

**Agenda Item No:** 15  
**Report To:** Cabinet  
**Date:** 10<sup>th</sup> March 2016



**Report Title:** **Proposed funding arrangement with the Homes and Communities Agency to enable delivery of M20 Junction 10A**

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**Portfolio Holder:** Cllr Clarkson, Leader of the Council

**Summary:** This report sets out the proposed basis of funding agreements with the Homes and Communities Agency (HCA) and Highways England to put in place the uncommitted part of the funding needed to deliver junction 10A. This will mean that construction works can proceed once the current Nationally Significant Infrastructure Project approval process, being run by Highways England, is concluded and a Development Consent Order is granted for the junction 10A project.

**Key Decision:** NO as to Recommendations **iv.** and **v.** as these are to be recommended to Full Council.  
YES as to Recommendations **i.**, **ii.** and **iii.** Since this matter has only arisen very recently, the subject-matter of the proposed key decisions was not published in the Council's Schedule of Key Decisions 28 days before the meeting. However, as it is impracticable to defer the decisions for this to be done (see para. 20 of the report), the Chairman of the Overview & Scrutiny Committee has been notified that they will be taken at this meeting.

**Affected Wards:** The junction 10A project directly affects a group of wards in the area around it, but all wards in the Borough are potentially indirectly affected by the funding arrangement and conditions proposed by the HCA.

**Recommendations:** **The Cabinet is asked to:-**

- i. Agree the funding proposition and terms for the delivery of M20 junction 10A from the Homes and Communities Agency (HCA), as set out in the Heads of Terms attached to the report; and**
- ii. Delegate authority to the Head of Legal & Democratic Services/Corporate Director (Law & Governance), in consultation with the Chief**

**Executive, the Head of Planning & Development/Corporate Director (Development) and the Head of Finance, to negotiate, finalise and execute a detailed funding agreement with the HCA, including the details and mechanisms regarding Starter Homes released by the junction 10A project, and also any related documentation to implement the above, and**

- iii. Agree that any delay to the above decisions becoming implementable would seriously prejudice the Council's and the public's interests for the reasons set out in para. 20 of the report, and that therefore with the consent of the Chairman of the Overview & Scrutiny Committee, these decisions are being made at this meeting as Urgent decisions within Overview & Scrutiny Procedure Rule 15(j), and**
- iv. Recommend to Full Council to enter into a consequential funding arrangement with Highways England Company Ltd. (HECL) to invest the HCA funding into the junction 10A project and to secure repayments to meet the Heads of Terms attached to the report; and**
- v. Recommend to Full Council to delegate authority to the Head of Legal & Democratic Services/Corporate Director (Law & Governance), in consultation with the Chief Executive, the Head of Planning & Development/Corporate Director (Development) and the Head of Finance, to negotiate arrangements with HECL for funding and repayment, and to finalise and execute a detailed funding agreement and any related documentation with HECL to implement all of the above.**

**Policy Overview:**

This Council has sought a new junction 10A for many years; the need for it is identified in Supplementary Planning Guidance to the Ashford Borough Local Plan SPG6 (2001 and 2004), the adopted Core Strategy (2008) and the Urban Sites & Infrastructure DPD (2012); and the new Local Plan to 2030 will rely on a new junction 10A to access a significant proportion of the planned growth to 2030. The junction is therefore one of the Council's 'Big 8' projects, and making arrangements for funding and delivering it are in the interests of both the proper planning of the area and the economic, social and environmental wellbeing of the Borough and its residents and workers.

**Financial Implications:**

The proposed funding arrangements for junction 10A do not involve any direct Council funding, either initially or by way of

repayment. This report sets out a proposed arrangement to put in place the balance of funding that is needed in order for the scheme to be committed by Highways England once it has development consent. This would be on a forward-funded basis, with repayments to be made to HCA from developer contributions that have been received or accrue in the future, rather than from the Council's own resources.

