

REPORT TO:		Cabinet	
DATE:		30 October 2024	
PORTFOLIO:		Councillor Melissa Fisher - Deputy Leader of the Council (Housing and Communities)	
REPORT AUTHOR:		Mark Hoyle, Head of Regeneration and Housing	
TITLE OF REPORT:		Huncoat Garden Village	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	Yes	If yes, date of publication:	29/10/24

1. Purpose of Report

- 1.1 Following a lengthy period of due diligence, Homes England has approved the Council's business case submission for £29,897,722 for infrastructure funding for the Huncoat Garden Village project (the project), subject to contract and discharge of contract conditions. The purpose of this report is therefore to update Cabinet on the project, and to seek a series of approvals to progress the project including authority to accept the grant award and enter into a grant funding agreement with Homes England.
- 1.2 The recommendations will enable officers to continue to progress the project in accordance with the project timetable in full consultation with the Council Leader and Portfolio Holder.

2. Executive Summary

- 2.1 Huncoat Garden Village forms a key part of Hyndburn Borough Council's growth plans. It is a residential-led, brownfield housing development project with the potential to transform the housing market within Hyndburn.
- 2.2 The Huncoat Garden Village Masterplan and Framework and Delivery Strategy, approved by Cabinet in October 2021, sets out a framework for the new housing development and expanded settlement of Huncoat, with the Masterplan Framework becoming a material consideration for planning applications for the Garden Village area. A design code (currently in final draft form) sets out good design principles including rules (the dos and don'ts) for the creation of a high quality residential development and environment and this will be used by Hyndburn Borough Council, landowners, developers, house builders, etc. as the project is delivered.

- 2.3 Huncoat Garden Village also forms a key part of the emerging Local Plan (Hyndburn 2040: Local Plan {Strategic Policies and Site Allocations}), Policy SP2. Homes England has confirmed that the Huncoat Garden Village proposals remain consistent with the new Government's strategy for housing growth as the project will make a significant contribution to the new housing targets for Hyndburn using a brownfield first approach, and "grey" belt where necessary. For this reason, Homes England has proposed adoption of the emerging Local Plan as a post contract condition within the grant Heads of Terms (refer to Appendix 1). It is therefore important to stress that Huncoat Garden Village project is contingent on the adoption of the emerging Local Plan, and vice versa. Without both the Council will not be in a position to meet the new housing targets.
- 2.4 The project will bring back into use the site of the former Huncoat Power Station, and the site of the former Huncoat Colliery, to create an extension to the existing Huncoat village using new garden community principles. It will deliver 1,816 new homes of mixed tenure (including affordable and social housing) over a circa 15-year period, alongside a new local centre meeting amenity needs, an expanded primary school, 24 hectares of strategic and functional open space, including a safeguarded area of ecological importance, new woodland and networked open space, and infrastructure in the form of a new residential relief road, car parking provision at Huncoat Railway Station, and localised road junction upgrades as required.
- 2.5 Given the major constraints presented by the previously developed land at the former power station and colliery sites, redevelopment is not feasible without public sector intervention to part fund site remediation and infrastructure to help provide serviced development platforms for viable housing development, as well as a new residential relief road that will connect new development areas with the existing network, as well as relieving congestion that already exists in the village.
- 2.6 Following a successful bid to the Brownfield, Infrastructure and Land (BIL) fund there is an opportunity to secure just under £30 million of grant funding to unlock the development of much needed social and market housing in Hyndburn.
- 2.7 This report therefore makes a series of recommendations for the Council to accept the BIL grant and enter into a grant funding agreement with Homes England towards site preparation works and new infrastructure. As accountable body, the Council will "passport" funding with conditions under grant agreements to landowners to undertake the remediation works. The proposed relief road passes over several land ownerships and therefore the Council proposes to enter legal agreements with these landowners to acquire land, and to construct the new relief road.

3. Recommendations

For the reasons set out in this report, I recommend that Cabinet:

- 3.1 Note and welcome progress with the Huncoat Garden Village project, including the offer of a maximum grant of £29,897,722 from Homes England.

- 3.2 Accept the £29,897,722 grant offer subject to paragraph “3.3” below.
- 3.3 Note the Heads of Terms for the Huncoat Garden Village Grant Award at Appendix 1, and delegates authority to the Head of Regeneration and Housing in consultation with the Leader of the Council and Portfolio Holder, and following consultation with the Executive Director (Legal and Democratic Services) to negotiate and enter into a BIL grant funding agreement with Homes England noting the risks detailed in paragraph 4.10 (4.10.1 - 4.10.6) of the report and at Appendix 2.
- 3.4 Note the in principle agreement with National Highways Limited in relation to Junction 8 of the M65 motorway described in paragraphs 4.6 - 4.8 of the report and delegates authority to the Head of Regeneration and Housing following consultation with the Executive Director (Legal and Democratic Services) to finalise terms and enter into the necessary legal agreements with National Highways Limited, subject to the grant funding agreement with Homes England having been completed pursuant to paragraph 3.3 above
- 3.5 Delegate authority to the Head of Regeneration and Housing, following consultation with the Executive Director (Legal & Democratic Services) to agree heads of terms and enter into legal agreements with landowners to enable delivery of Huncoat Garden Village where such agreements relate to:
- acquisition by the Council of land, rights or interests for the purpose of constructing the proposed new residential relief road at Huncoat (Huncoat Lane) or are associated easements, licences and / or option agreements
 - the award of BIL grant by the Council to the owners of the former Colliery and Power Station sites to facilitate remediation of their land for residential development
 - an equalisation arrangement between landowners benefitting from residential development whereby the cost of non-grant funded infrastructure and enabling costs, any costs that exceed grant awarded for the residential relief road, and for strategic open space is shared proportionally between the landowners

In all cases, subject to completion of the Homes England grant funding agreement pursuant to paragraph 3.3 above, and in consultation with the Leader of the Council and Portfolio Holder.

