

Report to Executive

**Agenda
Item:**

A.12

Meeting Date: 17th August 2020
Portfolio: Finance, Governance & Resources
Key Decision: NO
Within Policy and Budget Framework YES
Public / Private PUBLIC

Title: CARLISLE SOUTHERN LINK ROAD AGREEMENTS – FINANCIAL IMPLICATIONS
Report of: CORPORATE DIRECTOR OF FINANCE AND RESOURCES
Report Number: RD23/20

Purpose / Summary: This report provides Members with the financial implications on the Council's budgets and the MTFP, as a result of the Council completing both the Grant Determination Agreement and the Collaboration Agreement, in relation to the Carlisle Southern Link Road on 31st July 2020.

Recommendations:

The Executive is asked to:

- (i) Consider and approve, for recommendation to Council, the 50/50 split in the recovery proceeds as requested by the County Council; and the consequential impact on the Council's MTFP in terms of the temporary use of reserves and/or savings;
- (ii) Note the £5million indemnity cap which may be triggered by the County Council as a result of any financial loss incurred by them, due to the City Council defaulting on any of its obligations and milestones, noting that this will be a call on the revenue budget, if the clause is enforced;
- (iii) Delegate authority to the Corporate Director of Governance & Regulatory Services following consultation with the S151 Officer, Leader, Deputy Leader and Portfolio Holder for Economy, Enterprise and Housing, to approve any amendments to the Collaboration Agreement.

Tracking

Executive:	17th August 2020
Scrutiny:	Not applicable
Council:	8th September 2020

1. BACKGROUND

- 1.1 The Carlisle Southern Link Road (CSLR) is a significant project for both the City and County Council. The governance framework for this scheme required (1) a Grant Determination Agreement, to be signed between Homes England, the City Council and the County Council, and (2) a Collaboration Agreement, to be agreed between and signed by the City Council and the County Council.
- 1.2 Both of these agreements were signed by all parties on Friday 31st July 2020.
- 1.3 The CSLR is a £144million scheme with the bulk of the funding being received via Homes England (£134million) with both the County and City Council's contributing £5million each.

2. PROPOSALS

2.1 Grant Determination Agreement

The Council's contribution is earmarked within the 2022/23 Capital Programme, to be funded by borrowing, with the expectation that this sum is recouped via recovery proceeds (developer contributions) once St Cuthbert's Garden Village commences. The City Council, and the County Council, will each retain their £5million from the recovery proceeds, before Homes England's £134million is 'received' or reinvested in the Garden Village infrastructure. Following negotiations and discussions, this position is now reflected in the Grant Determination Agreement.

2.2 Collaboration Agreement - Recovery Proceeds

The Collaboration Agreement currently states that the City Council will be entitled to retain the first £5million of recovery proceeds and thereafter the next £5million will be paid to the County Council; however, Cumbria County Council has requested that this clause be revisited and require the recovery proceeds to be split 50/50. Although this will not change the level of contributions received by the City, the timescale for recoupment will be extended and will require the approval of full Council to make the necessary revisions to the MTFP in terms of the temporary use of reserves and required savings.

Any recovery proceeds above £10million will be dealt with in accordance with an agreed Housing Delivery Statement, which is due to be completed by September 2021 and is one of the key milestones and obligations placed upon the City Council. The MTFP assumes the following in terms of developer contributions on the basis that the City Council retains the first £5million of recovery proceeds. The impact of the proposed 50/50 split is also shown:

MTFP – current

Year	MTFP income
2022/23	£31,000
2023/24	£72,000
2024/25	£166,000
2025/26	£310,000
2026/27	£372,000
2027/28	£413,000
2028/29	£475,000
2029/30	£516,000
2030/31	£516,000
2031/32	£516,000
2032/33	£516,000
2033/34	£516,000
2034/35	£516,000
2035/36	£65,000
2036/37 – 2048/49	£0
TOTAL	£5,000,000