<b>Risk Assessment</b>	YES - in the body of the report
<b>Community Impact Assessment</b>	<p>Not specifically in relation to the funding decisions proposed in this report.</p> <p>Highways England will need to ensure that the design of a J10A scheme takes account of identifiable impacts upon protected groups.</p> <p>It is expected that the provision of Starter Homes will be a requirement of national planning law and/or policy, carried into local policy as appropriate. The recent Government consultation thereon was accompanied by an Equalities Statement which can be read at <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482890/Equalities_statement_NPPF_fin.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482890/Equalities_statement_NPPF_fin.pdf</a></p>
<b>Exemption Clauses:</b>	Not Applicable
<b>Background Papers:</b>	None
<b>Contacts:</b>	<p><a href="mailto:Richard.alderton@ashford.gov.uk">Richard.alderton@ashford.gov.uk</a> – Tel: (01233) 330239</p> <p><a href="mailto:Jeremy.Baker@Ashford.Gov.UK">Jeremy.Baker@Ashford.Gov.UK</a> – Tel: (01233) 330574</p>

## **Proposed funding arrangement with the Homes and Communities Agency to enable delivery of M20 Junction 10A**

### **Purposes of the Report**

1. This report concerns only the funding aspects of a proposed new junction 10A, and explains to Members an immediate opportunity that has arisen very recently for the Homes and Communities Agency (HCA) to provide the balance of forward-funding needed for the project (£16.0 million). This offer is the result of concerted efforts over a long period by the Council and its partners to secure a funding solution, and is at present subject to approval by both the HCA's Board and the Department for Communities & Local Government (DCLG). Subject to those approvals, the HCA proposes to forward-fund the Council to enable the delivery of a new junction 10A. Accordingly, the report seeks Members' agreement to the principles of an agreement to be entered into with the HCA to secure that funding.
2. The report also explains that, once the HCA funding has been secured, a further agreement between the Council and Highways England will be needed regarding delivery of the project. This will be a matter for Full Council and the report seeks the Cabinet's recommendation to Full Council accordingly.

### **Background**

3. The Council's long-standing commitment to securing a new junction 10A is well known and is set out in its adopted strategic planning documents going back to 2001. Most recently, the Cabinet resolved on 10<sup>th</sup> April 2014 to support in principle the delivery of a new, all-movements Junction 10A (rather than a more limited junction) when funding permits (Minute E397/4/14), and the Overview & Scrutiny Committee on 11<sup>th</sup> June 2014 agreed that "Council policy is for a full scheme at Junction 10A" (Minute OSC32/6/14).
4. A junction 10A scheme has for some years been in the National Roads Programme, and Highways England is currently carrying out formal public consultation (until 17<sup>th</sup> March 2016) on a proposed scheme. The project is a Nationally Significant Infrastructure Project (NSIP), the consenting process for which is designed to speed delivery of major infrastructure, and effectively puts both planning controls and compulsory purchase powers into a process overseen by the Planning Inspectorate. The Council's response to Highways England's consultation will be considered by a Special Meeting of the Planning Committee on 9<sup>th</sup> March 2016.
5. Highways England's timetable envisages a new junction 10A being open for traffic in 2019. Timely construction of the scheme that is finally approved through the NSIP process is very important for the Borough and its residents. People currently using this part of the road network will be pleased that the growing congestion issues at the motorway junction and on the local road network will be tackled. For potential investors, employers, housebuilders, and people considering moving to the town, confidence in both the shorter

and longer terms will be increased as a major constraint to growth is removed. Development currently held back by capacity constraints at the existing junction 10 will be able to come forward, creating new jobs and homes. Finally, the Borough will be able to meet the additional development needs identified in its new Local Plan covering the period to 2030 with a clear planning strategy for growth – in turn helping to protect other areas, not identified in the new Local Plan, from inappropriate development.

## Funding and delivering a new Junction 10A

6. A new junction 10A scheme requires three elements to its funding. The total median cost of the scheme which is now out to public consultation is estimated to be £86.2 million. Of this:-
  - (a) £50.5 million will be funded from central Government, via Highways England's Roads Investment Strategy 1 funds.
  - (b) £19.7 million was agreed in June 2014 from the Government's Local Growth Fund, via the South East Local Enterprise Partnership (SELEP) under the SELEP Growth Deal.
  - (c) The remaining £16.0 million was required by the SELEP Growth Deal to be made up by local contributions procured by this Council.