- 3.6 Note the following budget out turn position for 2023/24 and for the 2024/25 budget:
- The Council spent £553,208 in 2023/24 in progressing Huncoat Garden Village against an approved budget of £483,220 with a negative variance of £69,988 met from revenue reserves for the reasons set out in paragraph “4.12”
 - Costs of £54,584 have been incurred in 2024/25
 - Should the Council accept the grant award and enter a grant funding agreement with Homes England, all of the above costs (£607,792) should be recovered.
- 3.7 Approve a revenue budget of £400,000 for 2024/25 in advance of entering the BIL grant funding agreement to meet essential consultancy costs to enable the Council to

continue to progress key aspects of the Huncoat Garden Village project as described in paragraph “4.14”, recognising this spend is at risk but most will be recoverable if the Council enters a grant funding agreement with Homes England (and draw down of funds will be subject to consultation with the Executive Director (Resources)).

- 3.8 Grants approval to submit a planning application with supporting Environmental Impact Assessment for the proposed residential relief road.
- 3.9 Approves the appointment of appropriate consultants as required to support the Council and progress the project in line with the BIL grant funding agreement and the project delivery timetable.
- 3.10 Note that regular progress reports will be presented to the Council’s Management Team and to future Overview and Scrutiny and Cabinet meetings given the size and scale of the project.

4. Reasons for Recommendations and Background

Background

- 4.1 Over several years the Council has worked with a range of stakeholders including Lancashire County Council (LCC), landowners, house builders, infrastructure providers, etc., and supported by Homes England, in developing the Huncoat Garden Village Masterplan and project to deliver circa 1,800 new homes at Huncoat.
- 4.2 The Brownfield, Infrastructure and Land Fund (BIL) was announced and released by the Government at the end of July 2023. The fund is delegated to, and managed by Homes England. It is a £1 billion fund for projects across England with the intention of unlocking strategic housing sites where brownfield, infrastructure or land projects face delivery and, or, viability challenges.
- 4.3 In October 2023 the Council submitted an updated Treasury Green Book compliant business case to Homes England seeking grant funding of £29.898 million from the new BIL fund for Huncoat Garden Village. The overall investment from the project is estimated at £463.24 million. The BIL bid included the following specific items:
 - A new 1.1km residential relief road connecting Huncoat directly with the A56, such road to be constructed by the Council and subsequently adopted by Lancashire County Council
 - Land acquisition by the Council to enable delivery of the new residential relief road
 - Brownfield land remediation on the former colliery and power station sites
 - A contribution towards improvements for junction 8 on the M65 motorway
- 4.4 The project will have significant regeneration and growth benefits for Hyndburn by diversifying the housing offer, and providing modern housing in a high – quality environment. The scale of development supports the Council’s wider economic growth plans and will provide access to open space and new recreational and sport facilities.

Project Update and Progress

4.5 Since the Council's funding bid was submitted, Homes England has been carrying out a detailed assessment of the business case and bid. In the meantime, the Council progressed key aspects of the project to ensure the Council is well placed to "hit the ground running" should the Council's bid be approved. This includes progress with:

- Developing a Planning and Environmental Impact Assessment¹ (EIA) Strategy – establishing a robust planning framework to underpin landowner agreements including a S106 strategy and equalisation framework (this is the equalisation of costs between landowners for items that benefit all the project sites such as upgrades/reinforcement of services e.g. power supply, water supply, drainage, road junction improvements, etc.)
- Developing a Land Assembly Strategy – preparation of a site and CPO strategy, providing a framework for infrastructure delivery and site assembly for housing delivery
- Developing a Housing Delivery Strategy – sets out the expected housing delivery model and projects housing delivery in the context of the HGV Masterplan Framework and emerging Local Plan
- Reviewing of the former power station and colliery site land owners site remediation strategies
- Preparation of a full planning application and Environmental Impact Assessment (EIA) for the proposed Huncoat Lane (new residential relief road). This is almost complete and near ready for submission as a major planning application
- Contractor procurement for the proposed Huncoat Lane
- Concluded a desktop land referencing exercise to identify all registered and known interests in the HGV site, including schedules and plans to assist in our due diligence in understanding land ownership across the whole project and in preparing the way for a potential compulsory purchase order for the proposed Huncoat Lane. Where required this will be followed up by detailed title reviews by the Council's appointed solicitors
- Liaison and negotiations with land owners and their preferred house builders – including the preparation of draft heads of terms; preparing the way for legal agreements with land owners
- Liaison with National Highways including arrangements for improvements to Junction 8 of the M65 and proposed removal of the holding objection that was potentially putting Homes England funding and delivery at risk (refer to "4.6" - "4.8" below for more information)
- Liaison with other key stakeholders on bringing the overall project forward including Lancashire County Council, United Utilities, Electricity North West, house builders, housing associations, landowners, Huncoat residents, etc.

Junction 8, M65 Motorway

¹ EIA – as per the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the '2017 Regulations') which apply to development under Part III of the Town and Country Planning Act 1990, and require the assessment of the effect of certain projects on the environment.

- 4.6 National Highways consider Junction 8 of the M65 to be at full traffic capacity, and therefore are unable to support development in close proximity to this junction without major junction improvements. Determination of the Council's BIL bid has been delayed whilst National Highway's concerns about capacity, and therefore safety, at Junction 8 of the M65 motorway have been resolved. National Highways lodged an objection to an outline planning application for a residential development of up to 451 units on the site of the former Huncoat power station due to the safety concerns described above. Whilst the objection only relates to that application, National Highways indicated that in advance of them securing sufficient funding to fund the required improvement works at Junction 8, other planning applications in the area would likely to receive similar holding objections, and therefore preventing progress with HGV. Following senior officer discussions between the Council, Homes England and National Highways a process for funding and securing the required improvements at Junction 8 has been agreed in principle.
- 4.7 The National Highways holding objection presented the HGV project's potential biggest risk. Until the threat of objection was removed, or a process agreed to remove the objection, Homes England could not approve the Council's funding bid. This delayed Homes England's due diligence of the Council's BIL funding bid until early 2024. Following senior officer meetings a process for removing the holding objection was agreed in principle to the satisfaction of National Highways, sufficient for Homes England to consider and subsequently approve the Council's funding bid.
- 4.8 The process for removing the objection and any potential future objections is subject to the Council and National Highways entering a legal agreement which will underpin the steps to be taken by both parties sufficient for National Highways to remove the holding objection. Draft heads of terms are being prepared to reflect the in-principle agreement reached with National Highways. Once heads of terms are agreed both parties will proceed to enter a legal agreement to confirm funding commitments and timescales for the improvement works to be concluded. The main terms agreed in principle with National Highways are as follows:
- The Council will confirm to National Highways when the BIL grant funding agreement is entered into by Homes England and the Council
 - Upon written confirmation of Homes England's intent to commit BIL grant funding to the Council for HGV, and the announcement of the Road Investment Strategy (3) funding settlement, National Highways will withdraw its holding objection
 - Following the signing of the Grant Funding Agreement, the Council and National Highways will enter into legal agreements
 - Upon entering legal agreements the Council will transfer £2,192,500 to National Highways no later than the end of March 2026 for the M65, J8 works
 - National Highways will hold the monies until the time funding deployment is required to carry out the junction improvement works

