

<b>SUBJECT:</b>	<b>WESTERN GROWTH CORRIDOR – TAKING THE DEVELOPMENT FORWARD</b>
<b>DIRECTORATE:</b>	<b>MAJOR DEVELOPMENTS</b>
<b>REPORT AUTHOR:</b>	<b>KATE ELLIS – MAJOR DEVELOPMENT DIRECTOR</b>

## **1. Purpose of Report**

- 1.1 To update Executive on the progress of the Western Growth Corridor (WGC) development from the perspective of its landownership and developer role and to seek a decision to proceed with taking the development forward with authority to:
- Continue to develop the WGC sustainable urban extension planning application in line with the updated vision, principles and objectives;
  - Negotiate a Delivery Agreement with the adjacent landowner (Lindum Group Limited) on the terms outlined in the report;
  - Agree the principle of accepting the Homes England funding offer under the Local Authority Accelerated Construction Programme;
  - Delegate to the s151 officer and the Major Development Director authority to agree the detail of the grant from Homes England and in consultation with the Leader enter into the Funding Agreement for the first phase of infrastructure opening up costs (there will be a further report to Executive on the detailed costings and funding implications in the near future);
  - Progress the work required to deliver the associated outputs and conditions of the Homes England Funding Agreement including the work on the appropriation of the necessary land from Housing Revenue Account to General Fund;
  - Undertake further public consultation on the revisions to the WGC Masterplan as outlined in the report; and
  - Continue to develop a delivery model for the Council's landholding for consideration at a future Executive.

## **2. Executive Summary**

- 2.1 Work on progressing delivery of the Western Growth Corridor (WGC) development has been held up for over a year whilst resolution was sought on the following issues:
- Scarborough landownership was structured to enable them to enter into the necessary agreements to bring forward the wider development and to then deliver development on their landholding;
  - Undertake further detailed transport work to reflect the new County Highways model with further analysis to identify the optimum highways access strategy for the development that also gives the best benefits to the existing residents/businesses in the adjacent communities and the wider city area; and
  - Waiting for an outcome on the Accelerated Construction funding bid.

- 2.2 Following Lindum Group Limited (Lindum) acquisition of the Scarborough landholding within the City of Lincoln boundary (see Appendix A), the Council and Lindum between them, can bring forward the development of the Western Growth Corridor to meet the Central Lincolnshire Local Plan policy requirements.
- 2.3 Officers have reviewed the Council's Vision and Objectives for the development as refreshed and adopted by Executive in 2013 and propose an update to reflect the Local Plan Policy changes from 2017 and the findings of the detailed work that has been undertaken in the preparation of the planning application.
- 2.4 Officers have reviewed the Heads of Terms and draft Collaboration Agreement that had previously been prepared when discussions were with Taylor Wimpey and latterly with the Scarborough Family and Lindum. Officers propose that whilst the key terms do not need to change significantly, both the Council and Lindum are in a position where they are able to deliver development on their own landownership without the need to more formally join together. It is therefore proposed that a simpler Delivery Agreement rather than a Collaboration Agreement is entered into.
- 2.5 A Delivery Agreement between the Council and Lindum would commit both organisations to jointly promote the overall development, jointly fund common infrastructure costs in accordance with an agreed phasing plan and to bring forward individual developments on their respective land ownership that met the agreed vision and objectives for the overall development. It is not proposed through this agreement that the Council and Lindum enter into a Joint Venture, trade land, do developments on each other's land or additionally fetter each other's landholding beyond what is required to deliver the agreed overall development objectives and any grant funding requirements.
- 2.6 Extensive work on the planning application was completed last year. A review of this work has informed the updating of some of the survey work and the completion of other elements (such as archaeological investigations), that when combined with the consultation feedback, enable the outline planning application to be submitted in early 2019. A further period of public consultation is also proposed to inform the final planning application submission.
- 2.7 Substantial work to understand, model and analyse the highways/transport issues in the area, including further additional traffic modelling, is now informing the optimum way forward and is concluding shortly. This work will inform specific consultation events as part of the wider public consultation proposed in November 2018.
- 2.8 Progress in relation to securing government capital grant through Homes England's Local Authority Accelerated Construction programme has resulted in the Council receiving an offer of funding for the first phase of development. This funding of £1.88M is towards costs of £2.2M to deliver the first infrastructure improvements with a new roundabout at the current signalised junction on Skellingthorpe Road/Birchwood Avenue. This would enable the Council to put that piece of infrastructure in place before any housing is occupied. Homes England are still considering a second phase of funding that would connect Phase 1 through the development into Tritton Road with a road bridge over the railway line, which the Council want to put in place as early as possible to give real benefit to

the existing communities in that area and minimise the disruption and impact of development.

2.9 As a result of the progress in bringing the development forward, further revenue budget provision for the project is not being requested for 2018/19. Should a Delivery Agreement with Lindum not be signed, then any further work after December would need to be reviewed against the available budget at that time.