The Council has always made it clear that it is not able financially to provide, contribute to or underwrite these "local contributions" from its own resources, and the Council's Medium-Term Financial Plan does not make any provision for Council contributions. The junction is required to facilitate and serve development, but owing to the need for the whole cost of the junction project to be covered at the construction stage, and assured as part of the NSIP consenting process, a means is required not only of raising £16 million in repayment contributions from developments coming forward, but also of underwriting the £16 million until such contributions can be raised from development released by J10A in the future.

7. Whilst £16 million is a significant sum, officers believe it is realistic to assemble this sum over time from planned developments – both those in existing plans and those coming forward in the new Local Plan (subject to the Local Plan preparation process and procedures, which require a new Local Plan to be legally compliant and 'sound'). There are three ways in which this developer funding will be gathered:-
  - (a) Some funding that can be used towards J10A has or will come from **existing s.106 planning agreements**, which the Council has entered into under SPG6 with developers in the area around junction 10 since 2001 – for example, from Finberry (Cheeseman's Green) as it grows. As new Government restrictions on the use of s.106 agreements to 'pool' contributions towards infrastructure came into force last April, unfortunately the Council can no longer enter into new s.106 agreements in this way.
  - (b) The Council is now using **Highways Act s.278 agreements** to assemble contributions towards junction 10A. These agreements can

be entered into between Highways England and developers up until the time when a J10A scheme is completed, in order to help fund the junction, although the payments can be payable at a future date. Like s.106 agreements, the developer's entry into such an agreement can be a requirement of planning permission.

It is anticipated that most, if not all, of the £16 million will be recovered in these two ways, and on reasonable assumptions about the rate of delivery of development, that this should occur within 15 years. However, in case insufficient money is forthcoming under such agreements, a back-stop mechanism is required.

- (c) The final means to assemble contributions is via the **Community Infrastructure Levy (CIL)**, which it is expected will commence in the Borough in mid-late 2017. The Council has responded to a recent Government consultation on the future of CIL to seek changes which would remove the current legal confusion over a Council's ability to pay CIL contributions to a third party infrastructure provider *after* the infrastructure has been provided. At present, this is not something that the Council can commit to under current legislation.
8. In short, there are means to repay the £16m within 15 years, unless prevented by influences beyond the Council's control – e.g. a failure to clarify the CIL legislation to clearly allow CIL to be used to repay funds expended up-front by a third party infrastructure provider. The Council should clearly protect itself from any liability to repay funds from its own resources should such external influences not be resolved (see paras. 18, 21 and 25 below).
  9. So the issue of how the £16m is recouped over time is a relatively straightforward one and the Council can protect itself from financial risk by appropriate terms in the funding agreement. However, the more pressing and fundamental issue has been that, without funding being in place to cover the full costs of the junction, Highways England would not be able to commit to commence construction. This would in turn put the SELEP funding contribution in jeopardy and threaten the delivery of the project in its entirety.
  10. The Ashford Strategic Delivery Board, which oversees and directs progress on the 'Big 8' projects with the local MP and key public sector partners including KCC and Highways England, has become increasingly concerned about these financial risks to this project. The HCA is a member of the Board and recognised the critical importance of the delivery of junction 10A to directly enable the delivery of sustained growth in the area and the new homes and jobs that the Government is committed to deliver to help drive economic recovery.
  11. Within the last few weeks a breakthrough has been achieved. An immediate opportunity has arisen and the HCA's officers have proposed setting up a £16m enabling fund to unlock the current situation, subject to approval by the HCA's Board and DCLG. This would provide the injection of capital needed immediately, and would enable full project funding and Highways England commitment to take forward the scheme for junction 10A that emerges from the NSIP consenting process currently underway. This is an enormously important step forward and reflects not only the HCA's role and commitment

to deliver jobs and economic development but also the long-term successful working relationship between the Council and the HCA. It is hoped that the necessary approvals by the HCA's Board and DCLG can be obtained very soon.