Homes England Grant Funding Agreement

- 4.9 Following approval of the Council's funding bid the Council must enter a grant funding agreement with Homes England before it can access the circa £29.898 million grant

allocation. The agreement will incorporate Homes England's standard terms and conditions, which are not negotiable. However, the funding agreement will also be subject to a range of special conditions and milestones which are set out in the Heads of Terms attached at Appendix 1. These are bespoke to the Huncoat Garden Village project and subject to some negotiation. The obligations that will be imposed on the Council carry varying degrees of risk (please refer to 4.10 below for a summary of the key risks and mitigation measures proposed). We will liaise with the Leader and portfolio holder in detail in respect of the funding terms once we receive the draft funding agreement, but the key terms are outlined below:

- The grant will only be available for a specific period which will start once the Council enters into the funding agreement and will finish at the end of March 2028. This means the infrastructure projects and grant spend must complete during the grant availability period. Meeting this timetable will be critical, especially if the Council is required to CPO some of the land required for the relief road. This risk is considered in more detail in 4.10.3 below.
- The Council will be responsible to Homes England for the acts / omissions of any developer or contractor as if they were the acts or omissions of the Council. This includes the Council's consultancy team and any developer or contractor appointed to deliver the relief road. We will seek to pass this risk to our consultants and contractors by virtue of the contracts we will enter into with them. In particular we will seek warranties and indemnities to cover the risks and will require our contractors to carry appropriate levels of insurance. We will also engage an experienced consultancy team to assist us with monitoring the performance of our contractors. . .
- The Council will be required to take all reasonable steps to procure the delivery of the Outputs (basically circa 1,800 new homes).
- The Council will be subject to grant clawback arrangements should landowners / developers make excess profit (beyond what is considered reasonable) and the Council will register a legal charge against the land in question to secure the repayment obligations
- Homes England may reclaim grant from the Council (or withhold payment of the grant) if there is a serious breach of the terms of the funding agreement. Such breaches may relate to the actions of our contractors or the landowners, and we will seek to pass on the risk to the Council via the contractual arrangements we put in place with the contractors and landowners
- The Council must procure that any developer or contractor does not grant security over any assets funded by the grant unless they have Homes England consent and this will be achieved through the contractual arrangements we will put in place with the landowners
- The Council must ensure that the houses are sold freehold or at a peppercorn rent (in certain circumstances)

Project Risks

4.10 A project of this size and scale comes with a number of risks. The risks are identified in the table attached at Appendix 2. Some of the more significant key risks are highlighted below:

4.10.1 Land assembly for the proposed residential relief road –

i) there is a risk of not acquiring land to enable the road to be constructed as some of the land we will need is in unregistered / unknown ownership currently and one or more of the owners may refuse to sell their land to us, either at all or at a reasonable price.

ii) the grant funding availability places time constraints on the project which means the land required to construct the road must be acquired and the road constructed within the grant availability period which ends at the end of March 2028. The project will almost certainly need a Compulsory Purchase Order (CPO) to deal with the unregistered / unknown ownership interests as well as deal with any landowner unwilling to sell their interest. There is one landowner that we are aware of who may be unwilling to sell. This means the Council will need to ensure that it achieves a successful CPO in time to acquire land and construct the road before the end of March 2028.

iii) the most appropriate CPO power for the construction of a road is using the Highways Act. We are seeking Lancashire County Council's (LCC) support to use their Highway CPO power, which is not guaranteed. Without a successful CPO we may not be in a position to acquire all the required land

Mitigation:

i) the funding bid includes funding to acquire land at market value for the road. Expert advisors are appointed to advise the Council on land values and to undertake negotiations with land owners on the Council's behalf. Should terms not be agreed quickly during the funding period the Council will be required to acquire land by CPO.

ii) Homes England has extended the grant availability period to the end of March 2028, which should be sufficient time to secure a CPO and construct the road, although this cannot be guaranteed. However, it must be stressed that the Council will need to act in a timely and diligently manner with the support of LCC (see next point)

iii) Should LCC not agree to support the Council with a CPO, we would look to Homes England to support us with their CPO powers. There is a third CPO option using Planning Act CPO powers, but this may not be the most appropriate CPO route.

4.10.2 If we acquire land by CPO there is potentially a significant financial risk to the Council should values determined by Lands Tribunal exceed grant funding available for land acquisition.

Mitigation: It is hoped that this can be avoided by purchasing the land by agreement at market value. We have already obtained expert valuation advice in respect of the cost of acquiring the land we need to build the relief road and this has informed our funding bid. As a "belt and braces" exercise, we plan to take further advice from a barrister with expertise in this area to provide further assurance that our land valuations are sound and that there is little or no risk of landowners successfully claiming "ransom value" to inflate the acquisition costs. This risk can be further mitigated via agreements with landowners benefitting from housing development by way of an equalisation arrangement whereby all the sites that benefit from housing development agree to contribute towards any additional cost for the proposed road including land assembly costs, above those costs budgeted for within the BIL grant.