2.10 The project plan has been revised with the following key milestones and targeted timeline:

<b>Targeted Timescale 2018</b>	<b>Milestone</b>
Mon 12 - Sat 17 Nov	Public consultation events on revised masterplan including specific workshops on transport and flooding
Mon 12 Nov – Mon 03 Dec	Public consultation period on revised masterplan
Tues 04 – Tues 18 Dec	Consideration of consultation responses
December	Signing of Delivery Agreement between City Council and Lindum Group (subject to 24 Sept Exec decision and negotiations)
<b>2019 Indicative Targeted Timescale</b>	
January/February	Submission of outline planning application
January/February	Start of the procurement process to have contractor in place for mobilisation start date
March - Summer	Response to any queries/clarifications arising from submission Development of a delivery programme
Autumn/Winter 2019	Planning determination
Winter 2019/20	Mobilisation should consent be granted
Summer 2020	Start on site (subject to planning) with Skellingthorpe Road/Birchwood Avenue roundabout
Winter 2020/21	Completion of Phase 1 infrastructure – Homes England require grant funding to be spent by March 2021

2.11 Consideration is also being given as to how the Council brings forward development on its landholding should consent be granted. Options include the setting up of a wholly owned development company, entering into a joint venture with a development partner and the Council itself doing a mix of development options. The latter involves the Council developing a model whereby it would retain control of the land and implement a mix of options including, developing some itself for Council housing and investment purposes, selling parcels of land for a range of housing and employment development. This model would also include preparing a range of detailed development briefs/proposals for areas such as the Leisure Village and the Open Space/recreational space linking in with Hartsholme Country Park.

2.12 A project risk register has been maintained throughout the development of the scheme and the key risks are identified within the report.

### **3. Background**

- 3.1 The Western Growth Corridor (WGC) is one of 4 sustainable urban extension (SUE) areas around Lincoln identified and promoted in the Central Lincolnshire Local Plan for development to meet the area's growth projections up to 2036. It is the closest SUE to the city centre and has the greatest opportunity to achieve real sustainability both within the development and for the surrounding communities. It is the major area for housing and employment growth in the city itself and is a key part of delivering Lincoln's Growth Strategy over the next 20 years.
- 3.2 There have previously been three main attempts (1996-2001, 2005-8 and 2013-16) to bring development forward in partnership between the Council and adjacent landowners. Significant issues in relation to flooding concerns (majority of the land is in a flood risk area), transport impacts, comparative commercial viability and landownership have prevented the development from coming forward. The scale of development has reduced over this time from around 5,000 homes with 36 hectares of employment land and 2 local centres to address the key historical issues faced by the development including flooding and transport.
- 3.3 The Central Lincolnshire Local Plan adopted in April 2017 following a robust and thorough examination has now approved the principle for development of the site. Having established the principle of development, the next stage has been to consider the key building blocks of the development at a broad rather than a detailed level. The Local Plan allocation is for a new neighbourhood of 3,200 new homes (20% affordable), 20 hectares of commercial/employment space, a new Leisure Village, improvements in accessibility and range of green space, flood mitigation improvements, remediation of the former tip and a range of improved connectivity (roads, cycle paths and pedestrian routes).
- 3.4 The City Council is a significant landowner with approximately 50% of the development area and has been leading on bringing forward development of the area in a viable, sustainable and deliverable way since 2016. WGC is a key priority within the City Council's Vision 2020 and delivers across all the Council's priorities and objectives. It is also the single biggest development area within the City boundary.
- 3.5 The financial viability of the scheme is complex and extensive work has been undertaken to build a robust viability model to inform the components, phasing, delivery and financial requirements for bringing the development forward. This work has informed a number of funding applications being and continuing to be made, that enable the timely delivery of the WGC. These applications centre on funding the expensive infrastructure works as an upfront cost so that wherever possible the appropriate infrastructure is in place before the corresponding housing, to minimise the disruption and impact on existing communities whilst also delivering some tangible benefits to those neighbourhoods. A bid to the Homes England Local Authority Accelerated Construction Programme was submitted in February 2017 on this very basis and a series of discussions, due diligence and further work has been ongoing since the submission to progress this bid.
- 3.6 Extensive work on the planning application has been undertaken over the past few years, building on the Council's vision for the development and continuing dialogue with statutory organisations (such as the Environment Agency, Internal

Drainage Board, Highways authorities, Historic England, Natural England). Feedback from public consultation has and will continue to shape the development proposals.

- 3.7 The target date for planning application submission had been set for 31 October 2017. Over 90% of the work required for that submission had been completed but the submission was delayed due to 2 main issues:
- Landownership: The previous adjacent major landowner was unable to enter into an agreement with the Council to bring forward the development as required; and
  - Transport Assessment work: The highway access strategy and transport measures were a key concern for all parties and reflected in the public consultation responses on the proposed masterplan for the development. Lincolnshire County Council had commissioned an updated transport model that became available for use in November 2017, so the Council agreed to re-do the modelling work using this new model. In addition, earlier this year we commissioned further work to produce the optimum proposal.

