

Forward Plan reference number: FP/648/03/20

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| Report title: Harlow Gilston Garden Town - Decision on Acceptance of Housing Infrastructure Grant Funding | |
| Report to: Cabinet | |
| Report author: Councillor David Finch, Leader of the Council | |
| Date: 26 March 2021 | For: Decision |
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| County Divisions affected: All divisions in Harlow and Epping Forest Districts | |

1. Purpose of Report

- 1.1 To seek approval to enter into an agreement with Hertfordshire County Council (HCC) under which ECC would deliver infrastructure works in Essex funded through a Housing Infrastructure Grant (HIG) paid to HCC by Homes England. The agreement is referred to in this report as a ‘back to back’ agreement.
- 1.2 If agreed, ECC would be eligible to receive £42.1m (payable in arrears) to implement works in Harlow to develop a sustainable transport corridor (North to Centre) including works to the Burnt Mill Roundabout and Cambridge Road Junction (collectively referred to in this report as the “Project”) in Harlow.
- 1.3 The purpose of the funding is to provide infrastructure to unlock new homes in East Hertfordshire referred to as the Gilston Villages which are a part of the wider Harlow Gilston Garden Town (HGGT) partly in Essex. The Garden Town will also deliver transformative investment to support sustainable living and a healthy economy, providing a high quality of life for existing and future residents of Harlow and the surrounding area.

2. Recommendations

- 2.1 Agree to enter a Back to Back agreement with Hertfordshire County Council for £42.1m of funding to deliver the Project.
- 2.2 Agree that a further report should be brought to the Leader to agree ECC’s role in the management of the Gilston Villages project and the management of the rolling investment fund to be created by the section 106 agreement, ahead of the outline planning application being considered by East Herts District Council in June.

3. Background

- 3.1 The Housing Infrastructure Grant (HIG) is part of a government capital grant programme from the Ministry of Housing, Communities and Local Government (MHCLG) of up to £5.5 billion, which aims to help to fund infrastructure where required in order to deliver up to 100,000 new homes in England in the areas of greatest housing demand.
- 3.2 HCC submitted a bid to Homes England for funding, based around the Gilston Villages, where the Local Plan proposes the development of seven villages bringing forward 10,000 homes as part of 23,000 new homes to be provided in the wider Harlow and Gilston Town (HGGT). The Gilston Villages homes are to be built in Hertfordshire, in the district of East Hertfordshire, but are very close to the boundary with Essex and Harlow in particular. This will place significant demands on the infrastructure of Harlow as the nearest town. Residents of the new development are likely to look to it for employment, services etc. Harlow is separated from the Gilston Villages by the River Stort and the West Anglia mainline railway which constrains transport capacity due to the limited number of river and rail crossings. The development also presents significant opportunities for Harlow to achieve economic growth and an improved transport network.
- 3.3 HCC's bid to HIG ultimately resulted in an award of £171.180m to be spent by March 2025 for transport infrastructure identified as necessary for growth in the East Hertfordshire Infrastructure Development Plan (IDP)
- 3.4 HGGT was granted informal Garden Town status by the MHCLG in 2017. The HGGT development includes 23,000 homes across four strategic sites and connected to Harlow Town Centre by Sustainable Transport Corridors (STCs). Gilston Villages is one of the four strategic sites and the first to come forward for implementation. HGGT forms a fundamental part of the adopted Local Plans of East Hertfordshire and Harlow District Councils, and the draft Local Plan of Epping Forest District Council. ECC is supporting these Local Plans and therefore accepts the principle of development in the Gilston Villages and the opportunities it will bring. ECC and the other partner authorities are committed to Garden Town principles around sustainability and high-quality development and this is the presumption behind the development and planning approach across HGGT.

