



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**Thursday, 8 December 2022**

**Report of the Executive Director - Place**

**Regeneration Pipeline: South Derby Growth Zone Outline Business Case, Land and Legal Approvals**

(Cabinet Member for Infrastructure and Environment)

**1. Divisions Affected**

1.1 County-wide.

**2. Key Decision**

2.1 This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

**3. Purpose**

3.1 This report:

- a) Sets out the progress made towards business case submission, design-stage procurement, land assembly, funding and risk sharing for the South Derby Growth Zone (SDGZ) project; it also notes the potential requirement for a Compulsory Purchase Order, should negotiated settlements not be possible. (Note, this would be subject to a separate report in future).
- b) Seeks delegated authority for the Executive Director – Place, in consultation with the Director of Legal and Democratic Services and the Cabinet Member for Infrastructure and Environment, to conclude negotiations and enter into relevant legal agreements (including formalising collaboration arrangements between public and private sector partners).

- c) Seeks approval, in principle, to submit the Outline Business Case (OBC) to Government and delegated authority for the Executive Director – Place, in consultation with the Director of Legal and Democratic Services and the Cabinet Member for Infrastructure and Environment, to finalise the OBC and complete outstanding matters linked to the conclusion of legal agreements.
- d) Requests delegated authority for the Director of Finance and ICT to accept capacity building grant of up to £4.7 million (drawn from the £49.6 million total available) to facilitate pre-construction work packages, once satisfied over arrangements to share risk with public-sector partners.
- e) Notes the planned approach to procurement and the intention to enter into a design and build contract, but with only the design stage committed ahead of further consideration of the project by Cabinet.

## **4. Information and Analysis**

### Background

- 4.1 The South Derby Growth Zone (SDGZ) project comprises the delivery of enabling highway infrastructure that will bring forward major housing and commercial development as part of the wider Derby Infinity Garden Village scheme. The infrastructure comprises a new junction on the A50 Trunk Road and a link road to existing infrastructure within Infinity Park.
- 4.2 Planning consent is in place and the Strategic Outline Business Case has received approval from Government, alongside provisional funding of £49.6 million from the Levelling Up Fund (LUF) which is critical to project delivery and must be drawn down by March 2025. This is an achievable but challenging programme due to a number of key work packages needing to be progressed.
- 4.3 The new A50 junction will be a significant enabler in attracting inward investment across southern Derbyshire, particularly to Rolls Royce supply chain companies which would take advantage of the new transport infrastructure. The new link road will directly unlock Infinity Garden Village, enabling the creation of around 4000 new homes, 3.5million square feet of employment space and a new secondary school. Collectively, these proposals will help to create nearly 5,000 new jobs across the region.
- 4.4 Within the context of the proposed East Midlands Combined Authority, this major development will help build confidence in the regional economy and will provide a strong platform for levelling up, bringing more/ better jobs closer to local communities. These benefits form part

of the strategic rationale for the scheme and are set out in the Outline Business Case (OBC).

#### Progress Update

- 4.5 The project has made significant progress and now sits at a key gateway in formulating agreements required to control risk in entering into its full design stage, submitting the next level of its business case to Government and ensuring timely land assembly. The recommendations of this report, if approved, will enable the conclusion of negotiations over land assembly and facilitate further work on costs and funding ahead of further consideration by Cabinet ahead of Full Business Case approval and the construction stage.
- 4.6 Following submission and approval of the Strategic Outline Business Case in 2021, Government announced an allocation of £49.6 million from the Levelling Up Fund (major transport schemes), one of the largest in the country. Since this time, a considerable amount of work has taken place through regular project meetings and discussion with the private sector, Derby City and South Derbyshire District Council (SDDC) colleagues to understand the work packages required to ensure timely progress of the scheme.
- 4.7 Fundamentally, these work packages are linked to the development of the Outline Business Case (OBC) and include engagement of a contractor to design and then build the highway infrastructure. At its meeting of 10 March 2022, Cabinet was advised of the expected availability of a new Midlands Highways Alliance Medium Schemes Framework and agreed for this to be considered as a procurement option for the project (Minute No. 80/22 refers). The Framework was launched on 22 June 2022 and brings the benefit of being a competitive procurement route with up-to-date rates for staff and materials; members should note this is now expected to be used as the preferred procurement route for the design-and-build contract.
- 4.8 In accordance with protocols approved by Cabinet at its meeting of 14 January 2021, officers within the Highways Service are liaising with those in Procurement over the selection process and terms of the contract. It is intended that this contract be issued once the Director of Finance and ICT agrees to accept capacity funding on the project as recommended in this report. Cabinet will wish to note, though, that the contractual commitment at this stage will be restricted to the design stage only, with further reports to be considered ahead of entering into the construction stage.