#### 4. Landownership

- 4.1 Up until recently the landownership of the development area has been split broadly between the City Council with 49%, the Scarborough family with 49% and Lindum Group with 2% (including ownership of the key access route as identified in the Local Plan onto Beever Street).
- 4.2 The Executive had previously agreed principles for Heads of Terms that formed the basis of negotiating a Collaboration Agreement between the Council and Taylor Wimpey (who at the time were the developer partner for the Scarboroughs through a longstanding option agreement). Following the formal withdrawal of Taylor Wimpey as the **developer partner** for the Scarborough family in early 2017, negotiations on the same principles continued with the Scarboroughs. These negotiations were also extended to Lindum on the basis of both their land ownership (following the changed planning policy position in the Local Plan with regard to the Beever Street access) and the fact that the Scarboroughs' had procured Lindum as their **development promoter** (being a promoter is very different to being a development partner). A draft Collaboration Agreement was substantially completed before the breakdown of landowner negotiations in July 2017, when it became clear that the Scarborough family were not able to enter into the agreement without a developer partner or selling the site on for development.
- 4.3 The Scarborough family have spent the last year reviewing their options and over the summer they completed the sale of their landholding within the City boundary to Lindum (the small element of the site that is within North Kesteven District Council area has been retained by the Scarborough family). The Council did make two offers for the site but were not successful. We are aware that there was also interest from another third party at a considerably higher figure and it was Lindum's concern that this would complicate and delay delivery that led Lindum to increase their direct involvement in the scheme. The land purchased by Lindum is shown in the plan attached as Appendix A.
- 4.4 The Council and Lindum between them now own the land required to deliver the WGC development and meet the requirements of the Local Plan policy

(approximately 50% each of the revised development area). The landownership issue has therefore been resolved and as it is simpler than at any previous time, both the viability and deliverability of this complex scheme to achieve the policy objectives has significantly improved.

- 4.5 In order to progress with the completion of an outline planning application for the development in a timely manner, a Memorandum of Understanding (MOU) is currently being put in place between the Council and Lindum. This sets out how the two organisations will work until the signing of a formal Delivery Agreement (targeted for December 2018). It sets out both an intention to reach an agreement on delivering the development subject to obtaining planning consent and the principles for how we will work together to submit that planning application. It also includes a financial commitment to share the future costs (on a 50/50 basis) of completing the remaining work required for a planning submission that is non-refundable.

## **5. Council Vision and Objectives**

- 5.1 Council officers have reviewed the Council's vision and objectives for WGC to identify any changes needed to reflect the updated Local Plan policy position and to verify their continued appropriateness. This is particularly important in informing both the continued development of the scheme and the negotiation of any Delivery Agreement between the parties.

### **5.2 Vision**

The Vision adopted by the Council in December 2013 was:

- The Western Growth Corridor will have at its core a network of green spaces that provide opportunities for formal and informal recreation to the site and include measures to mitigate flood risk.
- Existing features of note, including Decoy Farm and views of the historic core of the city from the site will be retained and exploited to provide a unique character.
- The development will be well integrated with existing communities and facilities in the area including schools, health facilities. The development will be served with appropriately located retail facilities to serve locally arising needs without prejudicing established local centres, including at Birchwood. Hubs of activity will be created to encourage social interaction and encourage the development of a sense of community.
- The site will effectively link the residential areas to the south of Skellingthorpe Road with the city centre by providing high quality and attractive pedestrian and cycle routes through the site. New vehicular access will serve to link the site with the A46 and the city centre. Where possible this will be designed to reflect the primarily residential character of the area and respectful of the open space network and the desire to encourage non-vehicular movements through the site
- A mix of housing in terms of size and tenure will be provided in a high quality physical environment, including aspirational housing to widen the existing housing offer in the city to attract incomers to the city and local

residents

- Employment opportunities will be provided to the east of the site, linking with the University and established commercial areas capable of accommodating existing employers in the city seeking to expand and attracting new investment.
- The development will have a distinct physical identity respectful of the character of the city and aspire to achieve high quality sustainable and urban design principles.

### 5.3 Objectives

The Council also adopted 7 Objectives in December 2013 which are:

**Objective A:** To Provide New Employment Opportunities to Attract New Employers and Encourage Existing Businesses to Expand

Explanation:

- To provide a range of employment uses and types which will allow jobs for people with a range of skill sets and levels
- Attract inward investment
- Provide flexible employment spaces which can adapt to the changing nature of employment requirements
- Maximise opportunities for economic development and knowledge based employment with the Universities
- Ensure additional mixed use and community provision enhances and supports provision in existing communities, with particular regard to the Birchwood District mixed use centre
- Maximise opportunities for employment of local people and use of local companies

**Objective B:** To Mitigate Flood Risk for the Existing and New Development

Explanation:

- Integrated measures to protect and enhance the new and existing development
- Land drainage systems and water use management that utilise the natural landscape

**Objective C:** To Achieve a Social Return on the Council's Investment Through Financial Sustainability

Explanation:

- Revenue streams for the council through:
  - Council tax
  - Business rates
  - Managed housing
  - Managed employment spaces
- Use of capital land asset to contribute to the realisation of the other objectives

**Objective D:** To Contribute to Improved Health Outcomes Through Appropriate Health Provision

Explanation:

- Develop an integrated health hub on the site with a range of services as identified through service providers to ensure it meets the needs of the local communities
- Provision of a range of leisure opportunities including casual, organised, indoor and outdoor opportunities to attract a wide range of people

**Objective E:** To Deliver High Quality Housing of Different Tenures that is Affordable to our Communities

Explanation:

- Affordable housing provision
- All homes to be built to minimum quality standards to prevent the ability to distinguish between tenures
- Energy efficient homes which are cheaper to run and can assist in the eradication of fuel poverty
- Mixed density residential areas which blend with the existing residential areas on the periphery of the site
- Private and intermediate tenures which are affordable to communities and meet their housing needs
- Minimum development standards which are flexible to allow future inclusion of new and developing technologies for improved properties
- Residential areas which are integrated with other uses due to the mixed use nature of the site

