Gloucestershire COUNTY COUNCIL

Report title: M5 J10 Funding Agreement - Infrastructure Recovery Strategy Progress Report

Cabinet Date	24th March 2021
Cabinet Member	Cllr Nigel Moor Environment and Planning
Key Decision	Yes
Purpose of Report	To set out the intention and purpose of adopting an Infrastructure Recovery Strategy (IRS) to recover monies from development sites benefitting from publicly funded infrastructure improvements, such as M5 Junction 10. The Cabinet report will also detail feedback received from a public consultation into the IRS and seek approval to draft a consultation report, revise the IRS accordingly and determine appropriate next steps.
Recommendations	To delegate authority to the Executive Director of Environment, Economy and Infrastructure to: 1. Progress with the development of an Infrastructure Recovery Strategy, taking account of the responses received to the public consultation held between 28th January and 11th March 2021. 2. Conduct a competitive procurement process in respect of a 2 years contract for the provision of advisors to support the delivery and implementation of an IRS and award such contract to the preferred tenderer.
Reasons for recommendations	- Allowing the process of developing an IRS to continue will provide greater opportunity for GCC to recover funds. - The drafting of a consultation report allows officers to evidence feedback and adequately address comments raised during the consultation process and make necessary changes to the IRS. - Addressing consultation comments will help ensure any IRS has been written openly and fairly and reflects the needs of GCC and stakeholders. - Procuring external expertise allows the implementation of an IRS at the earliest opportunity once approved.

Resource Implications	• Officer time – required and provided from within existing resources. • One off external support to review and develop methodology funded from existing revenue resources. • External legal advice for consultation feedback funded under the M5 Junction 10 contract. • External support to undertake IRS negotiations – this will be charged against the M5 J10 fund award, but if recovery monies are secured this external support will become self funding. • The IRS could reduce the financial receipts received by GCC as a land owner where the Council has land that it is selling for development.
Background Documents	Appendix A - Draft Infrastructure Recovery Strategy (Consultation document)
Statutory Authority	Section 106 of the Town and Country Planning Act 1990 (as amended); Section 111 of the Local Government Act 1972; and Section 1 of the Localism Act 2011
Divisional Councillor(s)	The Infrastructure Recovery Strategy will be relevant to all divisional councillors.
Officer	Name: Colin Chick Tel. 01452 328470 Email: colin.chick@gloucestershire.gov.uk Name: David Simmons Tel. no: 01452 425651 Email: dave.simmons@gloucestershire.gov.uk
Timeline	• 24th March Cabinet • 26th April Strategic Communities and Infrastructure Members Board (SCIMB) outline consultation feedback and seek approval to submit strategy to Scrutiny/Cabinet. • Draft consultation report and revise IRS based on consultation feedback (April – June) • April Officer review group meeting to discuss consultation feedback and drafting of a consultation report and associated revisions to the IRS. Subject to full review of consultation responses: • Scrutiny (16th June) • 21st July Cabinet,

Background

1.1 The need for an Infrastructure Recovery Strategy (IRS) resulted from the Housing Infrastructure Fund (HIF) award for M5 Junction 10 improvements/works. The premise of the IRS is to recover funds from development sites that benefit from publicly funded infrastructure through an uplift in land value. The following sets out the history of the bid and the development of the Strategy to date.

1.2 In 2017 Homes England announced a £2.3bn HIF for new physical infrastructure which will unlock sites in areas of great housing demand. Gloucestershire County Council (the 'council') was successful in their Housing Infrastructure Fund Forward Funding bid for an 'All Movement' improvement at M5 Junction 10. The improvement will facilitate improved access to and from the M5 motorway northbound and southbound. This will support growth plans both locally and throughout Gloucestershire as well as solving long standing traffic and travel issues in the area.