4.10.3 There is a risk of not delivering the interventions within the BIL funding timescale.

Mitigation: The Council has appointed and is in the process of appointing various specialist advisors to support delivery (this includes 4.10.1 and 4.10.2 above). In addition, work is underway to ensure the deadline can be achieved e.g. planning application for the proposed new relief road, discussions and negotiations with landowners, development of a detailed delivery programme, procurement of a contractor to deliver the new residential relief road, etc. Homes England has extended the grant availability period to March 2028 which allows a realistic CPO timescale with subsequent spend.

4.10.4 There is a risk that expenditure exceeds the funding made available via BIL grant.

Mitigation: This is covered in part, for the land acquisition element, by “4.10.2” above. Funding for land remediation on the main two brownfield sites and the contribution to J8 are grants that will be capped at the BIL funded allocations and “pass ported-on” to the landowners and National Highways respectively and therefore removing any risk of spend exceeding the grant available. This will not apply however to the construction of the road where the Council is developer and therefore takes full financial risk. Here to mitigate risk the Council employed cost consultants to help determine the likely cost of the road. The costings included an allowance for inflation at 11.5% and a contingency of 15% on cost. This risk has recently been mitigated further following the procurement and tender exercise to appoint a contractor to build the road. Based on the tender the cost will be below the amount of grant available. Any additional cost can also be met through an equalisation arrangement as described in “4.10.2” above.

4.10.5 There is a risk that the actions of landowners could cause the Council to breach its contractual obligations to Homes England.

Mitigation: the Council will seek to pass responsibility for such breaches to the landowners, In particular, if the land owners actions result in grant being repayable we will seek to pass the repayment obligation to the landowner in question and will back this up by taking security over the land by registration of a legal charge. .

4.10.6 There are risks relating to non-adoption of the emerging Local Plan (Hyndburn 2040: Local Plan (Strategic Policies and Site Allocations). The draft Local Plan provides the planning policy framework for Huncoat Garden Village which means the draft Plan’s adoption is fundamental to delivering Huncoat Garden Village. The non-adoption risk could arise if the Council fails to submit the draft plan to the Planning Inspectorate within the permitted timescale or if the Planning Inspectorate deems the draft plan to be unsound following a public inquiry.

Mitigation: The emerging Plan has concluded the Regulation 19 consultation stage and is nearly ready to submit to the Planning Inspectorate. It is imperative that the draft Plan is submitted to the Planning Inspectorate in a timely fashion to allow for its adoption during the transitional arrangements proposed by the Government. The new Government is encouraging local planning authorities to continue to progress plans to adoption under the existing local planning framework without delay where the local planning authority has a draft local plan at an advanced stage of readiness, which is

the case in Hyndburn. The Planning Team are currently working hard to prepare the draft plan for submission.

Financial Implications for the Council

4.11 To date, £1.424 million has been expended on bringing the project forward as follows:

Huncoat Garden Village	£'000
<u>Expenditure</u>	
Masterplan Framework and Delivery Strategy	379,000
Design Code	50,000
Relief Road, Planning Application & Environmental Impact Assessment	569,000
Business Case & Early Project Development & Delivery	426,000
Total Expenditure to Date	1,424,000
<u>Funding</u>	
Homes England Grants	(634,000)
Department for Levelling Up, Housing & Communities	(50,000)
Lancashire County Council	(23,000)
Hyndburn Borough Council - non recoverable, prior to BIL process	(109,208)
Hyndburn Borough Council - recoverable through from BIL grant	(607,792)
Total Expenditure to Date	(1,424,000)
Unfunded Spend at this Time	
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4.12 On the 31st May 2023 Cabinet approved a budget of £483,220 from General Fund reserves in the 2023/24 financial year to meet consultancy costs in progressing the project. In total, £607,792 has been spent. The additional spend is mainly due to the delay in Homes England determining the Council's BIL submission, which was originally scheduled to be considered in March 2024. In the meantime key pieces of work had been commissioned with an expectation that BIL funding would be in place and available by April 2024. All project work is currently paused and no further spend occurring. However, it should be stressed that most costs incurred by the Council to

date (£607,792) should be recoverable by the Council if it accepts the BIL grant offer, and enters into a grant funding agreement with Homes England.

- 4.13 In addition to the Council's funding, Homes England awarded the Council an additional £200,000 revenue grant at the end of the 2023/24 financial year to support the Council's project costs ensuring project delivery remained on track (this is included in the £634,000 amount in 4.11 above)
- 4.14 The Council has paused activity and expenditure on the Huncoat Garden Village project at the end of 2023/24 until the Council's BIL bid was determined. Homes England's delay in considering the Council's BIL bid, did not help with project momentum (although Homes England support for the project including financial support has been critical, with Homes England reinforcing their full support for the project), and therefore there is an urgent need to progress key aspects of the project including the proposed relief road planning application, land owner negotiations and agreements, independent subsidy control advice, etc. This will require a further budget of £400,000 for 2024/25 in advance of entering the BIL grant funding agreement, subject to bid approval. This is an estimate of costs likely to be incurred before the Council enters the BIL grant funding agreement which is scheduled for mid-November 2024. Most of this expenditure will also be recoverable through the BIL grant award (Subsidy Control advice will not be recoverable via BIL and therefore the Council will need to meet that element of cost. This is not expected to exceed £15,000)

5. Alternative Options considered and Reasons for Rejection

- 5.1 Cabinet could choose not to proceed with the HGV project and to decline the BIL funding offer. However this is not recommended as it would put at risk the development of just over 1,800 new homes in the Borough (20% of which will be social housing or affordable), which form a major part of the housing growth proposed in the local plan. The HGV project is a central part of the draft local plan which would also have to be abandoned if a decision is taken not to proceed with the Huncoat scheme. The costs incurred to date in preparing the draft local plan to submission stage (approximately £250,000) would have to be written off and a similar sum would be required to produce a new draft local plan. In this regard, the Council would be required to begin the plan making process from scratch, including the compilation of a detailed evidence base, a call for sites and public consultation. This process could easily take over 30 months to complete and a start could be delayed whilst the new Government consults on, and then implements, changes to the local plan-making regime. In the meantime, the Council would be without an up to date local plan and without sites for delivery of the new housing targets. This means that, as a matter of law, the presumption in favour of sustainable development would apply to planning applications. In turn, this poses a threat to the Borough's green belt as there would be a much greater risk of speculative applications for housing development being successful, including on appeal, if the presumption applies.
- 5.2 A decision not to proceed with the HGV project would also be contrary to the Government's policies for encouraging new house building at scale and pace, including the proposed requirement for Hyndburn to deliver 313 new homes a year

through the planning system. If the brownfield / grey belt land at Huncoat is not used for housing development, the Borough's greenbelt would be put at significant risk as the Borough does not have anywhere near enough brownfield sites to enable housebuilding at this scale. Furthermore, many of the limited number of brownfield sites that exist in the Borough are not considered to be viable for development without considerable public funding (for example because of contamination and / or poor ground conditions) and there is no guarantee that this level of public subsidy will be available. It could also have other potential consequences for the Council, including:

- reputational damage with key stakeholders including Homes England, DLUHC, National Highways, house builders, registered providers, etc.
- the Council would not recover costs incurred to date on the project i.e. £607,792

Homes England consider the HGV project as a significant opportunity for new housing at scale, consistent with national Government policy. The funding is critical to supporting new infrastructure at Huncoat, without which, the Council's ability to enable additional housing to meet future housing needs would be potentially jeopardised.

5.3 Reducing the number of new housing units at Huncoat Garden Village is also not an option. The Council's bid is framed within the Masterplan Framework, and in turn the draft new Local Plan. The whole business case justifying circa £30 million grant funding is predicated on 1,816 new housing units. In turn, a reduction in units would fail to achieve the required Benefit Cost Ratio and potentially exceed the maximum grant rate per unit. Therefore Homes England will not consider such an option.

5.4 The Government and Cabinet want to see an increase in house building, including additional affordable / social housing up to 50% of the overall new homes built. The Council's BIL submission was made before the new Government announced its new housing targets including those for a greater proportion of affordable / social housing units. The BIL grant award allows for 20% affordable /social housing units which complies with the Council's Local Plan and the new emerging Local Plan. Cabinet and officers have engaged with Homes England about increasing the level of affordable / social housing units for the project. Homes England has confirmed this will not be possible due to project viability and because significant additional grant would be required to achieve an increase in affordable / social housing units. However, this does not rule out an increase in the number of affordable / social housing delivered at Huncoat. This is a 15-20 year project and therefore we can expect further funding opportunities to be available in the future to increase affordable / social housing provision. This includes future rounds of Homes England's affordable homes programme which is due to be reviewed in 2026.

6. Consultations

6.1 The Huncoat Garden Village Masterplan Framework was subject to extensive consultation leading up to its approval by Cabinet in October 2021. In addition, Huncoat Garden Village formed part of the consultation on the new, emerging Local Plan (Hyndburn 2040: Local Plan {Strategic Policies and Site Allocations}).

- 6.2 Infrastructure and housing development at Huncoat Garden Village will be subject to further public consultation as part of individual planning applications.
- 6.3 At the request of the Council Leader a Cabinet Working Group comprising of elected members and local representatives was set up in October 2024 to review the HGV project and to make a recommendation to Cabinet on whether the Council should accept the Homes England grant offer. The Working Group concluded that the Council should accept the grant offer, and that the project should remain under review especially at the start of each Phase as set out in the Masterplan Framework². Furthermore, the Working Group wanted to ensure the opportunity for a freight rail terminal opportunity as set out in the new, emerging Local Plan³ remained open.

7. Implications

<p>Financial implications (including any future financial commitments for the Council)</p>	<p>Refer to paragraphs 4.11 to 4.14 of the report.</p> <p>Homes England has made the Council a grant offer of £29.898 million subject to contract and discharge of contract conditions.</p> <p>Subject to accepting the grant award and entering Homes England’s Grant funding Agreement, the grant award covers the following:</p> <ul style="list-style-type: none"> • recovery of historic costs incurred by the Council to date (£607,792) • reimbursement of further capacity costs including professional fees for the project • capital costs for: <ul style="list-style-type: none"> ○ brownfield land remediation ○ land acquisition for, and construction of a new residential relief road ○ contribution to improvements to J8, M65 motorway <p>The Council’s direct legal and financial costs are not recoverable, and therefore the majority of these costs will be met from exiting internal service budgets. This includes legal advice on the Grant Funding</p>
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² Masterplan Framework & Infrastructure Delivery Strategy, section 9.3, page 119.

³ Hyndburn 2040 Local Plan (Regulation 19 Publication /Pre-Submission), Policy SP2.

	<p>Agreement.</p> <p>The Council will need to commission a subsidy control opinion, the cost of which is not recoverable. A budget of £15,000 will be set aside within the £400,000 sought at recommendation “3.7”.</p>
<p>Legal and human rights implications</p>	<p>The Council will be invited to enter into a BIL grant funding agreement by Homes England. Appropriate legal advice, including advice from the Council’s Legal Team, will be taken in respect of the terms and conditions before entering the agreement.</p> <p>The Council will ensure that its consultancy team and contractors are procured in accordance with procurement law and procedures, with frameworks used where this brings benefits and accords with the procurement strategy for the project. Written contracts will be put in place that include appropriate indemnities and insurance provisions and which require collateral warranties to be provided to the Council and Homes England where appropriate.</p> <p>The Council will need to enter into legal agreements with landowners and National Highways in order to deliver the £30 million spend and associated funded infrastructure as well as deliver 1,816 new homes at Huncoat. The agreements will be prepared with supporting advice by the Council’s externally appointed solicitors. Under these agreements the landowners will assume many of the responsibilities of the Council under the funding agreement with Homes England, thereby reducing the risk to the Council and helping to ensure compliance with terms of the Homes England funding agreement.</p> <p>Homes England (HE) requires the Council to provide it with a subsidy control compliance statement as part of the due</p>