**Objective F:** To Deliver a Sustainable, Well Linked and Integral Extension to the City with Effective Transport Links for New and Existing Communities

Explanation:

- Sustainable transport solutions to encourage non-vehicular movements
- Transport connections into existing communities

**Objective G:** To Deliver Sustainable Environmental and Energy Provision for the Development with Appropriate Links into the Existing City

Explanation:

- Ensuring green infrastructure and historic landscapes, biodiversity, water, flood and waste issues are managed in an environmentally sustainable way
- Introducing reliable, sustainable energy generation to secure Lincoln's economic future
- Working in partnership in tackling climate change and sustainability, while reducing Lincoln's carbon footprint
- Remediation of tipped land to enable redevelopment of the land
- Inclusion of play and open spaces as well as allotments
- Development of energy efficient homes to reduce fuel poverty
- On site waste recycling and composting

5.4 The Vision and Objectives adopted then formed the basis (where appropriate) for the development of the Central Lincolnshire Local Plan policy in relation to the WGC. This included a range of very detailed work on housing need, economic considerations, strategic transport modelling and a whole raft of place shaping policy considerations over the lifetime of the plan 2012 to 2036. As part of the Local Plan preparation process the Council approved a specific WGC Topic paper that alongside the other evidence formed the basis for extensive consultation and a public examination by the Planning Inspectorate. This process led to the



adoption in April 2017 of the following specific policies on WGC (to be read alongside other policies).

#### 5.5 **Policy LP28 – Sustainable Urban Extensions requires:**

Alongside the timely delivery of necessary infrastructure, key to the sustainable delivery of the urban extensions will be the requirement to minimise the need to travel, whilst maximising sustainable transport modes. This will be achieved by locating key facilities such as schools and local shops within easy walking and cycling distance of most properties, incorporating high quality walking and cycling networks linking to the wider area, and providing access to high quality public transport services and facilities, including bus priority corridors and, where appropriate, park and ride.

In addition to the above, each new urban extension proposal must, where applicable:

- a. demonstrate availability and deliverability of the proposed scheme;
- b. provide a broad range of housing choice in terms of size and design;
- c. set aside an area of land which is suitable for the provision of Gypsy and Traveller pitches. The size of the site shall be agreed through negotiation, though is likely to be of a size sufficient to accommodate 5-10 pitches. Such set aside land should be on-site unless the developer can demonstrate circumstances which demonstrate that provision on an alternative suitable site is identified, and is made available and deliverable by the applicant. Such set aside land (whether on the SUE site or off-site) should be provided to the local planning authority at nil cost and be secured through an appropriate legal agreement;
- d. contribute to the provision of a wide range of local employment opportunities that offer a range of jobs in different sectors of the economy;
- e. incorporate appropriate pre-school(s), primary school(s), and a secondary school (potentially incorporating sixth-form provision), if the scale of the urban extension justifies any of these on-site, or, if not, contribute to provision offsite in order to meet the needs generated by the urban extension (subject to national regulations governing such contributions);
- f. make provision for an appropriate level of retail without having an unacceptable impact on the vitality and viability of existing retail centres;
- g. consider the Agricultural Land Classification of the site, and where higher quality agricultural land exists on one part of the site compared with another, then, if possible, utilise such land (or part of such land) for productive use, such as community orchards and allotments; and
- h. demonstrate that the unnecessary sterilisation of minerals has been avoided.

#### 5.6 **Policy LP30: Lincoln Sustainable Urban Extensions**

In addition to the generic requirements for Sustainable Urban Extensions in Policy LP28, development at the following strategic sites will be required to meet the following locally specific requirements:

**Western Growth Corridor SUE (WGC) – Land at Swanpool, Fen Farm and Decoy Farm.** Proposals for the WGC area, as identified on the Policies Map, should provide:

- Approximately 3,200 houses;
- Approximately 20 ha of land for mixed employment (B Use Classes) and leisure (D2 Use Class) serving the wider Lincoln area for significant local

growth and inward investment of strategic importance complimentary to that on the adjacent Lincoln Science and Innovation Park;

- A distinctive place to live that has its own identity and respects its local surroundings including key views and vistas of and from Lincoln Cathedral and the historic core of the City and the setting of Decoy Farm scheduled monument and Hartsholme Registered Park;
- Comprehensive solutions to drainage and flood risk, guided by an agreed flood risk assessment and water management plan;
- A direct route incorporating priority for public transport linking Skellingthorpe Road through to the city centre via the Beevor Street area with connection onto the A46 if required;
- Transport infrastructure, such as measures to encourage walking, cycling and use of public transport (which might include park and ride facilities) in order to maximise opportunities for sustainable modes of travel, in line with the aims of the Lincoln Integrated Transport Strategy;
- A wide range of community facilities including a new Local Centre;
- A wide range of open space, recreation and leisure uses, together with consideration of the provision of a regional leisure complex;
- A development that maximises the opportunities for low carbon and sustainable design including, if feasible, use of the heat from the Energy from Waste plant at North Hykeham;
- Comprehensive solutions to reclaim and remediate the former tip on the eastern part of the site; and
- Improved linkages, enhancement and support of green wedges and other green infrastructure.