1.3 The Homes England HIF award for the Council was circa £250m, awarded on a funding agreement basis. The fund award is a recoverable grant, whereby the Council is required to use all reasonable but commercially prudent endeavours to secure recovery of the funding award from developer/third parties. This is to ensure that public funds do not subsidise developer/third party profit. Instead recovered funds are re-invested back into the county delivering growth where it is most needed to the benefit of the residents of Gloucestershire.

1.4 Council officers have sought legal advice on the means of recovering funds for this purpose. Based on advice received, imposing a planning obligation under section 106 of the Town and Country Planning Act 1990 (as amended) on development sites is regarded as the most likely and preferable means of recovering the funds successfully. Such a planning obligation would be negotiated as part of the planning process when a site is brought forward for development with the amount of the contribution sought dependent on the particulars of the development and viability considerations affecting the site. Awareness of the IRS will be raised to interested parties such as land owners and developers by Council and district officers at the earliest opportunity. Although the IRS will primarily seek recovery funds via the section 106 approach it does also support alternative recovery means, if agreed during negotiations, such as agreements pursuant to section 111 of the Local Government Act 1972 or section 1 of the Localism Act 2011. An (IRS) will outline the need and means of recovery funds.

1.5 The IRS will set out the policy justification and mechanism for recovering funds. The status of the document is to be regarded as guidance only and not a supplementary planning document. However if the IRS is adopted by Cabinet, it will ensure it is afforded weight, which will help during planning negotiations. As the Council is not the local planning authority (LPA) in respect of housing and employment development, it will be for the district councils as LPA's to attribute how much weight the IRS is given on a case by case basis when determining planning applications. The longer term aim, through collaboration with district council colleagues will be to seek integration of the IRS into District Council Local Plan/Supplementary Development Plan documents.

1.6 The IRS will initially aim to recover funds from development sites in proximity to M5 Junction 10 on the basis that it will be those sites which recoup the most benefit from the improvements. However, the methodology within the strategy will provide a basis for recovering funds from future development sites that benefit from recovered J10 monies and future successful HIF bids, as well as potentially other future public funding streams aimed at delivering large scale infrastructure across the county that require recovery of funds.

1.7 The IRS is aligned with the District Councils' planning policy as well as policy contained within Council adopted/emerging documents such as the Local Developer Guide (LDG) and Local Transport Plan (LTP).

1.8 The IRS negotiations will be undertaken by external specialists alongside GCC officers. The recoverable funds will be sought via contributions made pursuant to section 106 of the 1990 Act although other means, as previously discussed, can be agreed during negotiations.

1.9 The IRS's recovered funds will be retained by the Council for a period to be agreed and used to help support further infrastructure delivery which will unlock or accelerate additional future growth across the county. Recovered funds could be used to provide highway capacity improvements, public transport improvements, other sustainable transport infrastructure improvement, or other ad-hoc infrastructure as deemed relevant to the delivery of further growth on a case by case basis.

1.10 The development, adoption and implementation of the IRS will have positive future implications for the County. The funds the IRS helps to recover, and their subsequent investment into infrastructure to support growth delivery, will help to unlock additional housing elsewhere in the county.

Options

2.1 There are two potential options;

2.1.1 Option 1: To continue development of an Infrastructure Recovery Strategy, taking into consideration public consultation feedback.

2.1.2 Option 2: Not to pursue with the development of an Infrastructure Recovery Strategy.

2.2 Should Option 1 be pursued the County Council will have greater negotiating powers to seek and secure contributions from development sites that benefit from large publicly funded infrastructure projects such as M5 Junction 10. This will enable delivery of growth enabling infrastructure elsewhere within the county. This option will demonstrate to Homes England (HoE) that GCC is using all opportunities to recover grant provided by HoE for infrastructure, and will strengthen GCC's case for further inward investment of government grant in the future.

2.3 Should Option 2 be pursued; the County Council will not have an adopted document to set out the mechanism for securing recovery contributions. This will potentially weaken the County Council's ability to secure funds that can be used to deliver infrastructure elsewhere in the county, therefore potentially missing out on significant amounts of recoverable funds as well impeding further growth delivery. This option will potentially weaken GCC's case for further government funding for infrastructure in the future, as the likelihood of recovery is low.