	<p>diligence process and requires this to be drafted by an external solicitor. This has not yet been produced, but the grant agreement will not be concluded by either the Council or HE until both are satisfied that the grant funding and project delivery arrangements are subsidy control compliant.</p> <p>Selection of a contractor to construct the new relief road has been subject to competitive procurement, so no question of subsidy control arises. Both the relief road and M65 junction improvements are infrastructure works for general public benefit and, as such, funding for these elements of the project is not considered to constitute a subsidy in any event and the Subsidy Control Act 2022 does not apply to the same.</p> <p>Further reports will be presented to Cabinet in respect of any proposed use of the Council's CPO powers.</p>
Assessment of risk	Refer to paragraph 4.10 of the report and Appendix 2.
Equality and diversity implications <i>A Customer First Analysis should be completed in relation to policy decisions and should be attached as an appendix to the report.</i>	None for this report

**8. Local Government (Access to Information) Act 1985:
List of Background Papers**

- 8.1 The Huncoat Garden Village Masterplan Framework and Infrastructure Delivery Strategy was approved by Cabinet on the 20th of October 2021.
- 8.2 Cabinet 31st May 2023 – Huncoat Garden Village Update and Appointment of External Consultants.
- 8.3 Hyndburn’s Corporate Strategy 2023 – 2028, and the Emerging, Local Plan, Hyndburn 2040 (Strategic Policies and Site Allocations)⁴

⁴ Regulation 19 (Publication/Pre-Submission) Local Plan Consultation
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9. Freedom of Information

9.1 The report does not contain exempt information under the Local Government Act 1972, Schedule 12A and all information can be disclosed under the Freedom of Information Act 2000.

Appendix 1

Huncoat Garden Village – BIL Funding – 28th August 2024

Heads of Terms for Grant Award SUBJECT TO CONTRACT

These are commercial Heads of Terms intended to capture the main terms of the Grant Funding Agreement (GFA). Additional and varied legal provisions will be included in the GFA. The list of conditions is not exhaustive and additional conditions may be required which will be identified during the close out of due diligence and agreement of the GFA.

Parties	<p>1. Homes England (the trading name of Homes and Communities Agency) One Friargate Coventry CV1 2GN ("Homes England")</p> <p>2. Hyndburn Borough Council, Scaitcliffe House, Accrington, BB5 0PF ("Grant Recipient")</p>
Developer	This means any other party who will enter a contract with the Grant Recipient for the delivery of the Infrastructure Works.
Project Description	This project is to provide grant funding for infrastructure works to Huncoat Garden Village to allow 1816 new homes to be delivered.
Infrastructure Details (Schedule 1 GFA)	<p>In summary, the Infrastructure Works comprise:</p> <ul style="list-style-type: none"> • Land Acquisition and or rights over land to build the relief road; • Construction of the relief road to adoptable standards; • Financial contribution to capacity mitigation works for Junction 8 M65 and if required Junction 7; • Financial contribution to the site remediation of both the former Colliery site and former Power Station site; • Capacity funding for professional consultancy team support to deliver the project.
Maximum Sum (the BIL Funding)	£29,897,722 (Twenty-nine million, eight hundred and ninety- seven thousand, seven hundred and twenty two pounds) being the maximum amount of BIL funding for Capital Expenditure to be provided by Homes England to the Grant Recipient under the Agreement.

Infrastructure Sites	The land upon which the infrastructure Works are to be undertaken.
Outputs	The dwellings which are to be delivered or facilitated pursuant to the BIL Funding comprising 1816 homes in total with the provision of 20% Affordable Housing.
Output sites (Annexe 4 GFA)	The land upon which the outputs will be situated.
Delivery Programme (schedule 8 GFA)	Means the detailed plan or programme, which sets out the stages in delivery of the Infrastructure Works. Where there is more than one infrastructure project being funded then a master programme and a more detailed sub-programme for each infrastructure project should be provided.
Infrastructure Expenditure	The capital costs of delivering the Infrastructure Works as set out in the Expenditure Forecast which Homes England is satisfied either have been or will be reasonably and properly incurred by the Grant Recipient in delivering the Infrastructure Works.
Grant Recipient Contribution	£0 (Zero)
Expenditure Forecast	The forecast comprising a budget and a cash flow of Infrastructure Expenditure aligned with the Delivery Programme and showing the monthly drawdown of BIL Funding during each Financial Year of the project's duration.
Historic expenditure and or Pre-Construction Costs	The aggregate maximum sum of £ 3,257,658 of the Infrastructure Expenditure as set out in the Expenditure Forecast and marked as "Historic Expenditure" or "Pre-construction Costs" to be incurred by the Grant Recipient prior to the satisfaction of the relevant pre drawdown conditions (see post contract conditions) to each claim for BIL Funding. "Historic Expenditure and Pre-construction Costs" approval will need to have been secured with Homes England. For the avoidance of doubt the Grant Recipient shall provide a statement clearly setting out what costs are required as Historic Expenditure or Preconstruction Costs. This shall confirm the amount, whether it is fixed sum or an estimate, and the reason why this is required in advance of the agreement being fully unconditional. Examples of Historic Expenditure or Pre-construction Costs may include design fees, surveys, land purchase, utility diversions etc.
Permitted funding pre-Landowner Agreements	Funding of up to £3.5m only may be drawn down to fund pre-construction works and the contribution to the motorway mitigation works until the landowner agreements are signed and sealed. (Schedule 6 GFA)
Availability Period for BIL Funding	Means the period from the date of the Agreement until 31 March 2026 unless otherwise brought to an end in accordance with the provisions of the agreement. In recognition of the current project programme continuing beyond 31/3/26, Home England will provide funding up to 31 March 2028, subject to the terms and conditions of the GFA having been satisfied.
Subsidy Opinion	A legal opinion of the Subsidy treatment of the Infrastructure Works shall be obtained by the Grant Recipient from a firm of reputable solicitors who have expertise in Subsidy Law. Such opinion shall be satisfactory to Homes England acting reasonably. If a legal subsidy is identified Homes England will undertake a Principles Assessment and