5.7 It is clear that the Local Plan sets out a very clear vision for WGC alongside policy requirements that reflect the Council's own vision and objectives for the site with one main exception:

#### **Vehicular link between the site and the A46 as set out in the Vision**

- Within the December 2013 Vision there is a specific reference to an A46 link intended to be a new link on to the A46. This was at a time when the access proposal was three access points with one link into the city centre, one on to Skellingthorpe Road/Birchwood Avenue and then a new link on to the A46. It was also before doing any updated strategic or detailed transport assessment to reflect the reduced development footprint and wider revised growth plans for the area or indeed an assessment of the impact of delivering the schemes identified within the Lincoln Integrated Transport Strategy. The Objectives do not specify the links as they focus on the outcome of those links.
- The Local Plan work clearly identifies the need for detailed traffic modelling to inform the access strategy with a number of options for access points, and the Inspector in the examination report acknowledged that:

*“Due to the size of the allocation there would also be an inevitable increase in traffic on local roads, especially around Skellingthorpe Road which provides a direct link between the City Centre and the A46. Nevertheless, LCC confirm that recent work with the site promoters has shown that access could be taken from Skellingthorpe Road without the residual cumulative impacts becoming severe. Similarly, Highways England advise*

*that whilst the WGC and other planned developments would have a direct impact on the A46 and some local roads, where this occurs appropriate mitigation could be put in place through the development management process. Network Rail has also confirmed that agreement has been reached to allow a new link over the railway line to provide a direct connection with Beevor Street and the City Centre. We conclude the effects of the WGC on the local road network have therefore been adequately considered, and based on the evidence provided the allocation can be accessed without requiring a link onto the A46 for the early phases. Should connections be required at a later date this is provided for in Policy LP30"*

In addition, the Local Plan would obviously not reflect **Objective C** To Achieve a Social Return on the Council's Investment Through Financial Sustainability as this is a very specific landowner objective. So whilst it is also an exception, it is one that would be expected.

- 5.8 It is therefore recommended that the Council uses LP28, LP30 and the previously adopted 7 Objectives from December 2013 to shape the landowner development of the site and the principles within the Delivery Agreement.

## **6. Delivery Agreement**

- 6.1 In order to bring this complex SUE forward and demonstrate real deliverability (subject to planning consent), both the Council and Lindum need confidence that each party will deliver their contribution to the overall development as well as bringing forward timely development on their own landholding. Therefore, some form of delivery agreement between the Council and Lindum is required. This will also be required as part of demonstrating deliverability of the scheme in the planning submission.
- 6.2 Officers with their external legal advisers have reviewed the Heads of Terms and draft Collaboration Agreement that had previously been prepared when discussions were with Taylor Wimpey and latterly with the Scarborough Family and Lindum. Officers propose that whilst the key terms do not need to change significantly, both the Council and Lindum are in a position where they are able to deliver development on their own landownership without the need for a more formally joining together. It is therefore proposed that a simpler Delivery Agreement rather than a Collaboration Agreement is entered into
- 6.3 A Delivery Agreement between the Council and Lindum would commit both organisations to jointly promote the overall development, jointly fund common infrastructure costs and to bring forward individual developments on their land ownership that met the agreed vision and objectives for the overall development. It is not proposed through this agreement that the Council and Lindum enter into a Joint Venture, trade land, do developments on each other's land or additionally fetter each other's landholding beyond what is required to deliver the agreed overall development objectives and any grant funding requirements.
- 6.4 It is recommended that the key principles for the Delivery Agreement broadly remain the same as those previously adopted by the Council. The Delivery Agreement would therefore contain the following sections covering these points of principle:

- **Parties:** The agreement will be between the Council and Lindum (either Lindum Group Limited or a suitably funded subsidiary company with ideally a parent company guarantee).
- **Purpose:** To regulate certain matters relating to the delivery of the Western Growth Corridor in accordance with the Central Lincolnshire Local Plan 2012-2036 (particularly Policy LP28 and LP30). No joint venture or partnership is created or intended.
- **Development:** Save as dealt with under the agreement, each party will have an unrestricted ability to develop their respective land-holdings, taking full development risk.
- **Planning:** A joint planning application will be made; the agreement regulating the deadline for agreeing and submitting the application, what will be considered an onerous or unacceptable planning condition, as well as the basis for whether to appeal a refusal. The agreement will also deal with finalising the terms of the s.106 agreement.
- **Infrastructure:** Common infrastructure will be defined, principally being the highways infrastructure (including bridges and primary spine road), drainage works, landscaping, and other works of a strategic nature. All other costs will be recovered solely out of the relevant “plot” and therefore not shared between the parties.
- **Infrastructure costs:** These will be apportioned on a fair and equitable basis between the two land-owners. An appropriate proportion of relevant historic costs incurred by the Council are to be recovered.
- **Infrastructure works:** These will be procured either by the Council or on an agreed joint basis. All works will be procured in a way which meets Public Contract Regulations 2015 and delivers value for money. Works will be let in packages and sequenced. Frameworks will be used where appropriate.
- **Grant monies:** Any grant or other public funds available to the Council will be applied towards infrastructure costs as permitted by the grant provider. The application of these funds will be reflected in the method for apportioning costs and compliant with state aid law.
- **Security:** To protect the Council, and depending on the detail of how costs will be met, the agreement may require Lindum to provide security in respect of its financial commitment to meet infrastructure costs as they are incurred.
- **Assignment:** It will be recognised that appropriate obligations (including those arising under an agreement with Homes England) will need to be passed on to third parties (for example, where a parcel of land is sold off to a house-builder) or with the land. As such, the agreement will deal with that by means of deed of covenant and/or s106 and/or title restriction.
- **Development:** The agreement will describe how the development will be phased and will ensure that the two land-owners are not competing with each other (in addition to, or by reference to, any equivalent planning obligations). This will include appropriate terms in respect of sales, marketing, signage, etc.
- **Transport:** The Council will continue to lead on all matters requiring engagement with the Highways Authority and Highways Agency.
- **Fetter of discretion:** The agreement will make clear that it does not, and cannot, fetter the exercise of the Council’s statutory discretion, including as planning authority.

