 3.1 Good progress continues to be made towards Full Business Case completion, for the A50 junction and link road, anticipated to be within this calendar year.

- 3.2 Whilst Cabinet delegated authority to enter into the collaboration agreements, on 13 April 2022, it is important for Members to understand the overall objectives of the collaboration agreements and the Council's responsibilities and the financial risk exposure in relation to them, albeit that these are still in draft form. It is also important for the Council to enter into these collaboration agreements to demonstrate its commitment to the project, both to Government and to our project partners.
- 3.3 It is appropriate for the Council to delegate CPO powers to the County Council, as project lead and the Council has authority within its constitution (see 8.1 below).
- 3.4 Derby City Council has secured £0.800m Garden Villages Capacity Funding, from Homes England, to be used to complete the Levelling Up Fund Business Case; it will be necessary to transfer up to £0.700m of that grant to the County Council and that will require Cabinet approval to comply with Financial Procedure Rules to enter into the grant agreement between the two Local Authorities. Note that the existing authority to enter into agreements does not cover this.

Supporting Information

- 4.1 The South Derby Growth Zone (SDGZ) is the name given to the wider development area, to the south of the City and extending into South Derbyshire. It includes Infinity Park Derby (IPD), which is Derby's flagship regeneration project and one of the Government's Enterprise Zones. SDGZ also includes Infinity Garden Village (IGV) which consists of the Wragley Way (Sinfin/Stenson Fields) and Lowes Farm (Chellaston) major housing development sites which extend into South Derbyshire. IGV is one of 14 new Garden Villages announced by Government.
- 4.2 An image from the SDGZ Masterplan is shown below:



4.3 The regeneration and housing benefits of SDGZ and IGV as a whole are significant:

- Up to 4,500 new homes;
- Up to 3.4 million square feet new employment floor space;
- An additional 5,000 new jobs.

Note that these outputs are indirect i.e. they will stem from the wider SDGZ/IGV project, not from the junction and link road directly. The outputs are in addition to the outputs that Derby City Council is currently claiming in relation to its IPD funded projects. They will be claimed as part of the Levelling Up Fund (LUF) project (see 4.8 below).

Whilst much of the benefit of the SDGZ project will be felt in South Derbyshire, rather than Derby city, Derby city depends on South Derbyshire in order to meet its housing needs. For instance, in the current Local Plan period (2011-28), 3,013 of Derby's 16,388 new homes need to be met from South Derbyshire, therefore, these new homes will go towards meeting the city's needs.

In addition, the new highways infrastructure will help to accelerate development within the city element of Infinity Park Derby, in much the same way as a dedicated new motorway junction 29a on the M1 junction helped to accelerate development at Markham Vale, Chesterfield.

4.4 Without the new A50 junction and link road, most of those benefits would be lost. Derby City Council ('the Council') and South Derbyshire Planning Divisions have agreed that only 280 new homes and none of the additional employment floorspace would be able to come forward without this.

