



**CABINET – 25 NOVEMBER 2022**

**MANAGING THE RISK RELATING TO THE DELIVERY OF  
INFRASTRUCTURE TO SUPPORT GROWTH**

**REPORT OF THE CHIEF EXECUTIVE AND DIRECTOR OF  
CORPORATE RESOURCES**

**PART A**

**Purpose of the Report**

1. The purpose of this report is to set out the financial implications for the Council of delivering sustainable and inclusive growth and the approach and principles that it is proposed the Council will adopt to address and manage these risks.
2. The report highlights the financial challenges associated with delivering the existing Capital Programme, including the need to minimise risks associated with managing the cumulative impacts of growth and the need to ensure all Council forward funding is recovered.

**Recommendations**

3. It is recommended that:
  - a) The financial implications and associated risks to the Council of delivering growth in the current financial climate be noted;
  - b) The Council adopts the approach and principles outlined in paragraphs 51 to 63 of this report to manage the financial risks associated with capital infrastructure projects, including to encourage district councils to support the Council's engagement in the local planning process;
  - c) The approach be communicated to district councils (as local planning authorities), developers and landowners;
  - d) The Chief Executive write to district councils to make clear the Council's expectations and requirements with regard to the revised approach, specifically relating to forward-funding of infrastructure;
  - e) The Council continues to engage with the Government to address the imbalance on relative funding levels between local authorities and in the increasing cost gap within the existing capital infrastructure programme.

### **Reasons for Recommendations**

4. The key factor defining the approach outlined in this report is the Council's challenging and worsening financial outlook. This was reported in detail to the Cabinet in September 2022 where, due to pressures from inflation, increasing service demands and expected pay/national living wage increases, a gap of £29m is anticipated in the Council's revenue budget in 2023/24 rising to £135m by 2026/27. These gaps assume the currently programmed savings of £13m and £32m are delivered. Furthermore, the additional inflation pressures are expected to add around £45m to the cost of delivering the capital programme. Unless compensating reductions can be made this will add to the existing capital funding shortfall of £134m that was reported in September 2022.
5. Historically this Council has been in a position to provide modest levels of funding to support growth and to make available forward funding for infrastructure. The current financial challenges faced by the Council and the increasing costs of construction (through inflation), labour and material costs mean that, save for the specific highway projects outlined in the Appendix to this report, it is no longer in a position to do so.
6. The Council is committed to supporting the delivery of sustainable, inclusive and well-planned growth that benefits the residents and businesses of Leicestershire, but in the challenging financial circumstances the Council needs to set out its position in supporting this ambition.
7. It is also vital to ensure that Council investment in Capital Programme infrastructure projects is recovered to support future activity and that developer contributions keep pace with the cost of delivery.
8. The Government requires district councils to have an up-to-date Local Plan by the end of December 2023, as per its 'Planning for the Future' policy paper, published in March 2020. This, coupled with the sustained demand by Government to build homes at a rate of 300,000 a year across England, places significant increased pressure on councils and their finances to meet this challenge.
9. The recommendations will enable the Council to more effectively manage the resource pressures associated with the congested timetable of district council Local Plan development and review.

### **Summary of The County Council's New Approach**

10. The financial circumstances of the County Council (set out in the latest Medium Term Financial Strategy, September 2022) and the wider condition of the economy mean that the County Council's previous approach to delivering infrastructure and growth is no longer sustainable.
11. The County Council remains committed to supporting the delivery of inclusive and well-planned growth, but in order to continue to do so it will be necessary for:

- a. District councils to support the County Council's requirements for the Local Plan process, including early engagement, identifying the need for forward-funding, sharing evidence bases, disclosing key policies and viability assessments
- b. District councils to integrate the County Council's requirements relating to delivery of statutory infrastructure in their Local Plans
- c. Developers to refresh their project costs and share these with the County Council at appropriate, regular frequencies
- d. The entire cost of all statutory infrastructure projects to be recovered from developers (and other appropriate sources) and sufficient contributions secured before the County Council funds scheme delivery.

12. In addition, the County Council recognises that prioritisation of education contributions and delivery of school places may at times require a delay in delivering highways infrastructure and in some cases, lead to a permanent deterioration in conditions. However, this will not apply to infrastructure and improvements required to address severe safety impacts.