- **General:** The agreement will contain the usual terms in relation to matters such as confidentiality, dispute resolution, service of notices, means of communication via representatives, open book, and so on.

6.5 The intention (subject to Executive approval) is that the Delivery Agreement is negotiated with Lindum based on these principles and the other elements of the report, with a negotiated Delivery Agreement coming back to Executive as a Part B report (because of the confidential commercial elements within it) in November 2018.

## **7. Planning Application**

7.1 Significant work has been done since 2013 and particularly in the last 2 years to bring forward a planning application for the WGC. This included the public consultation that ran from 28 June to 15 November 2017, resulting in 298 responses containing 982 comments covering 41 different topics. The outcome and responses to the consultation was reported and approved by Executive in July 2018.

7.2 Both the public and statutory consultation identified a key concern around highways and the access strategy for the site. Given the importance of this key concern, two further pieces of transport modelling work have been undertaken incorporating a re-run of the access options through the updated Lincolnshire County Council Highways Model that became available for use in November 2017 and further detailed junction modelling and movement analysis in 2018. The majority of this work is complete, with the last elements concluding in the next few weeks.

7.3 To further ensure that the highway access strategy and transport assessment are robust and have identified the optimum approach, Lindum and the Council have commissioned a review of this work by an independent transport consultancy. This should provide the Council and other stakeholders with additional confidence in the access strategy that emerges for the scheme.

7.4 Extensive work on the planning application was completed last year. A review of this work has informed the updating of some of the survey work and the completion of other elements (such as archaeological investigations), all of which was done over the summer. Therefore, once we have the final conclusions of the access and transport work, we are then able to hold a further round of public consultation including the workshop events on flood issues and transport/movement that we are targeting for November 2018. Following analysis of the consultation feedback, the outline planning application is targeted for submission (subject to an agreement in principle on the access strategy for the site with the Highways Authorities) at the end of January 2019.

## **8. Homes England Local Authority Accelerated Construction Programme**

8.1 The Council submitted a funding bid to Homes England's Local Authority Accelerated Construction programme on 28 February 2017. The bid requested funding for the infrastructure (a roundabout to replace the current signalised junction at Skellingthorpe Road/Birchwood Avenue) to open up the first phase of development (approximately 155 homes). This was in exchange for developing

that first phase out at a faster rate than would normally be expected had the infrastructure not been in place fully before housing delivery started. The bid also requested funding for the follow-on infrastructure that would connect this roundabout through the site on to Tritton Road opening up a large percentage of the site and again delivering early local benefit by minimising impact and disruption of the development on the existing communities in that area.

- 8.2 Homes England have undertaken a robust period of due diligence in the last 18 months reviewing the technical reports and costs associated with delivery of the scheme. On 29 August 2018 the Council received a formal offer from Homes England of a grant covering 86% of the costs of the first phase of infrastructure totalling £1.88M against projected costs of £2.2M. The second phase is still under consideration, and given the substantial costs involved, any further offer will depend upon progress and delivery of the scheme against the outcomes and objectives set by Homes England.
- 8.3 Homes England require the Council to not only accelerate delivery, but to also ensure the houses built include an element of Modern Methods of Construction (for example, elements of the house structure are assembled off site) and encourage development by low or medium volume house-builders from the local or regional area.
- 8.4 Homes England also require that the Council do not hold any land benefitting from the infrastructure to be held within the Housing Revenue Account (HRA). The land at Skellingthorpe Road is within the HRA (Homes England are aware) so it will require appropriation to the General Fund. The Strategic Property Manager is currently reviewing land valuations to enable a future report to Executive on the appropriation required, the values and capital implications.
- 8.5 As with all public funding, any development benefitting from the infrastructure will need to comply with state aid requirements.
- 8.6 The offer letter and funding agreement contain a considerable amount of detail that officers are currently reviewing and verifying. The assessment of officers is that in principle the offer is accepted to comply with some tight timescales from Homes England. Before signing the funding agreement, some detailed work and discussion with Homes England is required along with appropriate consideration of the financial, property and delivery conditions of the offer on the Council. A further report to Executive on the detailed costings and funding implications will therefore be prepared in the near future.

## **9. Delivery**

- 9.1 Consideration is also being given as to how the Council brings forward development on its landholding should consent be granted. Options include the setting up of a wholly owned development company, entering into a joint venture with a development partner and the Council itself doing a mix of development options. The latter involves the Council developing a model whereby it would retain control of the land and implement a mix of options including, developing some itself for Council housing and investment purposes, selling parcels of land for a range of housing and employment development. This model would also include preparing a range of detailed development briefs/proposals for areas such

as the Leisure Village and the Open Space/recreational space linking in with Hartsholme Country Park.