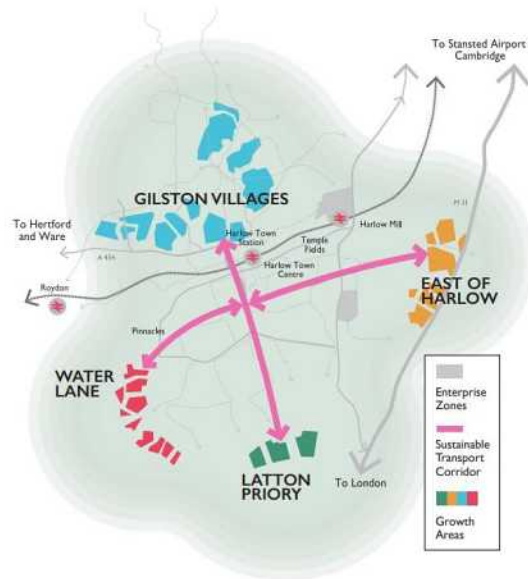


Figure 1: Plan of HGGT development proposals

- 3.5 The HGGT is a crucial part of a wider package of investment that will boost economic growth, help revitalise the town centre, provide up to 20,000 more jobs for local residents, and capitalise on Harlow's location with excellent links into both London and Cambridge and Stansted Airport.
- 3.6 This wider package includes elements such a network of Sustainable Transport Corridors – the first of which will be delivered through this HIG funding - are crucial to supporting sustainable growth and achieving
- 3.7 The Gilston Villages homes are to be built in the district of East Hertfordshire but are very close to the boundary with Essex and the town of Harlow in particular.
- 3.8 The HGGT vision focuses on making the Garden Town a great place for new and existing residents to live and work, centred on the economic opportunities and leisure facilities of the town of Harlow, regardless of the administrative boundaries between local government. In order to deliver this vision, ECC is working closely with the four other local authorities in the area (East Herts DC, Epping Forest DC, Harlow DC and Hertfordshire CC) as part of the HGGT partnership. The HGGT is a crucial part of a wider package of investment that will boost economic growth, help revitalise the town centre, provide up to 20,000 more jobs for local residents, and capitalise on Harlow's location with excellent links into both London and Cambridge and Stansted Airport.
- 3.9 The network of Sustainable Transport Corridors – the first of which will be delivered through this HIG funding - are crucial to supporting sustainable growth and achieving the infrastructure is required to mitigate the impacts of the development on the existing town of Harlow and also help deliver the exciting ambition of high levels of sustainable transport use by current and future residents.

- 3.10 HCC's bid (as the lead authority) to the HIG ultimately resulted in an award of £171.18m to be spent by March 2025 for crucial elements of the transport infrastructure identified as necessary for growth in the East Hertfordshire Infrastructure Development Plan (IDP). This includes the links that will connect the Gilston Villages development to Harlow (over the River Stort and the railway line) and help unlock the homes that are planned within the development.
- 3.11 The Gilston Villages development is being taken forward by two developers – Places for People (PfP) (Villages 1 to 6) and City and Provisional Properties (CPP) (Village 7). Planning applications have been submitted by both developers for housing development and are both currently under consideration by East Herts DC as the local planning authority, with ECC having submitted a response as a statutory consultee. Separate planning applications have been submitted by PfP for two river crossings to East Hertfordshire and Harlow District Councils as specified below. It is understood that determination of the applications is likely to be in June 2021.

Sustainable transport vision

- 3.12 HGGT is based on a presumption of sustainable development. The Gilston Villages developers(s) have committed to very high (60%) share of journeys from the development using 'sustainable means'. This shift will significantly help improve people's health, support good air quality, minimise carbon emissions and tackle congestion in and around Harlow and the wider strategic road network. Playing our part in delivering this shift also forms part of ECC's wider commitments to increase sustainable travel and tackle climate change, including in our response to the Essex Climate Action Commission. This approach is endorsed by the emerging HGGT Transport Strategy as well as the wider transport policy context and is essential to help mitigate the overall transport impacts of the development on Harlow and the wider strategic road network.
- 3.13 To contribute towards achieving this, significant investment is required by developers of HGGT to provide sustainable travel corridors (STCs) across Harlow providing priority routes for bus, cycle, and walking. The HIG is intended to be used to both directly fund the delivery of the first phase of the STCs from the Gilston Villages to Harlow town centre and to provide for planning authorities to secure a recovery mechanism for the funding of future phases of the STCs. In other words, the HIG money funds the first infrastructure works, with the cost intended to be reimbursed by the developers of the land whose development is facilitated by the works by means of planning contributions. The money 'recovered' can be used to fund a further phase of investment. Without the HIG money there would be no forward funding of infrastructure meaning that there would be a delay to the housing delivery and hence no basis of recovery.
- 3.14 While the principle of this 'recovery' of the HIG funding does form part of the HIG contractual arrangements, the mechanism for recovery is the section 106 requirement that will form part of the consideration of the planning application by East Herts DC. Detailed discussions on the s.106 contributions have been

conducted in parallel to the HIG discussions, but they will not be concluded until the determination of the application in June.

- 3.15 While ECC is fully committed to the future development of the STCs in order to realise our collective ambition for high levels of sustainable transport, there is no obligation on ECC to fund or deliver these projects as part of the decision to enter into the Back-to-Back agreement with HCC, which relates to the HIG projects only. A further report will be taken to the Leader on the s106 discussions ahead of the determination by East Herts DC.