### **Timetable for Decisions (including Scrutiny)**

- 13. The approval of the recommendations made within this paper is necessary to guide future Council decision-making in relation to Capital Programme schemes.
- 14. In addition, the recommendations will enable the Council to respond effectively to opportunities outlined in the 'Levelling-up and Regeneration' and 'Planning and Infrastructure' bills.

### **Policy Framework and Previous Decisions**

- 15. The Council approved the 2022/23 to 2025/26 Medium Term Financial Strategy (MTFS) in February 2022. The key aim of the Strategy is to ensure that the Authority has sufficient resources in place to fund key service demands over the period of the Strategy. The Strategy includes the earmarked funds and the allocation of ongoing revenue budget and capital resources for key priorities.
- 16. In September 2022, the Cabinet noted with concern the increasing pressures on the revenue budget and the Capital Programme. The report set out some of the elements required to manage the financial risk to the Council and also highlighted the impact that rising inflation will have on the Council's finances.
- 17. The Council's Environment Strategy outlines the Council's key environmental objectives, including:
  - a) Carbon emissions and climate change
  - b) Biodiversity, habitats and local environment
  - c) Resource use and low/zero carbon energy
  - d) Local economy and travel and transport
- 18. The Council's Strategic Plan provides a framework of outcomes, including:
  - a) Clean and Green

b) Strong Economy, Transport and Infrastructure

19. The Council's Capital Programme aims to support the above strategies and outcomes, with detailed consideration given on a scheme-by-scheme basis.
20. The Council's Environment and Transport Work Programme was approved in March 2022 and highlights a significant commitment to supporting growth, for example through the A511 Major Road Network and the Melton Mowbray Distributor Road North/East and South.

**Resource Implications**

21. The Council has committed significant resources to engaging in and supporting a collaborative approach to strategic planning, which is intended to facilitate the delivery of growth within the county and mitigate the negative impacts of development.
22. The Council's current Capital Programme includes over £200m to fund infrastructure projects that support growth in the county.
23. Delivering infrastructure (highways, schools and some community facilities) has required significant Council forward-funding and in the current financial climate the previous approach is no longer possible.
24. The approach proposed in this paper will strengthen the Council's ability to ensure that land promoters and developers pay their fair share and that the district councils are aware of the County Council's position and can contribute to achieving this objective.

**Circulation under the Local Issues Alert Procedure**

25. This report will be circulated to all Members.

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## **PART B**

### **Background**

#### **Expected Population Growth**

26. The population of Leicestershire is projected to increase by 23% to 861,000 by 2043. This is higher amongst all broad age bands than the East Midlands and England averages. The working age population is projected to increase by 5.3%, whilst the greatest cumulative change is projected to occur in the 65+ age group, accounting for roughly three quarters of growth. This brings the associated impacts of an ageing population and the need for specialist housing to support this, as well as a requirement for more employment and general housing.
27. In 2021, the Council and its partners (Leicester City Council, the seven district councils and the Leicester and Leicestershire Enterprise Partnership (LLEP)), commissioned the Leicester and Leicestershire Housing and Economic Needs Assessment (HENA). The final HENA was published in June 2022, replacing the 2017 Housing and Economic Development Needs Assessment (HEDNA). The HENA provides evidence that across Leicester and Leicestershire, the projected housing need from 2020 to 2036 is 91,400 dwellings and employment land need from 2021 to 2036 is 344 hectares.
28. A Statement of Common Ground (SoCG) relating to Housing and Employment Land Needs (June 2022) has been prepared by the Council, the City Council and the seven district councils. The SoCG is still subject to the governance processes of Hinckley and Bosworth Borough Council and Harborough District Council but has been agreed by the other authorities including the Council who became a signatory to the SoCG in September 2022. The SoCG sets out the City Council's identified unmet housing need of 18,700 homes and 23 hectares of employment land for the period 2020-2036 to be accommodated in the County.
29. Consumer expectation has also grown with homeowners demanding greater levels of infrastructure, including Council infrastructure predominantly relating to roads, schools and adult social care facilities).