The conclusion of this work will be presented to a future Executive.

## 10. Timescales

- 10.1 The implications of the report have led to the following targeted timescales for the forthcoming months (subject to approvals).

<b>Targeted Timescale 2018</b>	<b>Milestone</b>
Mon 12 - Sat 17 Nov	Public consultation events on revised masterplan including specific workshops on transport and flooding
Mon 12 Nov – Mon 03 Dec	Public consultation period on revised masterplan
Tues 04 – Tues 18 Dec	Consideration of consultation responses
December	Signing of Delivery Agreement between City Council and Lindum Group Limited (subject to 24 Sept Exec decision and negotiations)
<b>2019 Indicative Targeted Timescale</b>	
January/February	Submission of outline planning application
January/February	Start of the procurement process to have contractor in place for mobilisation start date
March - Summer	Response to any queries/clarifications arising from submission Development of a delivery programme
Autumn/Winter 2019	Planning determination
Winter 2019/20	Mobilisation should consent be granted
Summer 2020	Start on site (subject to planning) with Skellingthorpe Road/Birchwood Avenue roundabout
Winter 2020/21	Completion of Phase 1 infrastructure – Homes England require grant funding to be spent by March 2021

## 11. Strategic Priorities

### 11.1 Let's drive economic growth

The creation of a new neighbourhood provides homes for the workforce alongside 20 hectares of commercial land providing a wide range of employment opportunities.

### 11.2 Let's reduce inequality

The development will have a positive benefit in terms of this priority. As well as 20% of the new homes being affordable, a range of employment opportunities, a range of cultural/leisure opportunities as well as a wide range of options for walking/cycling and other transport measures.

### 11.3 Let's deliver quality housing

The Council will be ensuring through its land ownership that a full range of type and tenure of housing choice is delivered to a quality standard.

#### 11.4 Let's enhance our remarkable place

The area for development has a fantastic environment and some very special attributes in terms of existing quality landscape, views of the historic area and the biodiversity of the natural environment that will be utilised to create a quality community environment.

## 12. **Organisational Impacts**

### 12.1 **Finance**

**Revenue** – Lindum have agreed in principle to share the future costs (on a 50/50 basis) of completing the remaining work required for a planning submission that is non-refundable. In addition, there is a commitment to make a contribution to historic costs associated with the proposed submission of the planning application upon signing the Delivery Agreement. On this basis, the Council has sufficient revenue budget in place at this time to undertake the work identified up to the submission of the planning application.

**Capital** - To date (as a result of previous unsuccessful attempts to secure a planning consent on the site) the uncertainty and risk of delivering the scheme have meant that the Council has treated all costs since 2013 as revenue costs. However, on submission of a planning application we will then begin to capitalise future costs so work to identify appropriate capital resources is underway. A further financial capital report will therefore be submitted to Executive that covers this and the detailed financial implications for delivery of the Phase 1 scheme in line with the LAAC funding offer.

### 12.2 **Legal Implications including Procurement Rules** – external legal advice has been obtained in relation to both the legal and procurement aspects of the contents and implications of this report. This advice is set out below.

#### **Procurement**

12.2.1 The Council intends to enter into a legal agreement with Lindum Group Ltd (Lindum) to regulate the delivery by each of them of the Western Growth Corridor. The Council is acting lawfully under the Public Contracts Regulations 2015 ("the PCR") in not adopting an OJEU procurement approach because the main object of the agreement is the regulation of infrastructure delivery, including how the two parties will meet the costs, and of development activity. The object of the Council, as reflected in the agreement to be entered into, is not the carrying out of specified works through legally enforceable obligations to do so.

12.2.2 Where a council procures works and services above a threshold value, a competitive (.e. OJEU) process under the PCR would normally be required, unless there are lawful exceptions to that requirement under the PCR and case law. Where the main object of an agreement is the carrying out of specified works on an enforceable basis, conferring pecuniary benefit, then the PCR will require an OJEU procurement. However, because there will be no binding obligations on Lindum to carry out specified works, this agreement falls outside that test.



- 12.2.3 In this case, the Council will not be obliging Lindum to carry out works. Instead, the agreement will describe the categories of infrastructure to be treated as common infrastructure which benefit both land-holdings, and therefore to be funded as such. In addition, the agreement will deal with the approach to be taken on planning and in relation to how each party will pursue development (insofar as it is in the mutual interest of the parties to regulate such matters). Also, the agreement will recognise the infrastructure works themselves will need to be procured on a basis compliant with the PCR.
- 12.2.4 In addition to the nature of the agreement not being one subject to the PCR, it can also be strongly argued that Lindum have “exclusive rights” which enable a direct award without competition (on the basis that there is no other party with whom the Council could enter into contract for these purposes). This derives from regulation 32 of the PCR which recognises that where only one party is in a position to enter to the agreement with the contracting authority due to being in an “exclusive rights” position, no competitive process is required. In such cases, the duty to go to market under an OJEU notice is, in effect, waived, on the basis that it would be pointless.
- 12.2.5 Under the Council’s constitution, there is a general requirement to follow EU competitive tendering requirements. However, the Council’s Contracts Procedure Rules exempts the Council from compliance where there is a specific exemption under EU law (as there is in this case).