- 4.9 At its meeting on 10 March 2022, Cabinet also gave approval to commence land assembly for the project through the initiation of compulsory purchase procedures. Since then, work has proceeded well through negotiation with the principal developers and landowners, and a negotiated settlement remains the preferred route for land assembly. In order to ensure delivery, it remains the recommendation of officers and specialist advisors that compulsory purchase powers are exercised to the point at which it is clear they are no longer required.
- 4.10 To that end, work is underway on drafting a Statement of Reasons as part of the preliminary CPO process. The completion of all of the other supporting documentation for the making of the Compulsory Purchase Order is expected shortly but will need to be the subject of a further report to Cabinet. Once the Orders are made, this will allow affected parties to lodge objections which, if unresolved, would be heard at an independent inquiry. However, it is the intention of the Council to resolve each and any of those issues through negotiation, avoiding the need for the inquiry and helping to compress the mobilisation programme for the project.
- 4.11 With regard to both the pursuit of a negotiated settlement for land assembly and also the sharing of project costs and risks across public and private-sector partners, work has commenced on a number of potential collaboration and technical agreements between the public and private sectors. Whilst the County Council holds the role of project sponsor, these agreements are designed to clarify working and delivery arrangements between key partners (i.e. landowners and local authorities) specifically in relation to critical matters such as land assembly, funding and the apportionment of risk (e.g. cost over-runs etc).

#### Private Sector Collaboration Agreement

- 4.12 Whilst negotiations on land assembly will take place directly between the Council and affected landowners, compensation to the landowners will rely upon commercial agreements between them and the developers of land within the Growth Zone and Garden Village. These, in turn, are reliant upon cooperation between the Council and the developers to ensure that progress is made towards development of the land. A further key consideration is the securing of developer contributions towards the enabling infrastructure and the sharing of risk relating to cost overruns. The proposed 'private sector collaboration agreement' addresses these matters.
- 4.13 As an agreement between the County Council and private developers, it will set out the basis on which both parties will collaborate to deliver the

A50 infrastructure under the LUF, including confirmation of £6m developer contribution towards infrastructure costs. This is predicated on conditions precedent being met by the developer to reaffirm commitment of the developer £6m contribution on practical completion of the road scheme. Exempt Appendix 2 to this report provides Cabinet members with a summary of the terms of the agreement and managed risks.

#### Public Sector Collaboration Agreement

- 4.14 Associated with the above, progressing both the enabling infrastructure and the associated development requires close cooperation between the County Council, Derby City Council and South Derbyshire District Council. This includes the acquisition of land within the City's administrative boundary by the County Council and also the sharing of risk, both on short-term capacity funding and potential clawback, as well as construction cost overrun. The proposed 'public sector collaboration agreement' addresses these matters. Exempt Appendix 2 provides members with a summary of the terms of this agreement and managed risks.

#### 'Technical' Agreements

- 4.15 The enabling infrastructure comprises highway to be adopted by the County Council itself, Derby City Council and National Highways. It is proposed that, in the interests of proceeding as efficiently as possible with delivery, Highways Act agreements are made with these authorities under which, the County Council can act as highway authority rather than as a third-party developer. Authorisation for the conclusion of these will be sought at a future meeting in conjunction with the Compulsory Purchase Order.
- 4.16 Exempt Appendix 2 to this report includes a non-technical summary of the collaboration agreements and how these enable the Council to manage risk. Cabinet approval is sought in principle to enter into these agreements and for final sign off to be delegated to the Executive Director – Place in consultation with the Director of Legal and Democratic Services and the Cabinet Member for Infrastructure and Environment.