Risks

3.1 Failure to adopt an IRS will mean that GCC will not be able to recover, as easily, multi-millions of pounds from the development sites benefitting from publicly funded infrastructure.

3.2 It may still be possible to negotiate a fee with developers but without an adopted IRS it will be more difficult and result in a greater chance of failure to secure contributions.

3.3 The impacts of not being able to secure recovery funds, is the potential inability to fund infrastructure requirements to unlock land elsewhere for growth. This will delay and/or block future growth ambitions of the County and District Councils.

3.4 Failure to have appropriate resources or skills may impact upon the delivery of the strategy and securing of recovery funds.

Financial implications

4.1 The development and implementation of the IRS will afford greater weight towards negotiating a recovery fee from third parties. Without an IRS, negotiations could take place but without the IRS as a material consideration, lesser weight can be afforded to negotiations and any justification in statutory officer responses to, for example, planning applications by the LPA or Planning Inspector. This therefore increases the risk of unsuccessful negotiations and GCC suffering a significant loss of potential recoverable funds from those sites benefitting from the M5 Junction 10 improvements and other future infrastructure.

4.2 The IRS negotiations will be undertaken by external specialists alongside GCC officers. External experts will be procured to enable their expertise to be called upon on an ad hoc basis as needed.

4.3 The external resource costs can be met by the M5 Junction 10 fund in the first instance. Once monies have been recovered the costs of the external support can then be taken from this or agreed as part of the recovery fee being sought.

4.4 The IRS could reduce the financial receipts received by GCC as a land owner where the Council has land that it is selling for development. Although this is a possibility, the money lost on selling land available for development due to recovery charges would still come back to the council, albeit via a different channel for infrastructure use. Furthermore, the money that comes back to the Council via this channel would present a small proportion of the total received from all other developments that the IRS would be recovering against. Furthermore, without the public funding for M5 J10 for example and this IRS it is unlikely that development would have come forward in the areas in which GCC has an interest as a land owner.

Climate change implications

5.1 The use of any recovered funds would depend on the terms on which any public funding was provided or granted but could be used to provide highway capacity improvements, public transport improvements, or any other sustainable transport infrastructure improvement, or other ad-hoc infrastructure as deemed relevant on a case by case basis. These may have the ability to reduce congestion, improve air quality or encourage and sustain mode shift.

5.2 If the IRS is not adopted GCC may be unable to recover funding which may in turn impact on GCC's ability to provide infrastructure as easily, that enables sustainable development or travel behaviour. In turn this could have implications for GCC's climate change agenda and delivery of change.

Equality implications

Has an Equalities Impact Assessment (EIA) been completed? Yes / ~~No~~

If an Equalities Impact Assessment has been completed the following statement should also be included in this section:

6.1 Cabinet Members should read and consider the Equalities Impact Assessment in order to satisfy themselves as decision makers that due regard has been given.

6.2 The IRS in itself does not have any immediate or direct impact upon protected groups above or beyond what has already been assessed as part of the M5 Junction 10 Improvements Scheme.

6.3 Any future bid proposals and or infrastructure improvements will need to undertake their own EIA assessments at that time.

6.4 As this strategy will be utilised countywide, the evidence for protected groups has been utilised for those used as part of the emerging Local Transport Plan.

Data Protection Impact Assessment (DPIA) implications

7.1 None

Social value implications

8.1 None

Consultation feedback

9.1 A wide ranging formal public consultation commenced on 28th January and ended on 11th March 2021.

9.2 The consultation was open to all to respond with consultation notifications sent to a range of national, regional and local stakeholders, interest groups, organisations and consultancies. Media posts were also published via GCC's media channels and notifications sent to those who have signed up to GCC's consultation portal. A further email was sent to specific stakeholder groups as a reminder that the consultation was underway and that GCC officers welcome their feedback. The aim was to ensure that the consultation was as wide ranging as possible to allow interested parties to comment. A wide ranging consultation also minimises risk of legal challenge.