Contractual arrangements

- 3.16 HCC have been awarded the funding and will be the sole signatory to the grant agreement (GDA) with Homes England. However, HCC is not proposing to directly commission or deliver any infrastructure itself. Instead, HCC is seeking to passport funding to PfP and ECC to enable them to commission and deliver the work themselves. This means that, compared to similar projects in Essex, there is a transfer of risk from HCC to ECC. Homes England are seeking to enter into the GDA by the end of March 2021 and HCC have made clear that to further mitigate their risks they will not sign the GDA unless they have signed 'back to back' agreements in place with PfP and ECC.
- 3.17 It is proposed that there would be two separate agreements; one between HCC and ECC for the delivery of £42.1m of works in Essex and the second between HCC and PfP relating to the delivery of the remaining items. The aim of HCC is to put ECC and PfP in as close as possible a position to the position that each would have been in if they had signed the GDA directly with HE.
- 3.18 HCC will retain the direct contractual relationship with HE and will need to make sure that this relationship is well-managed so as to ensure that ECC can keep accessing the funding. The back to back agreement passes HCC's obligations to ECC with respect to the works that ECC are responsible for delivering and to PfP for the works they are delivering. Some of the obligations relate to reporting and HCC has to collate reports and submit to Homes England. HCC will also take 'step in' rights so that if the infrastructure is not delivered or if there is an event of default then it can take the place of ECC or PfP to ensure that the infrastructure is delivered, the HIG funding can be spent and the housing can still come forward.
- 3.19 It is proposed that the responsibility for delivering infrastructure/receiving payment would be split between ECC and PfP as follows:
- a) PfP are allocated £129m for the delivery of :
 - An expanded Central (River) Stort Crossing (CSC) allowing for sustainable transport links directly from the development toward Harlow. In effect this creates a new bridge adjacent to the existing river bridge therefore allowing bus and cycle priority on a continuous basis from the Gilston Villages into the STC's.
 - A road known as the Eastern Stort Crossing (ESC) including a new replacement River Way Bridge at its southern end, allowing for

development traffic to avoid Harlow centre, therefore reducing traffic impacts on Harlow, and supporting sustainable movement within the town itself and therefore complementing the CSC by reducing the overall demand on it

- Further detail is provided on the PfP elements of delivery below as there is a crucial interplay with the timing constraints around the HIG
- b) ECC are allocated £42.1m for the delivery of:
- A redesigned junction at Burnt Mill (to the south of the CSC), prioritising sustainable transport modes but also maintaining effective movement for essential traffic that needs to access employment areas in Harlow
 - A Sustainable Travel Corridor (STC) from Burnt Mill into Harlow town centre
 - A new junction at Cambridge Road, to the east of Harlow to connect into the ESC and as part of that work to allow for the timely reconstruction of River Way Bridge.

- 3.20 It should be noted that ECC has also invested £1.227m to the end of March 2021, at risk, to develop designs for HIG related works. Repayment of these project development costs would be sought once the back to back agreement has been entered into and the GDA signed between HCC and HE.
- 3.21 The HIG reflects government policy to bring forward housing delivery, and therefore there are also housing completion obligations within the GDA between HCC and HE. These do not fall upon ECC as it is not a responsible planning authority for housing matters and instead fall upon PfP.
- 3.22 In this context there ECC and PfP will have separate contractual arrangements with HCC related to the HIG. ECC's obligation is only to deliver its own scope of works ('the Project') as set out in 3.19 (b).

'Recovery' of HIG

- 3.23 The HIG is intended to bring forward infrastructure which would have otherwise been provided by developers, over time, to mitigate the impacts of their development(s). Since this infrastructure will now be provided by the taxpayer in advance there is a potential subsidy problem. To avoid this, developers are expected to pay money under planning obligations which effectively refund the HIG to the taxpayer over time. The money paid is expected to be 'recycled' and made available to for further infrastructure improvements. It is proposed that the money to be recycled is paid into a 'revolving infrastructure fund' (RIF).
- 3.24 The HIG is central to the transport strategy in the HGGT area. As an illustration comparing the RIF in a non-HIG versus a HIG scenario the fund is £27.6m vs £198.6m (i.e. the RIF is £171m lower without HIG). The Gilston Villages development, as the largest beneficiary of the HIG, is expected to be the largest single contributor to the RIF and S106 negotiations have been ongoing to agree the scale of contribution required under the planning condition.
- 3.25 The grant agreement to be signed between HCC and Homes England includes the principles for the drafting of a Recovery Strategy which will set out the

anticipated approach. The s106 secured via the planning process is the basis of recovery. Although ultimately the recovery levels could be impacted by development viability in the future and there remains the potential for under recovery of HIG, this risk is recognised by Homes England and the GDA includes provisions to 'maximise' recovery along with regular reporting on progress.