	make a submission to the Competition Markets Authority.
Output Delivery Statement	An Output Delivery Statement meaning a statement for the housing delivery timetable including where available planning, site assembly, site marketing and profiling of housing output delivery
Pre-Contract Conditions (termed as “Pre-Commencement Conditions” in Schedule 7 of the GFA)	<p>Prior to the date of the GFA the Grant Recipient is to provide (in a form satisfactory to Homes England) the following;</p> <ol style="list-style-type: none"> 1. A Delivery Programme demonstrating the programme for the Infrastructure Works through to completion; 2. An Expenditure Forecast to show all funding sources and the cash flow of expenditure on infrastructure utilising the Homes England template; 3. A summary Cost Plan for the Infrastructure Works (level of information to be agreed with Homes England but should include a cost plan for all items of infrastructure and be capable of cross referencing with the Expenditure Forecast); 4. The Land Acquisition Strategy for the Infrastructure Site including how the land will be made available for the delivery of the project 5. The CPO Strategy for the Infrastructure Site and evidence of a commitment by the Grant Recipient that CPO will be used, if required, to facilitate the completion of the Infrastructure Works; 6. A Recovery Strategy which seeks to maximise recovery of the grant funding from the Output Site(s). The Recovery Strategy shall be based on land sales receipts after funds for the waste depot relocation have been secured by the Grant Recipient and is to cover: a) expected amount and profile of recovery; b) detailed recovery mechanism in respect of land sale receipts and (if applicable) section 106 contributions; c) planning policy or land agreement basis for recovery; 7. A satisfactory red book Valuation where grant funding is to be used for land purchase; 8. An Outputs Delivery Strategy which shall include a development parcel disposal methodology, a parcel disposal programme and planning strategy; 9. A procurement strategy; 10. A risk register for the Infrastructure Works; 11. A governance strategy for the management and implementation of the project addressing all key management actions including but not limited to resourcing, decision making, roles and responsibilities, management of budget, relationship with Developer(s) including managing conflicts of interest together with confirmation of the commitment by the Grant Recipient to maintain resources during the

	<p>programme;</p> <p>12. Evidence of the Professional Team's capability, capacity and resourcing to deliver the Infrastructure Works by the Infrastructure Works Practical Completion Date;</p> <p>13. A planning strategy with a programme for acquisition of all relevant statutory consents for the implementation of the Infrastructure Works;</p> <p>14. A Subsidy Opinion (satisfactory to Homes England acting reasonably) given by a firm of reputable solicitors who have expertise in Subsidy law as to the Subsidy treatment of the Infrastructure Works. The Subsidy Opinion is to be presented on letterhead and shall clearly address and be based on the entire Infrastructure Works, methods to be utilised for recovery of the grant (where the grant is recoverable) and confirm that the proposed Grant Funding is compliant with the Subsidy Control Requirements and is not an Unlawful Subsidy;</p> <p>15. Confirmation from a firm of reputable solicitors who have an expertise in Subsidy law that the requirements of Section 52 of the Subsidy Control Act have been satisfied (either by way of a referral having been made or the requirements not being applicable to the Grant Funding); 16. Where the Grant Funding is deemed to be a Subsidy and amounts to an SOPI, the Competition and Markets Authority has issued its report in terms of the Subsidy (“the CMA Report”) and:</p> <ul style="list-style-type: none"> • Homes England is satisfied (acting reasonably) that the CMA Report provides the necessary assurance that the Grant Funding is compliant with the Subsidy Control requirements and is not an Unlawful Subsidy; and • the cooling off period, as provided under Section 54 of the Subsidy Control Act 2022 having expired; <p>17. A funding strategy that accords with the Expenditure Forecast, setting out that all the necessary funding will be in place at the right time for the delivery of the Infrastructure Works and DfT funded works to include confirmation of the Grant Recipient Contributions;</p> <p>18. A strategy to mitigate potential Cost Overruns signed by the S.151 Officer and describing how the Grant Recipient will cover any cost overrun;</p> <p>19. A certificate from the Grant Recipient's Section 151 Officer that all expenditure to which the Grant Funding will be applied is classified (according to proper accounting practices) as capital expenditure;</p> <p>20. A Legal Opinion dated prior to the date of this Agreement in the form set out in Schedule 4 of the Agreement</p>
Post- Contract Conditions	Post Contract – Pre Drawdown Conditions (applicable prior to any drawdown):

	<ol style="list-style-type: none"> 1. Funding of up to £3.5m only may be drawn down to fund pre-construction works and the contribution to the motorway mitigation works until the landowner agreements are signed and sealed. 2. HBC to enter an Agreement with National Highways (NH), to part fund Motorway Junction capacity mitigation works on the M65 using up to £2,192,500 of the BIL grant, where upon NH agree to retract their planning objection to the HGV development scheme immediately, and not issue further or future planning objections to the development within the HGV area based identified in the emerging Hyndburn Local Plan, on known concerns in relation to Junction 8 M65. The agreement is to include provision for return of the funding if the landowner agreements are not completed or if there is a fundamental default of the GFA. 3. HBC to enter into “Landowner Agreements” with the landowners or where appropriate successors in title, of the Colliery and the Power Station sites, with provision; <ol style="list-style-type: none"> i. to control payments from BIL grant for site remediation, ii. to ensure and monitor site remediation of both sites within the availability period, iii. to ensure the landowner will be responsible for any cost overruns, iv. to ensure the sites to be marketed and sold for residential development, v. to include an appropriate workable recovery strategy to be implemented, vi. to ensure each of the landowners of the colliery and the power station sites to pay the first £50,000 of remediation “Infrastructure Works” cost vii. to ensure each of the landowners retain the risk of repayment of any subsidy should a successful challenge prove any funding is an unlawful subsidy. 4. HBC to have a restriction on title placed on the colliery site and power station site in their favour, only to be released in the event of permitted disposals. 5. HBC to provide an update detailed program following completion of contractual agreements with NH and landowners. 6. HBC to secure planning permission for the relief road. 7. HBC to secure legal agreements for all the land required for the development of the relief road before drawdown of BIL grant ‘Infrastructure Works’ monies for the construction of the relief road. 8. No drawdown of ‘Infrastructure Works’ funding (excepting payment to National Highways -subject to 7.1.2 above) until
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	<p>the landowner agreements in respect of the colliery and power station sites are contracted.</p> <p>9. HBC to take all reasonable actions to secure adoption of the emerging Local Plan and implement the associated draft Design Code for HGV.</p>
<p>Performance Obligations</p>	<p>In addition to the conditions contained in the Award Notification, the GFA contains performance obligations that the Grant Recipient will need to adhere to.</p> <p>These will include amongst others, the following:</p> <ol style="list-style-type: none"> 1. Provide a monthly report on the status of engagement with all relevant landowners, developers and site promoters in relation to the Outputs as set out in Schedule 2 of the Agreement; 2. To monitor the infrastructure delivery throughout the programme and to measure the appropriateness of the agreed contingency budget and clarity on cost over-run provision; 5. To update the Expenditure Forecast and Delivery Programme on a quarterly basis, reporting on progress against key milestones and spend, with an updated risk register and programme; 6. All parties to work together to ensure that the overall project is structured in such a way so as to minimise impact on the Government's balance sheet; 3. To fund any cost overruns relating to the BIL funded Infrastructure works as the Project is progressed in accordance with the cost overrun strategy; 4. To provide a six-monthly report on recovery including developer contributions, contribution mechanisms and S.106 and CIL receipts; 7. Update details of the proposed schemes on each of the Output Site(s).
<p>Monitoring & Reporting</p>	<p>The Grant Recipient shall comply with the monitoring and reporting obligations in the GFA.</p> <p>Homes England reserves the right to impose additional monitoring at the Bidder's cost to meet required standards.</p> <p>If requested the Grant Recipient will ensure relevant Duty of Care provisions in favour of Homes England are included in the contractual documentation and professional services agreements relating to the BIL Funded Infrastructure Works.</p> <p>The Grant Recipient will be under continuing obligations once the BIL monies are spent to provide updated information on the Housing</p>