12. The HCA's £16m funding would be passed to the Council to hold for the J10A project, and it is understood that the HCA will endeavour to pay the funds over before the end of the current financial year.
13. The Council will then need to enter into a consequential funding agreement with Highways England (HE) under which the HCA funding will be invested in the J10A project alongside the other funding streams identified at para. 6 above. The precise timing of expenditure of each funding stream remains to be negotiated and clarified with HE, to ensure that the applicable terms of each are met. Investment of £16m. in capital works would constitute capital expenditure by the Council, which is not provided for in the Council's Budget notwithstanding that it will in fact be fully funded by the HCA. Therefore, the approval of this expenditure can only be given by the Full Council, and the Cabinet is asked to recommend the approval of such an agreement with HE to Full Council accordingly.
14. Moreover, there will be a need for the Council to agree a repayment mechanism with HE to reflect the fact that some developers will be paying s.278 contributions to HE. Since the Council, not HE, is responsible for repayments to the HCA, HE may arrange for the Council to act as its agent in respect of negotiating and securing s.278 Agreements, and recovering monies due under them, which could be paid direct to the Council on HE's behalf, in order to reduce administration and money transfers. Therefore, it is also sought to recommend to Full Council that the detailed arrangements for funding and repayment involving HE be delegated to officers to resolve within the overall terms of the HCA funding, ensuring once again that the Council's own financial resources are not required to be used either for the project or for repayment.
15. As developer contributions are collected in the ways described above, the HCA's funding will be repaid. In this regard, the Council's previous roles as facilitator of forward-funded infrastructure projects are very relevant. Members will be aware that the major improvement works to Drovers Roundabout and M20 junction 9, and the new Eureka Skyway bridge over the M20, were forward-funded using Regional Infrastructure Funding (RIF) made available to the Council by the then South East England Development Agency (SEEDA) in 2010-11. To repay the RIF funding, several mechanisms were employed, once again including s.106 and s.278 contributions from some developers. In addition, the Council's then Executive agreed on 24<sup>th</sup> September 2009 to set up an arrangement under which the Council would allocate specific percentages of its CIL receipts from new dwellings in the Ashford Growth Area towards Transport projects, from which due priority would be given to the RIF repayments (Minute E227/09/09 refers).
16. These terms were formalised in a pair of RIF Funding Agreements on 4<sup>th</sup> May 2010, under which the following applies:-

- a) The following sliding scale of percentages of CIL receipts from all new/converted dwellings in the Ashford Growth Area are to be paid into a Transport Fund:-
- (i) 36% if the receipt per dwelling is £14,000 or more
  - (ii) 50% if the receipt per dwelling is £10,000 or more but less than £14,000
  - (iii) 67% if the receipt per dwelling is £7,500 or more but less than £10,000
  - (iv) 80% if the receipt per dwelling is less than £7,500
- b) After any necessary deductions for repayments due to Taylor Wimpey for their forward-funding of the J10 Interim Scheme improvements in 2006/7, and any agreed deductions for other transport infrastructure, 25% of the balance in the Transport Fund is to be paid to SEEDA for repaying the Drivers RIF Project, and 25% for repaying the J9 & Footbridge RIF Project.

This arrangement with SEEDA deliberately left 50% of the Transport Fund available in anticipation that it might be required to support repayment of some funding to complete J10A. It is convenient that the RIF Agreements were transferred to the HCA when SEEDA was abolished by the Coalition Government in 2012. Thereby, all the building blocks of a repayment mechanism for J10A funding are already in place between the Council and the HCA.