4.5 The new A50 junction received planning consent on 30 April 2021 (planning application reference 19/00417/FUL).

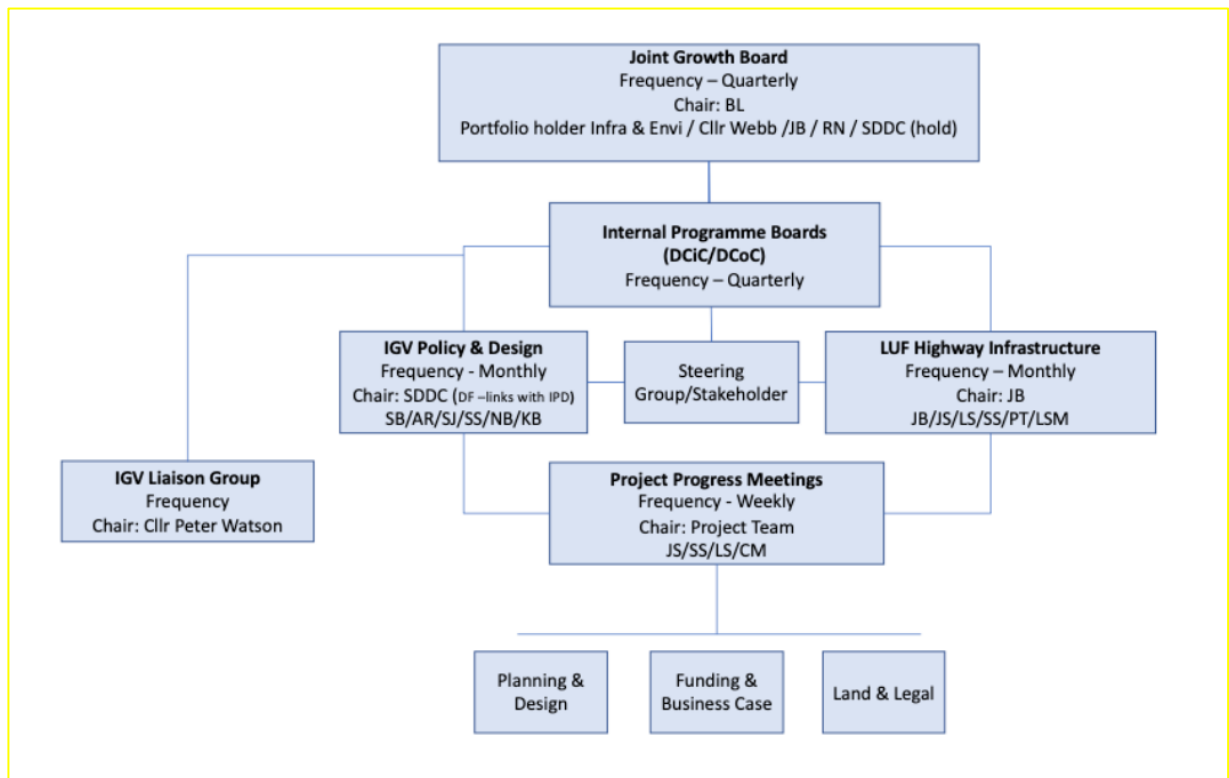
4.6 Partners in the project:

- Public sector partners – the Council, South Derbyshire District Council (SDDC) and Derbyshire County Council (DcoC);
- Private sector partners – Wilson Bowden Developments Limited and Infinity Park (Derby) LLP (commercial developers); Hallam Land Management (residential developer);
- Landowners;
- Strategic partners – Homes England and National Highways (formerly Highways England).

4.7 Proposed Governance Arrangements (subject to change)

DCC internal governance is via the Infinity Park Derby (IPD) and SDGZ Programme Board, which meets approximately bi-monthly.

External Structure



- 4.8 The Council is a partner in a Levelling Up Fund bid, for the A50 junction and link road project, led by the County Council, who are the accountable body. The bid was for £49.6m. The total cost of the highways infrastructure is £55.6m, with the remaining £6m from the private sector partners. The Public/Private sector collaboration agreement ties the private sector partners in to this contribution. Note that much of this has already been spent by the private sector. At the time of Full Business Case completion, the County Council aims to have the balance of this contribution not spent in a separate Escrow account.

This bid has been successful in securing an ‘in principle’ offer of LUF for the full amount, the largest award in the LUF programme; however, in order to secure the funding, The County Council will need to finalise the LUF Business Case by November 2023.

- 4.9 In order to demonstrate the Council’s commitment to the project, both to Government and to partners, it will be necessary to enter into two collaboration agreements, one between the public sector partners, the other between the public and private sector partners.

Whilst Cabinet has already delegated authority to enter into these agreements, on 13 April 2022 (minute reference 199/21) it is important for Cabinet to understand the overall objectives of the collaboration agreements and the Council’s responsibilities and financial risk exposure in relation to them, albeit that these are still in draft form.

Draft collaboration agreements are appended to this report. Details of the financial risk exposure is detailed in paragraph 7.4.

4.12 Next Steps

1. Support the County Council to finalise the Business Case for the junction and link road;
2. Enter into collaboration agreements with project partners;
3. March 2023, the County Council will make a CPO resolution, to acquire the necessary land for the new A50 junction and link road;
4. April 2023, the County Council will procure the construction contractor;
5. Late 2023, the County Council will complete the LUF Business Case. At that stage, if the budget estimate is above the original estimate or the full funding package has not been secured or committed, including the private sector contribution, the construction contract will make provision for termination if considered appropriate and a decision will be taken by partners whether to proceed or not, with reference also to the Council's Programme Management Office (PMO) Board. There is minimal risk of clawback of the LUF money spent at this stage;
6. If the project proceeds at that stage, the County Council will enter into the LUF funding agreement with Government.
7. January 2024 start on site;
8. March 2025 – project completion for LUF purposes (with the potential to extend to March 2026).