- 3.26 ECC as a partner in HGGT and as the local highway authority for Harlow, has played an ongoing role in the negotiations as part of a strong and collaborative partnership with the other local authority members of HGGT. While ECC is not the planning authority and has no powers to determine S106 contributions, the HGGT partnership is enabling us to secure positive outcomes for Essex from the s106 negotiations, including maximising recovery of HIG funding into the RIF to support future infrastructure delivery.
- 3.27 It is proposed that the decision-making process for the partners to spend the money recovered into the RIF will be set out in a memorandum of understanding (MOU) which is being drafted between the partners. This MOU will set out the basis on which partners will collaborate to establish and operate the RIF, though it is not anticipated to create new legal or financial obligations for ECC. Other developments around the HGGT will also be expected to contribute to the RIF where they can be assessed to benefit from the HIG infrastructure provided in terms of mitigating impact of their development-including contribution to the remaining costs of the ESC. These contributions will in practice be used to further invest in the sustainable travel corridors, working toward a comprehensive network across the area.
- 3.28 The draft MOU acknowledges itself that it will require development over time, to reflect both changing circumstances and the further detail the parties will need to agree in due course in respect of operation and governance of the RIF. Any such development will be subject to agreement of all the Councils. The MOU is not finalised and a further report on its final form and content will be brought to the Cabinet Member for Economic Development for agreement.

The ECC Projects to be funded from HIG

- 3.29 The Project includes the delivery of three key infrastructure elements required to ensure the successful delivery of sustainable housing growth in the Gilston Villages and supports ECC's sustainable transport objectives as set out in local transport policy as well as the emerging draft HGGT Transport Strategy which sets out the vision for transport in Harlow. It is of note that the Gilston Villages development aspires for a 60% trip share for sustainable modes and that across Harlow, HGGT seeks to achieve 50% of trips via sustainable modes for the existing community. These ambitious targets require high quality sustainable transport infrastructure and behaviour change initiatives.
- 3.30 The Burnt Mill Junction, to the south of the Central Stort Crossing, is a key junction in Harlow providing connection to the A414 strategic road on the Major Road Network, as well access to important employment areas to the west of

Harlow and Harlow town centre to the south. It also provides access to Harlow Town railway station with connections to London, Stansted, and Cambridge.

- 3.31 HIG funding will be used to upgrade the junction, better provide for sustainable transport movements, and improve the public realm. The emerging design has been developed with involvement from HGGT partners, stakeholders and ECC Members and seeks to balance both the strategic importance of the junction with sustainable transport objectives.
- 3.32 The STCs are fundamental to Harlow's transport strategy. These high-quality corridors will provide a network of bus priority, segregated cycling and walking routes linking the major employment, housing, retail, education, and public health areas/facilities across the town. They will provide an improved public realm and help to deliver frequent and reliable public transport services. The STC do require some third-party land, the majority of which currently belongs to Harlow District Council.
- 3.33 ECC will receive funding to deliver the STC running from central Harlow north to the Gilston Villages. This runs from Burnt Mill junction into Harlow town centre creating an interchange with Harlow bus station and also providing the town centre sections of STC .
- 3.34 Cambridge Road (A1184) lies to the east of the Temple Fields industrial area but does not have any direct connection to it. The Temple Fields (and Mead Park) industrial areas are served by River Way Bridge which is to be replaced as part of the proposed ESC. An alternative access is required to Temple Fields whilst River Way Bridge is being replaced. Cambridge Road junction is a scheme to allow for access to Temple Fields from the east This scheme will provide a new junction with links for cyclists and pedestrians, opportunities for new public transport routes, whilst improving overall accessibility to the Temple Fields industrial estate and support the development of the Enterprise Zone, as well as resilience. Cambridge Road Junction requires third party land – the land operator and current operator of the site in question would benefit from this new access.

Risks to ECC

- 3.35 In the back to back agreement with HCC, ECC only takes on the risks around the delivery of infrastructure in its own Projects. The GDA is a broadly generic document used in HIF/HIG schemes across the country and ECC (and PfP) have argued at length that it does not fully reflect the complexity of the Gilston Villages project, which schemes deliverable by different promoters principally for the benefit development in a different county. After extensive discussions with HE, the GDA has been amended to address our concerns and reduce the risk to ECC. However, several residual risks remain. These can largely be controlled or at least mitigated through our usual robust approach to management of large projects, as the HIG projects are well within ECC's experience and competency to manage, with well-developed designs and

programmes. Nonetheless, some risks remain, the most significant of which are:

- (a) ECC is required to deliver the Project in accordance with the delivery plan set out in the back to back agreement. If there is significant slippage then Homes England can withhold further funding. All funding is claimed in arrears, exposing ECC to a risk that slippage in the delivery of the ECC works will lead to funding being withdrawn. While ECC proposed and is content with the delivery plan, the timescales are challenging. In addition, if ECC fails to deliver a milestone then HCC could be required to 'step in' and seek to deliver the project instead of ECC although they would need our consent as highway authority. If step in occurred then any costs incurred by HCC would have to be paid by ECC if they could not be funded by the grant. There is also the possibility that Homes England could claim damages for any loss suffered as a result of ECC defaulting.
- (b) ECC must deliver the Project to the available budget – no additional funding is available, meaning that any overspend will need to be found from ECC's own resources.
- (c) ECC must comply with several conditions before it draws down each tranche of funding (for example ensuring that all claims are evidenced and signed off by either the S151 officer or a formal delegate). These are considered achievable in terms of compliance, particularly given that ECC is also claiming funding in a similar manner for other HIF schemes.
- (d) HCC as the Grant Recipient will need to manage effective and timely delivery of all HIG projects. ECC will feed into this process and ECC will convene its own project board to deliver its own Project. However ultimately the authority around programme level matters such as the resolution of any disputes with Homes England would sit with HCC as the Grant Recipient. ECC would expect that HCC will undertake its role in a reasonable and balanced manner as HCC has no interest in undermining the delivery of the projects.
- (e) If ECC commits a 'fundamental default' it may be subject to clawback of all funding that has been provided for its project. This is low risk because it would only occur if we brought Homes England into disrepute or there was fraud or corruption. ECC has system in place to try to prevent these things, but we need to acknowledge that they cannot be entirely prevented by systems.
- (f) The recovery and recycling strategy is still to be agreed. There is a risk that, with the exception of historic and preliminary costs, ECC will not be able to make any other claim for funding until this has been agreed and approved by Homes England and HCC.

HIG Timescales and interplay with planning process

- 3.36 The HGGT programme, the HIG and the complexities around the planning process involved for a large development such as the Gilston Villages present a challenging overall landscape where it has been necessary for ECC and other HGGT partners to demonstrate a flexible and responsive approach.
- 3.36 It has become necessary to re-configure the HIG programme to ensure deliverability and reduce risk to the PfP projects. This is revised approach to that set out in the original bid by HCC to HE but it has been agreed by HE given the challenges of the HIG delivery programme.
- 3.37 The core principle of the HIG funded projects as set out in 3.6 (a) remain. However it has become clear that the ESC is not - in its entirety - deliverable by 2025. Therefore a revised approach is proposed as follows
- A proportion of the ESC (£39.9m) funded by HIG is agreed by all partners as not deliverable by March 2025
 - This amount of HIG funding is reallocated to projects inside the Gilston Villages development boundary which can be delivered by 2025 which otherwise would have been entirely funded by PfP to bring forward its development
 - PfP is then contractually obliged to complete that proportion of the ESC no later than 2027 via its own funding (i.e. unconstrained by the 2025 HIG timescale, but they will be required to deliver the ESC by no later than [a date to be determined as part of the planning process])
- 3.38 The approach outlined would secure the HIG infrastructure by 2027 and be underwritten by the GDA between HCC-PfP and Homes England. It does mean that the ESC will be beyond the March 2025 HIG timescale.
- 3.39 This is a pragmatic approach under the circumstances which significantly de-risks the PfP projects whilst still securing the HIG and delivering on the infrastructure early.

Risks to ECC around PfP Projects

- 3.40 Funding allocated for ECC projects is contractually separate from the PfP projects. Nonetheless, the Cabinet should be aware of the 'strategic risks' around PfP delivery which could impact on ECC or on infrastructure in Essex more generally:
- If PfP is unable to complete its works it risks triggering a default from HE. Depending on the circumstances around the default this could result in a delay to infrastructure completion in Harlow. The planning conditions within any approval would need to ensure that in a backstop position PfP (or its successor) could not build out housing unless relevant infrastructure related triggers are met.
 - If ECC were not able to deliver the Cambridge Road junction to programme, it may be held liable for delay to the PfP completion of the ESC
 - PfP has in any case a large and complex infrastructure programme to deliver including the CSC and ESC with 2 railway crossings, crossing water courses and third party land risks. There remains a risk that even

with an extended programme to 2027 there will be delays to delivery of all required infrastructure which again will need to be mitigated against through the planning condition to ensure that unacceptable impact is not created on the ECC highway network.

- The reconfiguration of the HIG puts a clear requirement on PfP to deliver those projects within its development boundary by March 2025. Should they fail to do so PfP may lose HIG funding. This does not directly impact ECC but this may reduce the capacity of PfP to deliver the infrastructure required from 2025-2027. This risk will need to be mitigated through the planning and contractual arrangements put in place.

3.41 There is a general risk around the planning process. PfP are seeking planning approval for its housing development in Summer 2021. If this is not achieved it could result in further delay to the infrastructure programme and make even a 'reconfigured HIG' undeliverable although conversely delays to housing may also reduce the need for infrastructure to be delivered at the same pace and scale..

3.42 ECC as the statutory Highway Authority and is expected to adopt the new infrastructure and will need to approve the detail design. Both the CSC and ESC contain a number of structures, require construction over a flood plain, permissions required from third parties – including Network Rail, the Environment Agency, the Canal and Rivers Trust, Hertfordshire County Council. To meet the envisaged timescale PfP will need to provide sufficient resources and act positively to allow ECC approve the designs in a timely manner, without which ECC will not be able to approve the designs.