17. It is now proposed to utilise and build on this existing mechanism by continuing with the Transport Fund concept and revising its division as follows:-
- After any necessary deductions for repayments due to Taylor Wimpey for their forward-funding of the J10 Interim Scheme improvements in 2006/7, and a deduction of 20% for funding other non-motorway-linked transport infrastructure:-
    - 50% of the balance in the Transport Fund is to be paid to HCA for repaying the J10A Project
    - 25% of the balance in the Transport Fund is to be paid to HCA for repaying the Drivers RIF Project
    - 25% of the balance in the Transport Fund is to be paid to HCA for repaying the J9 & Footbridge RIF Project.
18. Of course, the Council has not yet introduced CIL, and this is expected to occur in parallel with the new Local Plan. Even if CIL payments were now being received and percentages thereof credited to the Transport Fund, as noted at para. 7(c) above it is not currently legally permitted to use CIL monies to repay forward-funding, so in practice these anticipated repayments to the HCA cannot be made. The existing Agreements recognise, as will the new Funding Agreement for J10A, that no payments of CIL receipts will in fact be made to the HCA unless and until appropriate amendments have been made to, or directions given under, the CIL Regulations to permit this, to the Council's reasonable satisfaction. Both parties will continue to press for such to happen, and to this end the Principal Solicitor (Strategic Development) and a representative of the HCA met with the Government's CIL Review Panel last month. The report of the CIL Review Panel is not expected before April.



## Securing the Funding

19. Assuming that the HCA's Board and DCLG approve the HCA making available the proposed funding to the Council, the arrangement will need to be formalised by means of a legal funding agreement between the Council and the HCA. This must be negotiated and signed imminently to allow the funding to be paid to the Council before the end of March if possible.
20. The need to obtain Members' immediate agreement to the terms of this funding, in order that the legal agreement can be prepared, finalised and signed to this timescale, is the reason for this report being brought to this Cabinet meeting as an Urgent item of business. Since there are few working days remaining, it will simply not be possible to allow the usual time for the involvement of the Overview & Scrutiny Committee, as any delay would seriously prejudice the Council's and the public's interests because it would inevitably result in the loss of the HCA's £16m funding in this financial year, and there is no commitment that the funding would or could be rolled forward and made available in 2016/17. Therefore, the circumstances of the proposed decisions by the Cabinet have been explained to the Chairman of that Committee, who has agreed that they are reasonable in all the circumstances and that the Cabinet may take them at this meeting as Urgent decisions.
21. The proposed Heads of Terms of the agreement with the HCA are attached to this report. One critical point is that there will be no call on the Council's own resources, either as part of the repayment regime or should external circumstances mean that developer contributions for any reason fall short of the £16m. However, should such circumstances occur then the Council would co-operate in discussion with the HCA to seek to find alternative ways of recovering any shortfall in repayments through the planning system using powers available to the Council.

## Starter Homes

22. In offering this funding to Ashford, the HCA attaches particular importance to its investment in J10A releasing housing development that will deliver Starter Homes under emerging Government policy. A very recently-concluded Government consultation (see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/482890/Equalities\\_statement\\_NPPF\\_fin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482890/Equalities_statement_NPPF_fin.pdf)) included proposals to change the National Planning Policy Framework's definition of "affordable housing" to include Starter Homes for first-time buyers under 40 years of age. And the Housing and Planning Bill, now under debate in Parliament, proposes to allow the Secretary of State to introduce through Regulations a statutory requirement for a proportion of such Starter Homes to be delivered on all suitable reasonably-sized housing developments.
23. On the assumption that these national changes are indeed forthcoming in the near future, the Council would need to reflect them in its new Local Plan to 2030 in order for it to be found 'sound'. Moreover, such a policy would encourage more young people and families into future developments. Therefore it is feasible for the Council to commit, in the agreement with the HCA, to promoting Starter Homes in line with whatever new policies and/or

laws emerge in time to be taken into account in its Local Plan process. However, it is recognised that this may be subject to development viability issues, and in any case would be subject to the process of independent examination of the Council's Local Plan by a planning inspector, and the agreement with the HCA will reflect these uncertainties.

24. The exact details and mechanisms for the provision of Starter Homes that will be released by the J10A project need to be resolved through further discussions with the HCA, and therefore this matter is recommended to be delegated to officers. Broadly, it is considered that around 3,500 dwellings would be released by the J10A project, and on the assumption that new Government policies and/or legislation will require 25% of new dwellings to be Starter Homes, J10A should release circa 875 Starter Homes.