#### **Funding, Forward Funding Infrastructure and Growth**

30. The link between infrastructure and growth is well established. The Council is responsible for delivering infrastructure such as roads, schools and certain community facilities which are important not only in creating sustainable communities but also in unlocking further development.
31. However, there is competition for the funding required for infrastructure. Housing developers are also facing increased expectations for affordable housing, biodiversity and other measures arising from new legislation. This is compounded by the increasing material and labour costs involved in delivering infrastructure. All put pressure on scheme viability.

32. Funding for infrastructure comes from a variety of sources, but principally from developer contributions set out in s106 agreements agreed between the developer, the County Council and the local planning authority (district council).
33. Forward funding is where the Council utilises its own capital budget to enable delivery of infrastructure on the basis that the funding will later be repaid by developers, often over several years. In addition, timescales for receiving this money often do not align with when the money is needed. Contributions are only payable where the development is deemed dependent on the infrastructure and any Council requests for contributions must be evidence-backed and made in compliance with the National Planning Policy Framework and s106 of the Town and Country Planning Act 1990. Contributions are also subject to negotiations with landowners and developers, who will have their own commercial interests to protect. If planned developments do not proceed there is a risk that forward funding will not be repaid.
34. The infrastructure required to support increasing population and housing demands is significant. The cost of delivering infrastructure across the county over the next 25 years is very difficult to predict, and as such only a broad range can be estimated. Analysis by the Council's Growth Service in August 2022 identifies that this is expected to be £0.5bn at the very least but could be up to three times this amount. Mostly this relates to schools, adult social care accommodation and investment in roads and transport measures. These figures are significantly higher than previously thought and reflect a clearer definition of infrastructure requirements included in district councils' new and emerging Local Plans, as well as significantly increased construction costs and inflation.
35. These demands come at a time when the Council is facing significant financial, demographic and service demand challenges. The Council's recent updated financial projections, reported to the Cabinet in September, showed that it has a financial challenge of £167m over the next four years, of which savings of £32m have been identified. The remaining gap of £135m is at an unprecedented level and is even more challenging given that savings of £230m have already been delivered since 2010.
36. The Council's Climate Emergency declaration in 2019 also places an increased burden on councils and developers to meet demanding requirements of net zero and biodiversity, both in the design of developments and homes but also energy consumed during the life of the development. This represents further pressure on the viability of Local Plans and all developments, large and small, contained within them.
37. The Council is committed to helping achieve net zero in the county by 2045. The approach adopted by local planning authorities, developers and landowners, as well as the Council's responsibilities in respect of highways and transportation and other services, has to be reflected in how growth is designed and delivered.

## **Education Infrastructure Implications**

38. The Education section of the Capital Programme currently totals £143m over the period of the MTFS up to 2025/26. This is funded from 'Basic Need Grants' from the Department for Education (DfE) and s106 developer contributions.
39. Basic Need Funding is £23.7m for the next two years and is provided for additional mainstream and Special Educational Needs and Disability (SEND) pupil places. It is determined based on the Council's 'School Capacity' calculations returned to the DfE on an annual basis.
40. S106 payments received currently total £54.6m as of July 2022. These payments will have to be spent within the specific period stated in the s106 agreement. All payments are allocated against specific schools for the provision of additional places.
41. Since July 2021 s106 funding has been index linked to the 'All-In Tender Price Index' (TPI), but indexation is not keeping up with current levels of inflation and therefore the funding available does not meet the cost of delivering infrastructure for additional pupils arising from housing delivery and other growth.
42. The delivery of additional pupil places is either commissioned by Children and Family Services with Property Services or with Multi Academy Trusts if they have the capacity to deliver at their school.
43. Inflation (and other pressures) has had a considerable impact on construction costs and the delivery of additional pupil places since the start of this year. On numerous occasions the Council has had to allocate additional funding from either Basic Need or s106 funding to ensure projects can be successfully completed. The schools listed in the table below illustrate the amount of additional funding that has been required to deliver the extra pupil places needed.