#### Outline Business Case

- 4.17 The final matter for consideration under this report is submission of the project's Outline Business Case (OBC) to Government. The OBC has been developed using HM Treasury's Green Book appraisal; a copy of the full document is available via the hyperlink provided in Exempt Appendix 3 (due to the confidential nature of some of the information) but for ease of reference, a summary of the findings is provided below.

- 4.18 Work on the OBC is now complete, subject only to the finalisation of current work with partners on land assembly and the sharing of financial risk and completion of the legal agreements set out in this report. Cabinet is therefore requested to grant approval in principle to submission of the OBC with delegated authority being given to the Executive Director – Place in consultation with the Director of Legal and Democratic Services and the Cabinet Member for Infrastructure and Environment, to sign off the final version of the business case.

### **Summary of Outline Business Case**

#### Strategic Dimension

- 4.19 This sets out the strategic growth and economic context within which the scheme sits. It confirms the case for change and the outcomes to be achieved. This strategic case for the scheme remains strong in helping meet the growth ambitions for this part of Derbyshire and the local plan proposals for both Derby City and South Derbyshire District Council. Specifically, it provides key enabling infrastructure for the Infinity Garden Village (4,500 homes) and the commercial component of the South Derby Growth Zone (3.45 million ft<sup>2</sup> of mixed employment floorspace). Cabinet will also wish to note the provision within the Growth Zone of both primary and secondary schools. The site sits within the outer boundary of the East Midlands Freeport and will complement the existing and proposed employment opportunities within this.

#### Economic Dimension

- 4.20 This dimension deals with the nominal economics of the actual scheme proposal, as opposed to project funding. Given the regeneration benefits that will be delivered from the development (jobs and homes) as described above, plus transport improvements, analysis using the Green Book methodology shows the project justifies the level of investment required. The calculated 'benefit:cost ratio' of just under 6:1 confirms that the scheme is classed as 'high' value for money. Cabinet will be aware from consideration of other projects that in the context of rising costs for infrastructure this 'high' classification can be hard to achieve, and this does confirm the South Derby Growth Zone as a sound investment.

#### Commercial and Management Dimensions

- 4.21 These dimensions describe how the Council plans to approach procurement for the preparation and construction of the project. This includes procurement of key work packages such as documents to support the planning process, land assembly, governance, risk management and approach to realising project benefits. The

Management Dimension sets out how the project is governed through its Project Control Board, working collaboratively with public and private-sector partners, as illustrated in Appendix 2. In essence, therefore, they set out for Government the same information which the Council expects to see in place for its portfolio of projects. Cabinet will note the procurement approach to design and construction set out above in paragraphs 4.7 and 4.8.

#### Financial Dimension

- 4.22 Along with the Economic Dimension, this section of the OBC is critical in that it deals with the 'real world' finances of project costs and how it is to be funded. The content, therefore, is a key area for consideration by Cabinet ahead of submitting the OBC.
- 4.23 The core cost of the project is now estimated to be £55.6 million. This figure has had the benefit of early engagement from one of the specialist construction contractors on the Midlands Highways Alliance Framework to help ensure as accurate a figure as possible for the purposes of business case completion. The cost estimate includes an amount calculated for 'quantified risk', comprising a review of what might conceivably go wrong, for example a failure to achieve planning consent on time, the likelihood of this, ways in which to prevent it happening but also the financial consequences if it does occur.
- 4.24 One of the key areas of work covered by the legal agreements described in this report is to secure adequate local contributions to complement the allocated Government LUF grant of £49.6 million. A contribution of £6 million is required to match the grant and create a total funding envelope of £55.6 million. This sum has been requested from the developers whose proposals for housing and commercial development will benefit from the scheme and Cabinet members should note that legal agreements are being prepared to secure this level of funding from the developers.
- 4.25 However, the proposed legal agreements also make allowance for how partners would provide for an increase of up to 10% in the project's gross costs. Any greater increase will, under the terms of the intended construction contract, be met by the contractor.
- 4.26 Cabinet will wish to be assured that the Council is not exposed to risk of clawback from the significant levels of grant funding to be drawn down for this project. In due course (at Full Business Case stage) the terms of accepting the full £49.6 million will need to be assessed and will inevitably require a commitment to deliver the funded infrastructure. In the short term, a proportion of the grant is available as capacity funding