9.3 The public consultation has received 47 responses, of which 39 respondents left feedback. Of those 39, 31 were relevant to the strategy. 8 respondents provided feedback that was not relevant to the strategy and the information within but in relation to M5 J10 as a concept itself or other non-IRS issues.

9.4 57% of respondents were members of the public, 9% were local councillors with 12% being local government officers responding on behalf of their authorities. 11% of respondents were charities or organisations that have an interest in planning. 9% of respondents were housebuilders, land owners or promotors. 2% were transport related organisations.

9.5 Focus of representations received:

The majority of relevant responses received were supportive of the principle of an IRS and understood the Council's ambition and reasons for producing one, but raised comments relating to the IRS content, that could be classified under the following key theme headings:

1. Environment and infrastructure
2. Growth
3. IRS document wording
4. Site viability/selection
5. Fairness/appropriateness of method
6. Collaboration/further consultation
7. Development Pace

Theme 1 – Environment and infrastructure:

The vast majority of the comments received were supportive of the principle but made reference to environmental implications and/or the type of infrastructure to be delivered by recovered funds.

The IRS's principle aim is to recover funds to enable additional growth through infrastructure delivery. A number of respondents were not supportive of further highway infrastructure delivery or improvements that increase capacity.

The focus of the recovered funds spend should be, in the views of these respondents, on sustainable infrastructure improvements such as Public Transport, walking, cycling and green infrastructure, or where highway capacity is required it can be offset by acquiring land for environmental or recreational purposes to create a biodiversity net gain. An environmental percentage levy taken from the recovered funds was highlighted as a mechanism for providing resilience to climate change. These respondents could therefore see the potential positive outcomes of the IRS if funds are recycled appropriately.

Objecting respondents raised the issue that the strategy does not give any indication of the additional infrastructure projects contemplated and that there should be a public record of where the recovery funds will be used that can be publicly scrutinised. The objections further stated that GCC has an obligation to identify their infrastructure needs and total cost of the infrastructure.

Theme 2 – Growth/Investment:

Respondents stated that growth should be sustainable and to the benefit of the whole county with the recovered funds not focussed entirely on the central Severn Vale. A widespread recycling of recovered funds will enable growth where it is most required which will help reduce economic and community inequality across the county.

Those respondents who objected to the IRS suggested that it does not provide certainty or confidence within the planning system and is likely to deter investment in the County as a result of the further burden being placed on development sites.

Theme 3 – IRS document wording:

The consultation feedback raised concern that wording and/or language used within the document could be interpreted in different ways by different parties.

Some respondents, particularly those raising objections, felt that the wording and content of the document was vague. They required more detail of the need for an IRS; a justification for the methodology proposed; clarification as to which developments an IRS would apply to and why; and likely recoverable costs as well as detail as to where the recovered funds would be recycled. Respondents felt that including this information would help with transparency between GCC and the parties most interested in an IRS and its implications. Respondents felt that further detail would help with justification and address issues of fairness as outlined in theme 5 below.

Theme 4 – Development selection/viability

Respondents stated that the IRS could impact on sites with marginal viability which could affect their delivery. Some respondents also felt that sites for which the strategy applies should be clearly outlined with a defined threshold and/or a defined area of benefit drawn around the infrastructure in question and that sites falling within that area would be applicable to an IRS. Engaging with landowners will then help with implementation of the strategy and overcome any sense of unfairness or viability concerns.

Some respondents acknowledged and understood that the IRS would take account of all necessary s106 obligations first and would not seek a recovery fee if it negatively impacted upon those necessary obligations, for example affordable housing provision.

Theme 5: Fairness and Appropriateness of Method.