4. Options

Option 1 – Enter into the back to back agreement

4.1 Entering into the agreement would unlock the HIG funding that is available and enable ECC to recover cost for preliminary costs it has incurred to date. Option 1 has some risk to ECC directly as outlined above.

Option 2 – Do not enter into the agreement

4.2 This would in effect mean either that

- the HIG does not proceed for the Gilston Villages; or
- the HIG proceeds in a different form without the participation of ECC.

4.3 In either case option 2 would have the same practical impact which is loss of HIG funding for infrastructure in Essex. It is likely that the housing development would go ahead regardless, but potentially over a longer period. This would result in the lack of delivery of the sustainable transport corridor – a key part of the growth strategy for the HGGT area. The HIG provides a total of £171.180m of funding for infrastructure in Harlow and a further RIF to fund future STCs (subject to separate decisions). The amount of RIF will be subject to individual planning agreements with specific developers but is estimated to ultimately arrive at £171m depending on viability and the outcome of negotiations.

- 4.4 In a “non-HIG” scenario there would be several implications:
- Infrastructure would not be delivered in advance of housing triggers related to mitigation of impact. This would mean that behaviour change benefits to promote sustainable transport would be lost.
 - In practice there would be more impact on the local transport network than in a ‘non HIG’ scenario because even at pre-trigger levels of housing delivery there will some extra traffic generated by the Gilston Villages development
 - The absolute contribution of funds for infrastructure is likely to be significantly lower because there will be no RIF. This will mean in practice that there will be less funding for Sustainable transport corridors over time, undermining the core HGGT transport strategy and ECC sustainable transport objectives [can we quote the figures here in terms of £171m vs £27m in s.106?]
 - There may be impact on housing delivery and possibly the wider Local Plan framework in HGGT. The Gilston Villages garden town objectives may be more challenging to achieve and/or housing may be delayed. More generally this could have negative consequences for the viability of Local Plans in the HGGT districts if housing supply is not delivered. This could result in less strategic and managed development coming forward.
 - Almost £1.3m of historic expenditure and current spending incurred by ECC will not be eligible to be claimed back as part of the HIG so to be treated as abortive costs and create an unfunded revenue pressure.
 - Loss of HIG is likely to have significant reputational impact on ECC (and HCC) and negative consequences for ECC’s relationships with other local authorities in the area

5. Financial implications

- 5.1 The capital programme entry for Harlow STC is £42.137m which is funded by HIG, however prior to contracting this is being forward funded through ECC resources. The table below sets out the existing capital programme entry and funding.

| | Prior Year | 2020/21 | 2021/22 | 2022/23 | 2023/24 | 2024/25 | Total |
|---------------------|------------|---------|--------------|--------------|--------------|--------------|--------|
| | Actuals | Budget | Aspirational | Aspirational | Aspirational | Aspirational | |
| | £000 | £000 | £000 | £000 | £000 | £000 | £000 |
| Capital Programme | | | | | | | |
| Harlow STC | 482 | 600 | 2,500 | 8,000 | 23,000 | 7,555 | 42,137 |
| Total Project | 482 | 600 | 2,500 | 8,000 | 23,000 | 7,555 | 42,137 |
| Funded by | | | | | | | |
| ECC forward funding | 482 | (482) | - | - | - | - | - |
| HIG | | 1,082 | 2,500 | 8,000 | 23,000 | 7,555 | 42,137 |
| Total Funding | 482 | 600 | 2,500 | 8,000 | 23,000 | 7,555 | 42,137 |

- 5.2 The HIG capital funding of £42.1m will now fund Harlow STC Burnt Mill to Town Centre of £38.130m and Cambridge Road Junction of £3.970m. This is expected to be funded by £42.1m of HIG and spend in early years has been forward funded through ECC resources until HCC contract with HE late in March 2021.

- 5.3 The ECC aspect of the original bid was intended to be £49m which would allow ECC to design and construct a series of sustainable transport corridors. The £171.180m bid submitted to HE did not include an inflationary uplift totalling £30m of which £7m related to Harlow STC, and as a result the budget was reduced to £42.1m creating a funding gap. In addition, RWB, the single point of entry from Gilston to the Enterprise Zone was found to be in a poor state of repair and would require replacement should it be required to carry additional development traffic, which was not factored into the bid.
- 5.4 HCC, PfP and ECC in consultation with HE agreed to changes post bid stage to ensure both Cambridge Road Junction and RWB were both funded as these were seen a key infrastructure to future developments. Cambridge Road is to be completed within the ECC £42.1m portion of the HIG, to enable this to happen the sustainable transport corridors have been descoped accordingly. Further sustainable transport corridors will be required in the future and these are identified in the draft RIF MoU as subsequent projects to be funded by s106.
- 5.5 Therefore, the following adjustments are required to the capital programme.