MTFP - proposal

50/50 split income	MTFP Shortfall/ (surplus)	Cumulative shortfall
£15,500	£15,500	£15,500
£36,000	£36,000	£51,500
£83,000	£83,000	£134,500
£155,000	£155,000	£289,500
£186,000	£186,000	£475,500
£206,500	£206,500	£682,000
£237,500	£237,500	£919,500
£258,000	£258,000	£1,177,500
£258,000	£258,000	£1,435,500
£258,000	£258,000	£1,693,500
£258,000	£258,000	£1,951,500
£258,000	£258,000	£2,209,500
£258,000	£258,000	£2,467,500
£258,000	(£193,000)	£2,274,500
£2,274,500	(£2,274,500)	(£2,274,500)
£5,000,000	£0	£0

In order to achieve a balanced budget year on year, the MTFP shortfall identified in the table above will have to be funded from a variety of sources such as the temporary use of reserves, virements (potentially on a non-recurring basis) from base budgets, and/or through the achievement of additional savings, commercialisation schemes or additional income generated through fees and charges.

2.3 Collaboration Agreement - Indemnity Cap

The signed Collaboration Agreement also contains a clause (clause 10) whereby the City Council provides an indemnity/warranty to the County Council in the event of any breach of our contractual obligations. Through negotiation, this has been capped at £5million and is in addition to the £5million capital contribution. A claim under this clause could be made for potential financial losses and liabilities incurred by the County Council, as a result of the City Council not meeting the 4 milestones which are reflected in the collaboration agreement as follows:

- Saint Cuthbert's Garden Village Masterplan finalised – 30 September 2020;
- Supplementary Planning Document for Saint Cuthbert's Garden Village adopted – 30 April 2021;
- Final Housing Delivery Statement for Saint Cuthbert's Garden Village – 30 September 2021;
- Saint Cuthbert's Garden Village Local Plan adopted – 31 July 2022.

3. RISKS

- 3.1 The trigger for any potential claim under this clause would be the legal action of the County Council against the City Council, if Homes England sought to recover grant money from them because they have not fulfilled their obligations; or they have incurred additional costs; or Homes England decides to not fund the full grant. The trigger would not be the failure by the City Council to hit the milestones, but Cumbria County Council would have to prove that liability attached to Carlisle City Council because their milestones had not been met.

The indemnity set out in clause 10 has been capped at an aggregate of £5million, and whilst an Insurance product and solution is currently being investigated for the potential liability, this is highly unlikely. Therefore the risks and any mitigating control strategies or these key milestones must be fully understood, documented and closely monitored to ensure that the warranty clause is not enforced as this £5million potential cost would be a charge against the revenue budget and would require savings and reserves to be identified. Members are reminded that our current levels of free reserves are just over £3.1million and are also based upon the achievement of £1.850million over the lifetime of the MTFP.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1 The Executive is asked to:

- (i) Consider and approve, for recommendation to Council, the 50/50 split in the recovery proceeds as requested by the County Council; and the consequential impact on the Council's MTFP in terms of the temporary use of reserves and/or savings;
- (ii) Note the £5million indemnity cap which may be triggered by the County Council as a result of any financial loss incurred by them, due to the City Council defaulting on any of its obligations and milestones, noting that this will be a call on the revenue budget, if the clause is enforced;
- (iii) Delegate authority to the Corporate Director of Governance & Regulatory Services following consultation with the S151 Officer, Leader, Deputy Leader and Portfolio Holder for Economy, Enterprise and Housing, to approve any amendments to the Collaboration Agreement.

Contact Officer: Alison Taylor

Ext: 7290

**Appendices None
attached to report:**

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS:

LEGAL – The legal situation is set out in the body of the Report. Once the budget profiling position is resolved the Collaboration Agreement between the City and County Councils will need to be amended, hence the required delegated authority to do so.

PROPERTY - None

FINANCE – as detailed in the main body of the report

EQUALITY – None

INFORMATION GOVERNANCE – None