Some respondents have objected to the IRS stating that the recovery fee would be unfair and challenged how it can be implemented across a range of sites moving forward. This linked closely with theme 4 – viability. The respondents believed the IRS would not relate to all developments across the county and would not help mitigate site-specific impacts. As such the respondents believed that the IRS was an unfair charging regime contrary to the requirements of the local economy and community. Respondents also challenged whether reliance on planning obligations secured through section 106 agreements was an appropriate method of recovering funds and its compliancy with the CIL Regulations, particularly regulation 122. This could open legal challenge when negotiating the recovery fee. Respondents also criticised the IRS for not outlining costs of the infrastructure being recovered against and expected recovery amounts. The respondents suggested a charging schedule approach or collaboration with Local Planning Authorities to implement the IRS within development plans and devising a CIL payment accordingly.

Theme 6: Collaboration/further consultation

A number of respondents felt that the collaboration and engagement with interested parties on the development of the strategy to date was not sufficient and no collaboration was made to develop a realistic and deliverable charging schedule. Some respondents, despite objecting to the IRS, suggested the need for greater collaboration in order to determine a strategy and method that they deemed was fair, transparent and just. Suggestions were made for further engagement with developers, land owners and Local Planning Authorities and for a further round of consultation on a revised/updated IRS prior to adoption.

Theme 7: Development Pace

A number of respondents objected to the development of the IRS stating that the mechanism could result in prolonged negotiations which will ultimately slow the pace of development. They regarded this as being contradictory to the recent Government planning reforms which aim to accelerate growth delivery.

9.6 Next steps:

The consultation results and responses received will be fully analysed, actioned and responded to in a consultation report. If, during the review of consultation responses and amendments to the recovery strategy, it becomes apparent that further consultation is required, this will be undertaken.

These points will be considered fully within the consultation report and presented along with, where necessary, a reviewed/revised IRS.

Officer recommendations

10.1 Progress with the development of an Infrastructure Recovery Strategy, taking account of the responses received to the public consultation held between 28th January and 11th March 2021

10.2 To conduct a competitive procurement process in respect of a 2 year contract for the provision of advisors to support the delivery of the IRS and award such contract to the preferred tenderer.

Performance Management/Follow-up

11.1 Regular updates will be provided to Lead Cabinet Members detailing progress made. A review group has been formed which will provide feedback on strategy drafts. An IRS would be presented to Scrutiny and future Cabinet for adoption.

Gloucestershire County Council

Infrastructure Recovery Strategy

(Consultation Document)

Version	**0.3**
Last Revised	**January 2021**
Review Date	
Category	**Transport Planning**
Owner	**Strategic Planning – Gloucestershire County Council**
Contact	**ltp@gloucestershire.gov.uk**
Target Audience	• District Councils • Planning and Transport Consultants • Developers

Contents Amendment Record

This report has been issued and amended as follows:

Issue	Revision	Description	Date	Signed
v0.1		**Consultation draft**	**November 2020**	**DS**
v0.2		**Consultation draft**	**December 2020**	**DS**
v0.3		**Consultation draft**	**January 2021**	**DS**

Contents

1. Introduction 3

2. Policy Justification 4

3. Recovery Methodology 7

4. Implementation: 9

1. Introduction

Gloucestershire County Council's (GCC) Infrastructure Recovery Strategy (IRS) sets out the policy justification, methodology and implementation mechanism for recovering funds from development sites that benefit from publicly funded infrastructure. The aim of the IRS is to ensure that development sites which see an uplift in land value from infrastructure that has been forward funded by public money do not unfairly benefit, by requiring such sites to make a financial contribution.

The methodology in the IRS, used to calculate the financial contribution that a development site will be asked to make, is based upon the uplift in land value of sites as a result of public funding awards. Each development site will realise a different level of benefit from infrastructure brought forward with public funding and it is this benefit that will be used to determine a capped recoverable value.