<b>School Name</b>	<b>Original MTFS Funding</b>	<b>Actual Cost</b>	<b>Cost Shortfall</b>	<b>Cost Increase %</b>
<b>Rothley Primary School</b>	£4,020,328	£4,501,427	+ £481,099	12%
<b>Normandy Way Primary School</b>	£6,129,067	£8,516,390	+ £2,387,323	39%
<b>Welland Park Primary School</b>	£1,095,000	£1,300,000	+ £205,000	19%

44. Since the start of 2022, a number of developers have paid their developer contributions in advance of the trigger points in the s106 agreement to lessen the impact of indexation on their own finances. Another developer has opted not to deliver a primary school for the Council due to increased construction costs and will now just pay their developer contribution instead.
45. The financial gap between s106 contributions and actual costs has further increased due to lower cost multipliers and pupil yield calculations used at the time planning permission was granted. For example, primary pupil yield has increased from 24 per 100 to 30 per 100 homes delivered and the cost multiplier from £12,099 to £18,356 in recent years. Cost multipliers are based on DfE

benchmarking guidance. As with the examples outlined in paragraph 43 above, the cost shortfall must be made up by the Council.

46. The DfE has not commented on the increasing costs of delivering school places. The issue is being discussed within several forums involving officers across authorities who collectively work on delivering additional pupil places.

### **Previous Commitments – Highways**

47. In its role as Highway Authority the Council regularly supports growth by coordinating and managing necessary highway improvements arising from the cumulative impacts of development. Where no single development could reasonably be required to deliver a scheme, but instead contributions are required from multiple developments, the Council will collect those funds and deliver the scheme.
48. This approach has inherent risks as often costs of the schemes increase between their identification, the completion of s106 agreements that commit the developer to providing proportionate funding and that funding being received. At this stage the risk and responsibility rests with the Council. Once funding is received the Council can begin detailed design and delivery. It is worth noting that the Council will likely have committed initial funding upfront in order to identify the infrastructure requirements and evidence the contributions sought from developers as required by the National Planning Policy Framework and s106 of the Town and Country Planning Act 1990.
49. Where the infrastructure identified is 'major', in the sense that it contributes to growth at a strategic level and there is likely to be a funding gap, the Council has previously agreed to deliver several large capital highways schemes on the basis of forward funding developer contributions. When infrastructure is of this scale a funding gap may have been identified and the Council has submitted funding bids to the Department for Transport (DfT) where the benefits of that investment would be significant for residents and businesses of Leicestershire. Forward funding is often required to meet the requirements of a grant funding bid submission where delivery is required within a certain time window. The Cabinet noted in September the need to review existing capital programme commitments due to significant and increasing financial pressures.
50. Large capital infrastructure schemes often require the Council to collate funding from several external sources, as well as forward-funding a portion of the costs from its own resources. Despite robust financial planning, funding gaps can still appear due to uncontrollable external pressures, which risks the scheme not progressing, wasting Council time, resources and impacting communities. The cost of highways capital infrastructure schemes can also escalate when factoring in cumulative impact assessments.



### **Proposed Approach to Managing Existing Capital Highway Infrastructure Projects**

51. The funding provided by the Council for Highways schemes is provided on the basis of forward funding in accordance with the Council's funding strategies. The Council's medium and longer term financial strategies are only sustainable if this funding is recovered. A list of existing capital infrastructure schemes is provided in the Appendix and recovery of this funding with the support of the local planning authority to achieve this is required.
52. Where the Council seeks contributions from multiple developers in Area Strategies (jointly agreed strategies for specific areas), it will collect the full costs associated with highways, schools and some community infrastructure.
53. The Council will ensure that infrastructure delivery costs are reviewed regularly, and that inflation is applied to any cost estimates from the date that the Area Strategy is developed, not from when the relevant s106 agreement is completed.
54. The justification, costs and methodology for assessing contributions will be updated and added to the Council's website as appropriate.