- currently estimated at £4.7 million - and can be requested to support preparation work, including scheme design.

- 4.27 The terms of this capacity funding do permit Government to seek its recovery should the project not proceed to construction. However, discussions with project partners over the sharing of risk are proceeding well with a view to these being incorporated into the Public Sector Collaboration Agreement described above. Cabinet's authorisation in principle is therefore sought to accept up to £4.7 million to support the continued preparation of the project, with delegated authority being given to the Director of Finance and ICT to accept the grant, subject to satisfactory arrangements being in place in terms of risk sharing between County, Derby City and South Derbyshire District Councils and to be incorporated into the Collaboration Agreement.

#### Summary of Key Project Risks

- 4.28 From the analysis above, Cabinet is advised that the key risks to be considered at this stage are:

- Clawback risk with regard to grant funding to be drawn down pre-construction; mitigated through agreements with partners over sharing costs.
- Failure to maintain progress against programme through negotiated land assembly; mitigated through the agreements set out in this report.
- Failure to secure developer contributions towards construction; again mitigated through the agreements set out in this report.

## **5. Consultation**

- 5.1 No public consultation is required relating to the content of this report. Cabinet should note that extensive public consultation took place ahead of the submission of the planning application for the enabling infrastructure. Regular liaison with parish councils and key stakeholder groups on the Growth Zone and Garden Village takes place through South Derbyshire District Council. Any future Compulsory Purchase Order will be subject to specific engagement and consultation processes.

## **6. Alternative Options Considered**

- 6.1 Option 1: negotiation with landowners presents an alternative route to land assembly for this project and, remains the preferred option. This will be pursued in parallel to the proposed use of compulsory purchase powers which is the subject of this report.

- 6.2 Option 2: It is possible for the Council to act as a third-party developer in proposing highway assets to be adopted by Derby City Council and National Highways, however this would involve more onerous approval processes than the approach proposed in this report and therefore is not considered a suitable option.

## **7. Implications**

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

- 8.1 Cabinet Report, Regeneration Kick Start Fund Arrangement, dated 17 June 2021 (Minute No.100/21).
- 8.2 Cabinet Report, Use of Professional Consultancy and Construction Frameworks for Highway, Transport and Environmental Services and Projects, dated 14 January 2021 (Minute No. 07/21).
- 8.3 Cabinet Report, Regeneration Programme Pipeline reports dated 10 March 2022 (restricted) and 16 June 2022 (Minute Nos. 80/22 and 118/22 refers).

## **9. Appendices**

- 9.1 Appendix 1 - Implications.
- 9.2 Appendix 2 – [Exempt] Summary of proposed collaboration agreements
- 9.3 Appendix 3 – [Exempt] Hyperlink to draft Outline Business Case

## **10. Recommendations**

That Cabinet:

- a) Notes the progress made to date on this project towards design, land assembly and legal agreements covering resources and risk sharing
- b) Agrees the proposed approach towards land assembly through negotiated settlement to ensure timely delivery of the South Derby Growth Zone (SDGZ) project and the potential requirement for a Compulsory Purchase Order, should negotiated settlements not be possible.