The IRS is in alignment with district and national planning policy as well as policy and guidance contained within GCC documents such as the Local Developer Guide and Local Transport Plan. It is also supported by government guidance relating to public funding, such as the guidance relating to the Housing Infrastructure Fund (HIF).

GGC will, through the IRS, use all reasonable but commercially prudent endeavours to secure the recovery of funds from development sites, with GCC's preferred option to achieve this being through the use of a planning obligation agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). This would be done as part of the planning process relating to the relevant development site. Where necessary, funds may also be recovered through other mechanisms agreed with relevant parties. The IRS will also take account of any future planning reforms.

Recovered funds will be retained by GCC in perpetuity and used to help support further infrastructure which will unlock or accelerate additional growth delivery elsewhere in the county.

The M5 Junction 10 Scheme ('M5 J10') is an example of a case where GCC has received forward-funding in the form of the HIF and would wish to rely on this IRS to secure financial contributions from benefitting development sites. M5 J10 will see improvements to form an 'All Movements' Junction, as well as other scheme elements, with funding being awarded by Home's England as part of the £2.3bn (HIF). In line with Homes England's policy, GCC is committed to recovering funds from development sites that benefit from forward-funding where possible and to producing a recovery strategy to achieve this.

The IRS enables GCC to seek to recover the costs of the public funding, by way of negotiation with developers and Local Planning Authorities (LPA) based on the principles contained in the IRS, from development site allocations that will benefit from the infrastructure being delivered. The IRS will shape those negotiations by outlining the methodology to calculate recovery.

The IRS will also be applied to any future development (speculative/windfall/allocation) that comes forward and benefits from the publicly funded infrastructure, such as those at M5 J10.

2. Policy Justification

The IRS has been developed from a review of existing policy and key material considerations in order to provide justification of the recovery methods and mechanisms within.

Joint Core Strategy:

The Joint Core Strategy (JCS), adopted in December 2017, is a partnership between Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council which sets out a strategic framework for the three areas. Within the framework there are two policies that support the application of a recovery strategy.

- INF1 (Transport Network) states that if there are likely to be severe impacts on the transport network due to a development, they must be mitigated to the satisfaction of the planning authority in consultation with the highway authority.
- INF6 (Infrastructure delivery) states that for permission to be granted mitigation must be provided for the impact on existing infrastructure.

Stroud District Council Local Plan:

The Stroud District Local Plan was adopted in 2015 and contains policy CP6, which has also been retained in the emerging Stroud Local Plan currently undergoing review.

- Policy CP6 – Infrastructure and developer contributions ensures that infrastructure will be in place at the right time and will be achieved by a number of means, one of which is CP6.4 negotiating with appropriate planning obligations to mitigate any adverse impacts or proposed development – while avoiding duplication of payments made through CIL.

Forest of Dean District Council Core Strategy:

The Core Strategy was adopted in 2012 and contains Policy CSP.4.

- CSP.4 (Development principles, development at settlements). The policy discusses the additional infrastructure needs that can be sought by way of developer contributions.

Cotswold District Council Local Plan:

The Cotswold District Council Local Plan was adopted in 2018 and contains a specific infrastructure delivery policy.

- INF1 (Infrastructure Delivery) states that development will be permitted where infrastructure requirements identified to make the proposal acceptable in planning terms can be met. Provision of infrastructure will be secured having regard to regulatory and national policy requirements relating to developer contributions.

Gloucestershire Local Developer Guide (LDG):

The LDG is being prepared by GCC and sets out how the county council plans to engage with planning proposals, which may impact upon the infrastructure and services it is responsible for. It is expected to be adopted in March 2021.