| | Prior Year Actuals £000 | 2020/21 Budget £000 | 2021/22 Aspirational Budget £000 | 2022/23 Aspirational Budget £000 | 2023/24 Aspirational Budget £000 | 2024/25 Aspirational Budget £000 | Total £000 |
|--------------------------------------|-------------------------------|---------------------------|---|---|---|---|---------------|
| Capital Programme | | | | | | | |
| Harlow STC | 482 | 600 | 2,500 | 8,000 | 23,000 | 7,555 | 42,137 |
| Cambridge Rd Junction | - | | | | | | |
| Total | 482 | 600 | 2,500 | 8,000 | 23,000 | 7,555 | 42,137 |
| Current Forecast | | | | | | | |
| Harlow STC | 482 | 590 | 1,720 | 875 | 14,500 | 19,963 | 38,130 |
| Cambridge Rd Junction | | 155 | 515 | 3,300 | - | - | 3,970 |
| Total | 482 | 745 | 2,235 | 4,175 | 14,500 | 19,963 | 42,100 |
| Capital Programme Adjustments | | | | | | | |
| Harlow STC | - | (10) | (780) | (7,125) | (8,500) | 12,408 | (4,007) |
| Cambridge Rd Junction | - | 155 | 515 | 3,300 | - | - | 3,970 |
| Total | - | 145 | (265) | (3,825) | (8,500) | 12,408 | (37) |

- 5.6 ECC has and continues to spend at risk ahead of HCC contracting with HE and signing the back to back agreement with HCC. ECC is forecast to have spent £1.072m on Harlow STC and £155,000 through Advanced Scheme Design on Cambridge Road by 31 March 2021. Once the back to back agreement is in place with HCC, ECC will claim for all expenditure incurred. If any of the parties involved are unable to sign the contracts, ECC will be unable to claim for expenditure incurred to date which will result in a funding gap and a risk of abortive cost should the scheme not continue, resulting in an unfunded revenue pressure.
- 5.7 There is a risk that s106 contributions are not sufficient to cover future infrastructure and wider ECC service requirements especially given some of those s106 contributions are being earmarked to fund infrastructure required now. There is also the potential that residents of Harlow Gilston Garden Community may drive increased usage of unrestricted ECC services in Harlow due to its proximity to the border for Hertfordshire. For example, it is probable residents will make use of our Recycling Centres for Household Waste and libraries, whilst concessionary fares could increase for the return leg of journeys

from Harlow to Hertfordshire. The services mentioned may experience increased revenue costs which are not possible to quantify at this time. Arrangements have been agreed with HCC over which services they will provide for the residents of the Gilston development and which those residents will be able and likely to use in Harlow. As a result, s.106 contributions are being sought for libraries and the waste and recycling centre in Harlow, which will be passported to ECC (these contributions will be determined as part of the planning process in June).

- 5.8 There are the following key financial risks to ECC in entering into the back to back agreement with HCC:
- 5.9 ECC will through the back to back agreement be responsible for any cost overruns on the ECC projects, therefore ECC will be the funder of last resort and expected to fund any current and future unknown capital cost escalation that may materialise associated with the construction of both the North-Centre STC and Cambridge Road Junction.
- 5.10 Homes England stipulates that the HIG funding is required to be spent by March 2025. The current spend profile assumes that all HIG monies can be spent by the required date. However, there is a risk that any programme delays could result in this target date being missed and in turn any HIG funding unspent will be unavailable for ECC to draw down, resulting in a funding gap to be funded by ECC as funder of last resort. The profile of spend for Harlow STC is largely in the later years of the programme, with greater than 50% falling in 2024/25 as such there is a considerable risk that this project slips and ECC is unable to drawdown on the HIG.
- 5.11 The contract requires the total value of historic expenditure that has been incurred before the date the agreement is signed to be stipulated as well as this value being approved by Homes England (in its absolute discretion). ECC has forward funded £482,000 of expenditure incurred in 2019/20 and a further £745,000 is forecasted to 31 March 2021. The project team are currently preparing the necessary evidence and anticipate receiving all money expended (excluding legal fees) to be refunded in the first drawdown. There is a risk that Homes England do not authorise this historic expenditure resulting in a funding gap.
- 5.12 All the financial projections and assumptions supporting the project at this current moment in time do not take account of any potential Macro economic shock post Covid, it is not known what potential impact this could have on interest rates, inflation, material prices etc. This is a risk to ECC in that it may result in capital cost escalation and increased revenue cost pressures. This risk may also impact Public Works Loan Board interest rates and therefore any revenue cost of borrowing associated with funding any current or future capital cost escalation could increase should prudential borrowing be approved.
- 5.13 Despite the scope reductions and reduced funding envelope compared to our bid submission, a contingency of 20% is committed to being maintained by our professional advisers, Jacobs. Jacobs have confirmed that the estimated costs

are based on the preliminary design stage of the revised scope of the project that has been completed to date and is subject to further detailed design, ground investigations and surveys, complying with the requirements of the Essex Major Contracts Manual. As with all schemes at this stage of development, these estimates will be refined and develop as progress is made through the design process but they are not yet sufficient for construction purposes and tender estimates would accompany formal cabinet papers prior to award of construction. Any cost escalation that arises through this future activity will be addressed as references elsewhere in this paper but at the present time in conversations with senior executives of ECC, Jacobs executives confirm that it is their belief they can contain the costs of the revised project within the budget envelope of £42.1m on the basis there is sufficient flexibility in the scope of the STC and Homes England confirmation that funding is granted for the programme not individual projects and can be allocated according to changing needs.