### **Legal Powers**

- 12.2.6 The Council may rely upon the General Power of Competence (“general power”) provided for in Section 1 of the Localism Act 2011 to enter into the agreement. The general power is a wide power which allows the Council to do anything that an individual may do (subject to public law principles), but it is subject to certain statutory limitations.
- 12.2.7 Section 4 of the Localism Act 2011 provides that if the Council is exercising the general power for a commercial purpose then it must do so using a company. In this case, the primary purpose of the Council is not “commercial”. The main object is to regulate the delivery of the Western Growth Corridor, which (in the case of the Council) involves land disposal and is supplementary to the discharge of its statutory housing functions.
- 12.2.8 Sections 8 and 9 of the Housing Act 1985 impose a duty on local authorities to review housing needs in their district and provides them with related powers to provide housing accommodation by building and acquiring houses or by converting other buildings into houses. These powers can include provision via third parties.
- 12.2.9 Section 123 of the Local Government Act 1972 provides the Council with the power to dispose of non-housing land for best consideration. The Council therefore needs to demonstrate its compliance with section 123 when selling land. The agreement with Lindum will not, of itself involve the transfer of land, but the arrangements for sharing costs of infrastructure, and for regulating the phasing of development, must not indirectly result in

best consideration not being obtained. In order to demonstrate full compliance with section 123, the Council will therefore need to take any necessary further independent valuation advice where necessary throughout the delivery of the development.

### **State aid**

12.2.10 State aid legal compliance will need to be managed on an ongoing basis, including where further external public grant or other funding is made available. The mechanism for sharing costs of infrastructure will be settled on terms which avoid any unlawful state aid. This will be based on the principle that Lindum are to pay their fair share of all common infrastructure costs.

### **General**

12.2.11 Public law constraints will apply to the arrangement, including the Council's fiduciary duty to act prudently with public monies entrusted to it. The Council therefore must establish (and maintain a full audit trail to support) that the arrangements made with Lindum are 'intra vires' and that the decision to enter into the agreement is made after having given due and proper consideration to all relevant factors (disregarding irrelevant factors) and in accordance with normal public law considerations.

12.2.12 The agreement entered into with Lindum will make expressly clear that the Council's discretion as planning authority is not being fettered.

12.3 **Land, property and accommodation** – A condition of the LAAC funding is that the Council land ownership is held within the General Fund (GF) and not the Housing Revenue Account (HRA). Currently the land required to provide the new roundabout at Skellingthorpe Road/Birchwood Avenue is held within the HRA, so would need to be appropriated to GF to access the funding. The Strategic Property Manager is currently reviewing existing valuations for the land to inform a future report back to Executive on the details of the appropriation.

12.4 **Human Resources** – a combination of internal officers and specialist external advice is already in place to provide the required human resource to deliver the implications of the report.

12.5 **Equality, Diversity & Human Rights** – no new implications arise from this report.

## **13. Risk Implications**

13.1 (i) **Options Explored** – Previous reports have extensively covered the options in relation to selling the Council's land interest; reviewing options should planning consent be granted; and delaying the planning application. In addition, Council authority exists to develop both the planning application and to negotiate an agreement with the landowners. The only change to this position is making it clear that following a change in the ownership of the other main landholding required to deliver the scheme, the Council would be entering into a Delivery Agreement with Lindum. The key principles of this are set out in the report and are very similar to those previously approved with the key differences being the removal of collaboration type clauses that were previously required because there was both a

developer partner and a landowner involved.

The implications of not negotiating a Delivery Agreement and developing a planning application remain the same as previously reported.

- 13.2 (ii) **Key risks** associated with the preferred approach – Throughout the development of the scheme a risk register has been in place and has evolved into a robust document. There are a number of risks but the key ones remain:
- Agreement on the highways access strategy for the development and specifically whether there is a need/provision for an A46 link;
  - Funding/finance for delivering the scheme;
  - Viability;
  - Delivery of the Council's objectives as a result of viability and/or financial factors;
  - Tip remediation requirements and costs;
  - Third Parties (including reaching agreement with the main adjacent landowner);
  - Network Rail (in terms of agreement on detail of bridge over rail crossings);
  - State aid compliance; and
  - Archaeological impact on development area and subsequent viability.

A range of action plans and measures are in place to manage the identified risks and there is a regular review of the risk register.

## 14. Recommendations

- 14.1 Continue to develop the WGC sustainable urban extension planning application in line with the updated vision and objectives.
- 14.2 Authorise officers to negotiate a Delivery Agreement with the adjacent landowner (Lindum) on the terms outlined in the report.
- 14.3 Agree the principle of accepting the Homes England funding offer under the Local Authority Accelerated Construction Programme.
- 14.4 Delegate to the s151 officer and the Major Development Director authority to agree the detail of the grant from Homes England and in consultation with the Leader enter into the Funding Agreement for the first phase of infrastructure opening up costs (there will be a further report to Executive on the detailed costings and funding implications in the near future).
- 14.5 Progress the work required to deliver the associated outputs and conditions of the Homes England Funding Agreement including the appropriation of the necessary land from Housing Revenue Account to General Fund that will result in a further report back to a future Executive.
- 14.6 Agree the targeted timetable of actions set out in the report including the public consultation.

14.7 Officers to continue to develop a delivery model for the Council's landholding for consideration at a future Executive.

**Is this a key decision?**

Yes

**Do the exempt information categories apply?**

No

**Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?**

No

**How many appendices does the report contain?**

One (land ownership plan)

**List of Background Papers:**

None

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