### **Proposed Approach to Managing Future Capital Infrastructure Projects**

55. In order to address the significant challenge of funding infrastructure to support growth it is proposed that:
  - The presumption is that approved developments will cover the costs of all necessary infrastructure, set out by planning condition.
  - Where this cannot be achieved as a result of cumulative development, the Council will collate contributions.
  - However, the Council will not fund the delivery of schemes until sufficient contributions are secured.
  - Where funding gaps exist, developers and local planning authorities will seek contributions from third parties (including funding organisations, i.e. relevant Government departments).
  - The Council will lead and support as necessary such requests where appropriate, for example funding bids to the DfT. External funding would be required for any match funding or significant bid development costs.
  - It is recognised that if the Council prioritises education contributions and delivery of additional school places due to its statutory duty, it may at times be necessary to delay delivery of highway infrastructure, meaning that the Council could in principle accept a deterioration in conditions before infrastructure is delivered. In addition, in prioritising the delivery of education infrastructure, the Council may accept a permanent deterioration in conditions if it is not financially viable to deliver the

highways mitigation. However this will not apply to infrastructure and improvements required to address severe safety impacts arising from development.

- Where the Council considers that the overall viability of the plan or development will not allow sufficient mitigation of its impacts and prospect of external funding is low, it may object to its adoption.

### **Strategic Planning and Supporting the Development of District Council Local Plans**

56. In respect of the development of Local Plans, district councils will be encouraged to:

- Engage with the County Council at an early stage including sharing evidence bases, disclosing key policies which will pertain to Council infrastructure delivery and specifically the development of infrastructure delivery policies.
- Share appropriate viability assessments for new Local Plans and key developments identified within Local Plans at the earliest opportunity to enable the County Council to plan effectively for infrastructure requirements.
- Share masterplan documentation which provides detailed proposals in respect of the requirements for County Council infrastructure.
- Where practicable align with the County Council's Net Zero commitments.

57. The Council will formally request that district council Local Plans identify the need for forward funding of those schemes listed in the Appendix and the principle of contribution strategies that minimise financial risk and increase overall scheme viability. It will use the requirement of the Local Plan "duty to co-operate" provisions to ensure that its requirements regarding forward funding are properly recorded and where necessary included in any required Statements of Common Ground.

58. The Council will also require in regard to any major development proposals that district councils have in place robust provisions relating to the recovery of infrastructure costs via Supplementary Planning Documents, where appropriate.

59. In the absence of any sufficient Local Plan provision and or Supplementary Planning Documents a report will be presented to the Cabinet setting out the need for County Council infrastructure and the proposed approach to fund that scheme through an effective developer contributions strategy.

### **Managing Financial Risk**

60. In order to better manage the risks arising from cost uncertainty, the Council will request updated costs from contractors and developers and review these at appropriate, regular frequencies.
61. The Council may enter into financial Contribution Strategies (agreements between developers, funders and the Council) where they accurately reflect the funding requirements for Council Infrastructure, both in terms of full funding and also short-term forward funding models.
62. The Council will regularly review its position following the publication of governmental guidance, including any changes to the Levelling-up and Regeneration Bill and the Planning and Infrastructure Bill, and subsequent legislation.
63. The Council will review its commitments as set out in the Capital Programme each year.

### **Equality and Human Rights Implications**

64. There are no equality and human rights implications for the Council arising from the recommendations in this report.

### **Environmental Implications**

65. Accepting additional congestion on Leicestershire's roads has the potential to impact on air quality levels.

### **Partnership Working and Associated Issues**

66. The Council works with a multitude of external public and private sector organisations during the process of delivering capital infrastructure projects. Significant resource and programme management challenges arise in responding to Local Plan processes and recovering the developer contributions that enable Statutory Authority infrastructure delivery. The Council's Growth Service is tasked with delivering a corporate approach to managing the broad range of engagement outlined above and engaging directly with district councils and other stakeholders.

### **Background Papers**

Report to the Cabinet on 23 September 2022 "Medium Term Financial Strategy - Latest Position" and minutes of that meeting - <https://bit.ly/3EbMySG>

**APPENDIX****List of Schemes with County Council Forward Funding Commitments**

- Melton Mowbray Distributor Road North and East
- Melton Mowbray Distributor Road South
- A511 Major Road Network (MRN)
- Hinckley Hub

**List of Schemes with Cumulative Impact Strategies**

- Desford Crossroads
- SELTS (South East Leicestershire Transport Strategy)
- Interim Coalville Transport Strategy (ICTS)
- Market Harborough Transport Strategy
- Kibworth Cumulative Impact Study