- c) Notes the summary of legal agreements provided at Exempt Appendix 2 of this report and agrees authority be delegated to the Executive Director – Place, in consultation with the Director of Legal and Democratic Services and the Cabinet Member for Infrastructure and Environment, to conclude negotiations and enter into relevant legal agreements (including formalising collaboration arrangements between public and private sector partners and separately between the public sector partners over resources and risk sharing).
- d) Agrees, in principle, to submit the Outline Business Case (OBC) to Government and delegates authority to the Executive Director – Place, in consultation with the Director of Legal and Democratic Services and the Cabinet Member for Infrastructure and Environment, to finalise the OBC and complete outstanding matters linked to the conclusion of legal agreements.
- e) Delegates authority to the Director of Finance and ICT to accept capacity building grant of up to £4.7 million (drawn from the £49.6 million total available) to facilitate pre-construction work packages, once satisfied over arrangements to share risk with public-sector partners.
- f) Notes the planned approach to procurement and intention to enter into a design and build contract following the acceptance of capacity funding as recommended under recommendation 10.5.

## **11. Reason for Recommendations**

- 11.1 To ensure continued strong progress on the project and that delivery of infrastructure for the South Derby Growth Zone can be managed through a robust approach to financial risk management and meet the programme constraints of its Levelling Up Fund grant.

## **12. Is it necessary to waive the call in period?**

- 12.1 No.

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## Implications

### Financial

- 1.1 The South Derby Growth Zone enabling infrastructure is supported by grant from the Levelling Up Fund. Since the project's Outline Business Case was approved, tranches of this are being offered on a quarterly basis to assist with preparation. With Cabinet's approval through this report, this funding can support the pre-construction stages of work. Further capacity funding has also been provided through Derby City Council by Homes England, and an additional sum is available if required from the Regeneration Kick Start Fund, for which Management Arrangements were approved by Cabinet on 17 June 2021 (Minute No.100/21 refers).
- 1.2 The project budget of £55.6m is comprised of £49.6 million of Levelling Up Fund grant plus a contribution of £6 million from private sector partners. This is currently adequate to deal with estimated costs and with an allowance for risk. As set out in this report, subject to satisfactory assurance over clawback risk, up to £4.7 million of the Levelling Up Fund grant will be drawn down to support pre-construction stages. These will culminate in the Full Business Case (FBC), which will require a further Cabinet approval.
  - a. With regard to clawback risk against funding drawn down in advance of FBC approval, the proposed public-sector collaboration agreements would share this with Derby City and South Derbyshire District councils. Legal advice is also being taken over how, through acting reasonably and competently, the Council can minimise the risk of this occurring.
  - b. With regard to cost overruns through the construction stage, the proposed agreements would share an uplift of up to 10% between private (50%) and public-sector (50%) partners, with the public-sector element again shared by the County Council, Derby City and South Derbyshire District Councils. Beyond this level, partners would have the option of withdrawing from the project.

### Legal

- 2.1 Sections 239, 240, 246, 250 and 260 of the Highways Act 1980 provide the basis of the Council's compulsory purchase powers as recommended to be exercised in this report for the South Derby Growth Zone.

- 2.2 Further reports to Cabinet will be required to seek approval for further steps required for the project, notably to approve the making of a Compulsory Purchase Order, at and to update Cabinet generally as to progress.

### **Human Resources**

- 3.1 The portfolio of regeneration projects has significant implications for the workload of staff within the Economy and Regeneration Service and for supporting legal, property, finance and highways functions in particular. External support is commissioned for individual projects within their confirmed budgets, but additional in-house capacity is being established.

### **Information Technology**

- 4.1 None.

### **Equalities Impact**

- 5.1 Individual projects within the portfolio will be subject to equalities impact assessment at the appropriate stages of their development.

### **Corporate objectives and priorities for change**

- 6.1 The regeneration portfolio addresses directly a number of objectives set out in the Council Plan.

### **Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

#### **Property and Asset Management**

- 7.1 Direct implications arising from the recommendations of this report will lead towards the creation of additional highway and transport assets, and the acquisition of additional land required for construction purposes and then transferred back to the vendor.

#### **Environmental Sustainability**

- 7.2 Under the Council's Climate Change Strategy and Action Plan all infrastructure projects sponsored by the County Council will now be subject to a Climate Impact Assessment covering the whole-life carbon cycle and impacts upon resilience.