The IRS aligns with Paragraph 45 of the emerging LDG. Paragraph 45 states the following,

- "Paragraph 45: In certain cases, the use of developer contributions through s.106 planning obligations will remain important for securing infrastructure to meet the demands from new development. It is likely, for example, that s.106 contributions will continue to be used for securing infrastructure on strategic sites, as well as in instances where the infrastructure is to be provided on-site and is directly related to the development. In such cases and where appropriate, contributions from several geographically located developments may be pooled to provide the required infrastructure, or contributions secured from developers towards recovering the cost of large scale infrastructure, for example M5 Junction 10, where appropriate as set out in GCC's financial Recovery Strategy Guidance note.

  Additional S.106 contributions will still be sought where an authority chooses not to introduce CIL.

  On the potential granting of a planning consent, the decision will be made between the LPA and the county council as to whether the infrastructure contributions sought will be best secured via S.106 or via CIL, as appropriate, duly noting that CIL is a mandatory charge on developments, which has already undergone viability testing at the development plan EiP stage. S.106 is subject to viability testing at the planning application stage."

Local Transport Plan (2015 – 2031):

The Local Transport Plan (LTP) sets out the long-term transport strategy for Gloucestershire. The LTP supports delivery of adopted council-based strategy and plans, district led Local Plans, as well as maximising the opportunity and ability of GCC to successfully negotiate with developers to secure infrastructure associated with emerging development.

- Policy PD4.4 (Maximising investment in the highway): The council will seek contribution from developers towards priorities and schemes contained in the plan. The Connecting Places Strategies and Delivery Chapter identify infrastructure needs that planning obligations can be secured against/for.

NPPF/NPPG:

The National Planning Policy Framework (NPPF) sets out the government's economic, environmental and social planning policies for England and how these should be applied. The policies set out in the NPPF apply to the preparation of local and neighbourhood plans and it is a material consideration in planning decisions.

- Paragraph 56 states that planning obligations must only be sought where they meet all of the tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
  - Necessary to make the development acceptable in planning terms;

    - Directly related to the development; and
    - Fairly and reasonably related in scale and kind to the development.
- The requirement on a development site to make a financial contribution will need to meet the CIL tests and this remains a question of planning judgement that will be taken at the time of planning application and the negotiations into planning obligations.
- It can be argued that the seeking of a planning obligation to provide funds is directly related to the scheme for which funds are being recovered against, although it is acknowledged that these funds will be used to deliver infrastructure and associated housing elsewhere in the county. If the use of planning obligations is taken forward, the planning obligations sought must be fair and reasonable in scale and kind to the development and this is achieved by this recovery strategy which provides the mechanism of justification for the contribution being sought.

3. Recovery Methodology

The IRS will seek to recover funds in accordance with the following aims;

1. The Infrastructure Recovery Strategy will seek to maximise the recovery of funds from sites that benefit from publicly funded infrastructure.

2. The recoverable contribution will be sought via planning obligations made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended), or other agreed methods during the planning process.

3. The Infrastructure Recovery Strategy will be applicable to housing and non-residential use classes as specified in the Town and Country Planning (Use Classes) Order 1987 (as amended) and implemented on a site-by-site basis.

4. Recovered monies will be retained in perpetuity by the GCC and used to enable the delivery of growth elsewhere in the county.

To determine whether a development site can support recovery, a recovery fund cap calculation, necessary to apportion benefit, and financial viability assessment, to ascertain surplus or loss, will be undertaken through engagement between GCC, Local Planning Authorities and applicants and/or other relevant third parties, during the site specific planning application stage.

Recovery Fund Cap:

The recovery fund will be capped and will be calculated by;

- Undertaking a dependent development analysis of an individual development site(s) to calculate the number of dwellings and level of non-residential use class land that is dependent on the publicly funded infrastructure.
- An evidence base will be compiled to calculate the level of demand for the infrastructure scheme that can be linked to the dependent development. This will allow the calculation of recovery estimates that comply with state aid rules from the development site. This evidence base will utilise a variety of tools including council traffic model(s) and identify a suitable forecast year to be tested.
- The proportion of trips travelling to/from the development site using the improvement scheme will be calculated.
- The proportion will then be applied to the total cost of publicly funded infrastructure with the ‘cap’ being the monies to be recovered.