- 4.13 Note that it is standard practise for major transport schemes to be delivered in this way, for a design and build contractor to be procured for detailed design to complete the Business Case.

The LUF application allowed funding for this and there is a substantial contingency/risk pot of around 25%. Should the Business Case demonstrate that the scheme is unviable, the construction contract will allow the County Council to terminate the scheme with minimal risk of clawback by Government of costs to date.

Public/stakeholder engagement

- 5.1 The principal means of public and stakeholder engagement is through the Infinity Garden Village Liaison Group, which is managed by South Derbyshire District Council. This group involves elected members and local community representatives. The Council is represented by ward members for Sinfin.
- 5.2 The County Council also undertook a considerable amount of public and stakeholder engagement through the process of obtaining planning consent for the A50 junction and link road. Further engagement will be undertaken as the project progresses and as a result of planning applications for any housing and commercial development.

Other Options

6.1 Do Nothing

This is not an option, as without the highways infrastructure – a new A50 junction and link road – only 280 new homes would be built, resulting in the loss of the remaining 4,220 homes, 3.2m sq ft. of new employment floorspace and 5,000 jobs that would otherwise have been created.

6.2 Do the minimum

This is not an option, as there is no middle ground. The impact of any additional new houses above the 280 identified, plus the additional commercial development, must be mitigated by a new A50 junction and link road.

Financial and value for money issues

7.1 The cost plan presented with the LUF application was as follows:

Cost heading	Costs (£)
A50 JUNCTION	£22,841,325
DUAL CARRIAGEWAY	£3,473,040
NORTH SOUTH LINK	£10,994,151
OFF-SITE INFRASTRUCTURE	£1,583,389
LAND BUDGET	£2,500,000
RISK	£9,978,183
INFLATION	£4,227,883
TOTAL	£55,597,972

Funding Sources	2022-23	2023-24	2024-25	Total
LUF	£6,751,797	£20,803,662	£22,042,513	£49,597,972
Private Sector			£6,000,000	£6,000,000
Total	£6,751,797	£20,803,662	£28,042,513	£55,597,972

Up front costs of detailed design are a target cost. The current estimate of these costs is £4,691,944, which is slightly lower than the original budget, even allowing for £187,297 of risk at this stage.

The construction contract is a fixed price contract and the initial cost estimate from the contractor is £44,856,954, which is still well within budget. Of course that could change with detailed design, leading up to Full Business Case.

Once the project is in the construction phase, any design changes could still alter the price, despite this being a 'fixed' price contract. Such changes might include alterations to the road alignment, adjustments to allow for utilities (known as 'statutory undertakers' works), adjustments to levels to allow for drainage and adjustments to allow for commercial plot development.

Both the construction contract and collaboration agreements allow for dispute resolution by an independent expert.

The Council, as part of the project team, will have a say in the decision-making on those risks. Should the agreed budget be exceeded, the contractual arrangements are clear that the Council would be liable for 25% of any additional cost.

The County Council is the Accountable Body for the LUF funding.

The above costs are based on estimates provided by the quantity surveyor for the County Council's project management consultants. Needless to say, costs can change and are likely to change as we are still finalising the Business Case; however, early indications from the construction contractor are that the costs are realistic and the project is on budget. Whilst the land valuations are not 'Red Book' valuations, they should be realistic, as only the land for the highways works will be required, leaving the remainder of the land to be developed for commercial and residential purposes.

- 7.2 The Council has secured £0.800m from Homes England which is included in the Council's approved capital programme. This funding is towards upfront costs of the Business Case, which will be used towards the City Council and County Council costs related to the CPO, design, ground and site investigations and legal fees. Cabinet approval is sought to transfer up to £0.700m of this funding by way of a capital grant to the County Council, to be used towards their costs. There is no clawback risk to this. The remaining £0.100m will be used by DCC towards traffic modelling costs, design and capitalised salaries, of which £0.076 has already been spent.