## **Risk Assessment**

25. The proposed Heads of Terms for the agreement with the HCA mitigate the Council's risks. Crucially, there is no financial liability for the Council should the developers' funds for repayment not come forward as anticipated, provided that the Council has taken reasonable steps to pursue defaulters. In such circumstances the parties would work together to find an acceptable way forward, and any future revised agreement with material changes to the Heads of Terms attached will be subject to separate Member approval at that time.
26. In connection with the use of CIL income to help repay the £16m funding, as set out above the Heads of Terms for the agreement are structured in a way that limits the impact on overall CIL proceeds. Thus, the proportions of the overall CIL receipts that are to be reserved for Transport projects as a whole will remain exactly the same as agreed with SEEDA (now the HCA) in 2009. Moreover, within the Transport Fund 20% of the available funds will be ring-fenced for other transport projects that are not HCA-funded, which could include bus services, cycleways and a Park Farm Rail Halt. Therefore - although it is now clear, following the recession, that CIL will generate less income than was hoped at the time the RIF funding was agreed in 2009 - the Council will still have some ability to fund other key infrastructure items from CIL receipts.
27. Owing to the size of the HCA funding involved and the Council's obligations to hold, disburse and repay it, the agreement with HCA will need to be noted in the Council's accounts as a contingent liability in the same way as the existing RIF Agreements are currently noted.
28. If the current NSIP consenting process results in the design of J10A being changed from that currently subject to HE's public consultation, this will not affect the funding offer as it will not be tied to any particular design but rather to whatever scheme eventually secures approval by means of a Development Consent Order.

## **Other Options Considered**

29. The Council has also been in discussions with another member of the Ashford Strategic Delivery Board – Highways England – to see if HE could fund the

£16m up-front in the process, on the basis of a similar means of developer contribution-funded repayments. Whilst there is an awareness of the issue, Highways England has not been able to come forward with a solution at this time. No other funder able to provide £16m. towards the J10A project has been identified.

## Conclusion

30. The opportunity that has arisen for the HCA, as a partner on the Ashford Strategic Delivery Board, to help to generate certainty about delivery of a new junction 10A is a most welcome one. Assuming that it is approved by the HCA's Board and by DCLG, this is sure to influence investor confidence in the short, medium and long term prospects of the area. Certainty over delivery will help to demonstrate the deliverability of the new local plan and its proposals for Ashford's planned development to 2030.
31. Officers are firmly of the view that the HCA's proposal should be welcomed as a key step towards the delivery of a new junction 10A. With the safeguards mentioned above and set out in the attached Heads of Terms, officers believe the Council is fully protected from financial risk. Accordingly, Members' endorsement is sought to complete the necessary agreements in line with the attached Heads of Terms, to enable funds to be passed to the Council as soon as possible (probably by the end of March) and thereafter to be passed to HE to assist project delivery.

## Portfolio Holder's Views

These will be given at the Cabinet meeting.

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# **J10A FUNDING AGREEMENT BETWEEN HCA AND ABC, MARCH 2016**

## **HEADS OF TERMS agreed at HCA/ABC meeting on 4/3/16**

### **0. Background to Funding**

- 0.1 Highways England (HE) requires a commitment from ABC to provide the Funding to be entered into in summer 2016, to support J10A Project preparation, consenting and construction.
- 0.2 "J10A Project" means the Construction of a new junction 10A to the M20 (which includes any partial junction) with associated works subject to an approved Development Consent Order.

### **1. Drawdown of Funding**

- 1.1 HCA to pay to ABC on or before 30/6/16 the Funding in the sum of £16,000,000, and HCA will endeavour to do so on or before 31/3/16.

### **2. Use of Funding**

- 2.1 ABC to hold and use the Funding only for the J10A Project. If the whole or any part of the Funding is not used for the J10A Project, ABC to return the whole or the balance of the Funding to HCA.
- 2.2 ABC may pay Funding to HE subject to invoicing/claims procedures agreed between ABC and HE to meet HE expenditure made or committed. Indicative anticipated annual spending profile for the Funding to be attached, showing that parties anticipate that the majority of the Funding will be used in Financial Years 2016-2018.
- 2.3 ABC to report quarterly to HCA on the amount of Funding held and expended and on the progress of the J10A Project against key milestones. Agreed list of key milestones for monitoring purposes to be attached.
- 2.4 ABC to require HE to comply with applicable procurement laws.