Financial viability:

Unless the developer accepts the recovery sum sought by GCC as part of the s106 contributions an assessment of the financial viability of the proposed development will need to be undertaken, at the planning application stage, by the developer for review by the Local Planning Authority, to assess whether a scheme generates a sufficient surplus to make the contributions sought.

Government issued National Planning Guidance on Viability sets out the methodology of testing the financial viability of the site, taking into account, but not limited to, site specific costs, s106/CIL, grant funding etc. This guidance is supported by publications from the Royal Institution of Chartered Surveys (RICS) which guide Chartered Surveyors on what must be included in a Financial Viability Assessment and how the process must be conducted. Planning applications will be assessed by reference to the relevant published guidance.[1]

The IRS methodology will therefore follow these steps (the steps are not exhaustive);

Step 1: The publicly funded infrastructure benefit for each infrastructure scheme is calculated (See Recovery Fund cap section above)

Step 2: FVA will by default assess the following:

- Value of the Completed Development (GDV)
  Less the:
- Benchmark Land Value
- Development costs (including Policy costs)
- Developer Profit.

Financial Viability Result:

If the calculation results in a surplus then viability is proven and the development is capable of paying the funds sought (up to the level of the surplus) through the IRS. However, should the surplus exceed the value of the recovery cap, only the value of the cap will be sought. If the calculation results in a loss, no recovery will be sought.

[1] https://www.gov.uk/guidance/viability

4. Implementation:

The IRS is a standalone document but closely aligned to existing adopted GCC documents such as the Local Developer Guide. The IRS whilst standalone can also be embedded within all relevant local planning documents such as Local Plans, Gloucestershire Local Transport Plan, Gloucestershire Local Developer Guide and Supplementary Planning Documents for the development sites benefiting from publicly funded infrastructure.

Transport Planning and Highways Development Management officers will raise awareness of the IRS during development pre-application discussions and the planning application viability appraisal.

The IRS is a mechanism to be used by GCC officers and appropriately chosen partners to seek appropriate contributions from developers of sites that benefit from infrastructure improvements, such as M5 J10, and from promoters of development that would be likely to have an impact on travel patterns in the vicinity of the infrastructure. GCC officers will work with developers through the planning application process to secure recovery monies in a timely manner and proportionate to their impact.

The IRS sets out the methodology to follow when calculating a recoverable figure. The means of achieving the figure and any associated trigger points will be negotiated during the application stage but will be based upon the methodology set out in the adopted IRS.

Each planning application will agree a payment profile based upon the cash-flow specific to that planning application. Recovery fund trigger points could be agreed by house sales, occupations, and prior to occupation or post occupation or any other agreed trigger. However, these are to be negotiated during the planning application process for a particular development site.

The IRS will be monitored by relevant GCC officers and recovered funds will be held by GCC in perpetuity and used to support further infrastructure which will unlock or accelerate additional growth.

GCC have sought legal advice into the use of planning obligations as a means of securing funds from development sites which benefit from public forward funding. In order to use planning obligations to secure funds the planning obligation will need to meet the test set out in Regulation 122 of the CIL Regulations 2010.

The use of planning obligations to secure funding from developments is preferable to GCC because of the enforcement powers and security afforded by a planning obligation agreement. Planning obligations run with the land and therefore offer GCC greater security as the obligation to pay a financial contribution would be enforceable against future occupiers of the land bound by the agreement.

However, GCC is aware that there are limitations on what constitutes a planning obligation and that to enforce the obligation as a planning obligation it will need to meet the CIL tests set out above. In the event that it is determined that the proposed obligation does not meet the CIL tests, GCC intends to use other general powers available to it to secure funds from development sites for this purpose. Those obligations would be contractual obligations, contained within a planning agreement but not themselves planning obligations, and would be enforceable by GCC against the person giving the covenant as a contractual obligation.