	Outputs and amounts collected from the recovery/recycling provisions for the term of this Agreement																										
Professional Team	The Professional Team (e.g. Architect, Civil Engineer etc.) and any other consultant or advisor and in-house staff with a design or supervisory responsibility for the Infrastructure Works appointed or engaged by the Grant Recipient, a Developer or Main Contractor in connection with the Infrastructure Works																										
Infrastructure Milestones	<p>Milestones to be set out in Schedule 1. Failure to meet the Milestones, subject to agreed extension provisions, will be an Event of Default.</p> <p>The Milestones are currently identified in the table below.</p> <table border="1"> <thead> <tr> <th>Project Milestones</th> <th>Delivery or Target date</th> </tr> </thead> <tbody> <tr> <td><i>Planning application submission for the relief road</i></td> <td>August 2024</td> </tr> <tr> <td>Contractual Agreement with National Highways in respect of retraction of planning objections</td> <td>October 2024</td> </tr> <tr> <td>Contractual Agreement with landowners of the Colliery and Power Station sites (or successors in title) in respect of contributions towards site remediation and bringing the sites to market for residential development</td> <td>October 2024</td> </tr> <tr> <td>Acquisition of all necessary rights or interests in land for the construction of the relief road</td> <td>December 2024</td> </tr> <tr> <td>Planning application determination for the relief road</td> <td>December 2024</td> </tr> <tr> <td>Planning Application submission for the remediation of the Colliery site</td> <td>December 2024</td> </tr> <tr> <td>Planning application submission for remediation works for the power station site</td> <td>December 2024</td> </tr> <tr> <td>Appointment of preferred main contractor for the relief road</td> <td>November 2024</td> </tr> <tr> <td>Commence Site Remediation works of Colliery and Power Station</td> <td>Feb 2025</td> </tr> <tr> <td>Start on Site – construction of the relief road</td> <td>Feb 2025</td> </tr> <tr> <td>Completion of Remediation Works</td> <td>March 2026</td> </tr> <tr> <td>Completion of the relief road</td> <td>December 2027</td> </tr> </tbody> </table>	Project Milestones	Delivery or Target date	<i>Planning application submission for the relief road</i>	August 2024	Contractual Agreement with National Highways in respect of retraction of planning objections	October 2024	Contractual Agreement with landowners of the Colliery and Power Station sites (or successors in title) in respect of contributions towards site remediation and bringing the sites to market for residential development	October 2024	Acquisition of all necessary rights or interests in land for the construction of the relief road	December 2024	Planning application determination for the relief road	December 2024	Planning Application submission for the remediation of the Colliery site	December 2024	Planning application submission for remediation works for the power station site	December 2024	Appointment of preferred main contractor for the relief road	November 2024	Commence Site Remediation works of Colliery and Power Station	Feb 2025	Start on Site – construction of the relief road	Feb 2025	Completion of Remediation Works	March 2026	Completion of the relief road	December 2027
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Housing Output Target Dates	Each date set out in Schedule 2 by which the relevant Housing Output Target should be achieved.																										
Term	The period of time from the date of the GFA until all Output Targets are achieved, subject to earlier termination by Homes England of the entirety of the GFA.																										
Event of Default	The GFA includes a series of General and Fundamental Events of Default and, where applicable, the process for remedy.																										
Repayment Provisions	The GFA includes details of the circumstances in which the Recipient may be required to repay any amount of the BIL Funding																										
Governance	Homes England reserves the right to attend any decision-making																										

Provisions	forums. Homes England reserves the right to request evaluation surveys to help inform future programme development.
Legal Cost	Each party to bear their own legal costs.
Communications	The Grant Recipient shall notify Homes England and obtain approval to any press or other media communications.
Confidentiality	All correspondence and documents related to the Heads of Terms and GFA are to be treated as sensitive and confidential.
Contacts	<p>Homes and Communities Agency (trading as Homes England)</p> <p>Representative Name & Contact Details</p> <p>Adrian Lewis, Tel 01925 644815; Mobile 07967782273; Email adrian.lewis@homesengland.gov.uk Address 3 New Bailey, Salford, M3 5AX</p> <p><u>Solicitor Name & Contact Details</u> Womble Bond Dickinson (pending conflict of interest checks) (Details to be provided subsequently)</p> <p>Hyndburn Borough Council</p> <p>Representative Name & Contact Details</p> <p>Mark Hoyle Head of Regeneration Tel 01254 380662 Mobile 07776257370 Email mark.hoyle@hyndburnbc.gov.uk Address Scaitcliffe House, Accrington, BB5 0PF</p> <p><u>Solicitor Name & Contact Details</u> Pinsent Mason (Details to be provided)</p>