### **3. Repayment of Funding**

- 3.0 ABC to report to HCA quarterly on sums received for repayment of the Funding, and to repay quarterly sums to HCA only as and when received from developers or HE in the following ways:-

#### **3.1 Via new s.278 Highways Act agreements:**

- 3.1.1 ABC to use reasonable endeavours to seek contributions from developers to HE towards the J10A Project via s.278 Agreements (using existing SPG6 mechanism and/or other appropriate planning policies).

3.1.2 When developers pay contributions to HE<sup>1</sup> under s.278 Agreements, and when ABC receives the amount received by HE, ABC to pay the amount on to HCA.

### **3.2 Via existing s.106 Town & Country Planning Act agreements:**

3.2.1 When developers pay ABC SPG6 contributions under existing s.106 Agreements, and after ABC has fully discharged its existing s.106 commitment to repay Taylor Wimpey for forward-funding J10 Interim (including the Rail Halt Fund if that commitment is transferred to that), ABC to pay to HCA 80% of the SPG6 contributions received.

### **3.3 Via CIL repayment mechanism in 3.3.1 – 3.3.4 already agreed between ABC, HCA & KCC on 4/5/2010:**

3.3.1 ABC to pay into a Transport Fund the following sliding scale of percentages of Strategic Tariff or CIL receipts from all new/converted dwellings in the Ashford Growth Area:-

- (i) 36% if the receipt per dwelling is £14,000 or more
- (ii) 50% if the receipt per dwelling is £10,000 or more but less than £14,000
- (iii) 67% if the receipt per dwelling is £7,500 or more but less than £10,000
- (iv) 80% if the receipt per dwelling is less than £7,500

3.3.2 After any necessary deductions for TW repayments, and any agreed deductions for other transport infrastructure [this will now become 20% as per 3.3.5 below], ABC to pay quarterly to HCA 25% of the amount in the Transport Fund for Drovers RIF Project repayment, and 25% for J9/Footbridge RIF Project repayment.

3.3.3 ABC to use reasonable endeavours to maximise payments into the Transport Fund (i.e. to maximise Strategic Tariff or CIL receipts, including to recover unpaid Strategic Tariff or CIL).

3.3.4 ABC is not liable to compensate HCA from its other financial resources if developers do not pay their due Strategic Tariff or CIL or s.106/278 contributions, provided has taken reasonable steps to pursue defaulters, but parties to agree alternative means to maintain indicative anticipated repayments to HCA.

3.3.5 After any necessary deductions for TW repayments, and a deduction of 20% for funding other non-motorway-linked transport infrastructure, ABC to pay quarterly to HCA 50% of the amount in the Transport Fund for J10A Project repayment.

3.3.6 In terms of the above obligations, ABC will pay funds derived from Strategic Tariff or CIL receipts to HCA unless any law, regulation, Court judgment, Inspector's or Secretary of State's decision, etc. would or does make this unlawful, and in respect of funds derived from CIL receipts unless appropriate

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<sup>1</sup> Contributions may be paid direct to ABC as agent for HE, under arrangements made between ABC and HE, but this does not affect the operation of this principle.

amendments have not been made to, or directions given under, the CIL Regulations to permit this, to ABC's reasonable satisfaction.

### **3.4 Long-term Funding**

- 3.4.1 ABC is not required to repay the Funding to HCA other than as set out above, or by any specified date, but the parties anticipate that, provided that independent Examiner approves ABC's proposed CIL and appropriate amendments are made to, or directions given under, the CIL Regulations before the J10A Project is completed, repayment will be achieved by 31/3/2031. If this does not occur, parties to agree alternative means to maintain indicative anticipated repayments timeline [to be attached] to HCA.

## **4. Provision of Starter Homes**

- 4.1 If new laws, regulations or provisions of the NPPF and Government guidance so require, and subject to viability, ABC to use reasonable endeavours to promote, and to adopt if independent Inspector approves, policies in its new Local Plan requiring an overall proportion of Starter Homes of 25% among the dwellings released by the J10A Project, which the parties anticipate will total in the region of 3,500 dwellings.