- 5.14 There are land acquisition costs for Cambridge Road Junction which are allowed for in the budget. A land strategy is in place with negotiations to be ran in parallel with Compulsory Purchase Order (CPO). If a CPO is required there is risk of cost escalation however the risk of programme delays is minimal as there is allowance for this process in the project. Nonetheless, if significant delays did occur, this could result in ECC being unable to draw down all the HIG funds by March 2025. The conditions of funding do allow for 're-allocation' of funds between the ECC elements of the project, and this would be called upon if necessary, to manage land acquisition risks subject to further descoping in the project.
- 5.15 The GDA that HCC will sign with HE asks for the total preliminary costs to be stipulated, the current total relevant to ECC is £3.0m. There is a risk that if the amount stipulated in the contract is less than actual preliminary costs incurred that ECC may be liable to fund additional costs.
- 5.16 HCC are the authority contracting with HE, which means all claims will be required to go through HCC. The project team will need to collect evidence for each claim and get s151 approval before it is sent to HCC who will then conduct their own review prior to submission to HE (the GDA includes that separate ECC and PFP claims may be made by HCC to HE to speed up the process). Once this has been reviewed and processed by HE, the payment will be made to HCC, who will in turn make payment to ECC. There is a risk that this lengthy process could result in delays to the claims made in arrears and subsequent payments, HCC is drafting a programme governance framework which includes financial and project management processes.
- 5.17 The developer Pfp will be constructing a replacement of the River Way Bridge (RWB) by March 2027 at an ECC estimated capital cost of £15m and Pfp will be responsible for any cost escalation associated with this project. It is known that RWB has significant maintenance issues and if it were to be replaced by ECC in the future, potentially there could be an estimated capital obligation of c.£15m. A decision to enter into agreement with HCC would relieve ECC of a potential future capital obligation of c.£15m. The RWB currently provides a

single point of access to the Enterprise Zone, as such ECC will be delivering Cambridge Road junction at an estimated cost of £4m funded via HIG in advance of works at RWB. Following the completion of the bridge, Cambridge Road Junction provides secondary access to the Harlow Enterprise Zone.

6. Legal implications

- 6.1 The risks associated with the drawdown of funding under the back to back agreement are set out in detail in section 3 of the report.
- 6.2 ECC will need to follow appropriate procurement procedures when appointing the professional team and contractors. There are specific requirements within the GDA (via back to back agreement) that must be covered in contracts with contractors to comply with the terms of the GDA via the back to back agreement.
- 6.3 Separate reports to cover the formal governance for specific project matters, land, procurement and Compulsory Purchase Orders (if required) will need to be prepared at the relevant time and in sufficient time to meet the milestones set out in the back to back agreement.
- 6.4 HCC have obtained a legal opinion that confirmed that the provision of this funding did not amount to state aid. here is an ongoing requirement that HCC obtain regular state aid opinion throughout the life of the contract at intervals of every 12 months. It is of note that State Aid regulations are changing after Brexit and that this could provide additional risk to any legal opinion on this matter provided to date.
- 6.5 Any fundamental default of the GDA via the back to back agreement will enable Homes England to terminate the GDA in its entirety, suspend or alter the timing of the payment of any HIG funding, withhold and cancel any further payment of HIG funding due to ECC under the Contract, and require the Grant Recipient to immediately repay the HIG Funding and all other amounts due under the GDA together with interest.
- 6.6 HIG funding may also be reduced in the event that there are variations arising out of the operation of the delivery plan and/or expenditure forecast, changes to the infrastructure works agreed between the parties or increases in income or other sources of financial assistance becoming available to ECC or a Contractor in relation to the delivery of the infrastructure works.
- 6.7 ECC will need to ensure that it has adequate sub-contracts and appointments in place to protect itself, in so far as possible, and to assist it in complying with the terms of the GDA via the back to back agreement.

7. Equality and Diversity implications

- 7.1 The Public-Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The HGGT development will be subject to further equality impact assessments by HGGT and partners as the relevant local planning authorities.

8. List of appendices

8.1 Equality impact assessment.

9. List of Background papers

9.1 MHCLG Guidance on applying for Housing Infrastructure Fund weblink: <https://www.gov.uk/government/publications/housing-infrastructure-fund>