- 7.3 The proposed collaboration agreements will result in the Council being responsible for sharing the following financial risks:

Risk Area	Supporting Notes
Pre-construction phase, design/Business Case development costs – changes to design and up-front survey works required	This would come out of the overall LUF budget and would impact on the level of contingency/risk pot. Note however, that this stage is currently within budget (see 7.1 above).
Pre-construction phase, design/Business Case development costs – abortive cost risk	Whilst no formal confirmation has been received, it is believed that there is minimal risk of clawback by Government of costs to date. However, if clawback did arise, then any abortive up-front costs previously supported by LUF would then be shared 50/50 between the City and County Council.
CPO and land budget costs – risk of overruns	This would come out of the overall LUF budget and would impact on the level of contingency/risk pot. Note however, that this stage is currently within budget (see 7.1 above) and the land agents do not envisage any problem with this.
Construction phase (up to approved budget) – risk of design changes	Some of this risk will lie with the contracting authority (the County Council) and some the contractor; if the Council doesn't agree with a certain change, we have the ability to influence the decision, as part of the project team.
Construction phase - risk of overruns above approved budget)	<p>The Council would be responsible for funding 25% of any cost increases above the approved budget for the scheme at 7.1. eg. a cost overrun of £5m would mean that the Council would need to find an additional £1.25m .</p> <p>There is a substantial contingency/risk pot of almost £10m (25%) and £4.2m for inflationary pressures in the cost estimate at 7.1 above. Should the Business Case demonstrate that the scheme is unviable, the construction contract will allow the County Council to terminate the scheme at that point to avoid future costs that are not fully funded.</p> <p><i>The opportunity to 'value engineer' any potential cost overruns down is also an option. If the Council has early warning of cost overruns, we will of course endeavour to secure any additional grant funding before making a request to the Council.</i></p>

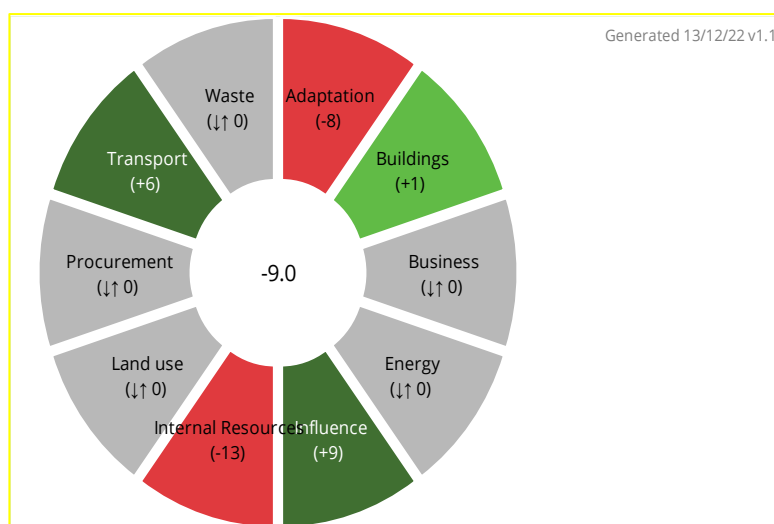
- 7.4 The Council has no additional capital or revenue funding identified for this project to cover our share of liability in the event that any of the above financial risks were to materialise.

Legal Implications

- 8.1 Cabinet approval is sought to delegate CPO powers within Derby city's administrative boundary to the County Council. Delegation of such powers to other Local Authorities is expressly permitted by virtue of powers set out in the Local Government Act 1972 (as amended).'

Climate implications

- 9.1 The Council's Climate Change Impact Assessment tool demonstrates that the project can have a strong impact in terms of transport mitigation, along with an influence in changing behaviours. Where the project is weak, which we know, is its resistance to climate – in particular surface water drainage and flooding, as the area is low-lying agricultural land.



Socio-Economic implications

- 10.1 This project will create a new community, through Infinity Garden Village and we will attempt to monitor socio-economic implications as a result.
- 10.2 The requirement for Social Value in public contracts also means that contractor Key Performance Indicators will be specified, in relation to Socio-Economic implications, within the main construction contract. This may include employing local people and providing skills training, participating in Enterprise for Education events at Derby schools.
- 10.3 An Equalities Impact Assessment will be developed, specific to this project.

Other significant implications

- 11.1 The current DCC Risk Register for this project is appended to this report. A full construction risk register will be developed by the County Council with the construction contractor, the risks workshopped and costs attached to them. The LUF bid included a significant contingency/risk pot of around 25%.
- 11.2 There are no Section 106 obligations arising from this project; however, S106 obligations will stem from the wider SDGZ/IGV project.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu	31.01.23
Finance	Amanda Fletcher	31.01.23
Service Director(s)	David Fletcher	31.01.23
Report sponsor	Rachel North	31.01.23
Other(s)		

Background papers:	
List of appendices:	Cabinet Report 13 April 2022, minutes of Cabinet meeting 13 April 2022, Risk Register, Draft Public Sector Collaboration Agreement, Draft Public/Private Sector Agreement