

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY
EXECUTIVE COMMITTEE**

Date: 13 June 2008

Subject: **Regional Infrastructure Fund**

Report of: Director of Development

Recommendation:

It is recommended that the Executive Committee agree to submit the governance and accountability framework to Government.

Purpose of Report:

To seek the agreement of the Committee to the governance and accountability framework as set out in Annex I. To advise the Committee on the criteria that will be used to assess the eligibility of proposals to receive funding from RIF.

Key Issues:

Establishing the Regional Infrastructure Fund is a priority action for both the Regional Assembly and SEEDA. Both organisations are committed to having the RIF established and operational from autumn 2008.

The Regional Infrastructure Fund (RIF) is a key part of the package of measures identified in the Implementation Plan associated with the South East Plan that need to be put in place in order to facilitate sustainable economic growth. It is also one of the Transformational Actions identified in the Regional Economic Strategy.

The next stage in establishing the RIF is for the region to set out its proposal to Government. Comments on the draft governance and accountability framework have been sought at a previous meeting of this Committee and from the Regional Transport and Housing Boards. This meeting is now being asked to agree that the framework is submitted to Government.

1. Context

- 1.1 The Regional Infrastructure Fund is a pump priming fund, through which the public sector forward funds the delivery of infrastructure the cost of which is then recovered from the private sector. In this way the RIF will assist in facilitating the timely provision of regionally or sub-regionally significant infrastructure.
- 1.2 Initially the RIF will be established using funds from the public sector. The Governance and Accountability framework are therefore firmly based within the public sector. However the framework has been drawn up in such a way as to enable opportunities to work more closely with the private sector are not fettered.
- 1.3 This Executive Committee considered a draft of the governance and accountability framework at its meeting on 14 December 2007. It has subsequently been considered by the Regional Housing Board (17 January 2008) and the Regional Transport Board (16 May 2008).
- 1.4 The SEEDA Board will be considering a similar report to this one at its meeting on 19 June. Subject to the agreement of both meetings to the proposal set out this paper, it should be possible to have the RIF operational from the autumn.

2. The Governance and Accountability Framework

- 2.1 The governance and accountability framework has been developed in the light of experience gained in the south west region. That framework has been supported by Government and provides the basis for ensuring an appropriate level of accountability.
- 2.2 To recap, the key elements of the framework are:
 - a) SEEDA will be the Accountable Board for the purposes of operating the RIF in the region.
 - b) An Investment Panel is established to direct the investment made through the RIF.
 - c) An Investment Criteria is used to identify suitable candidates for RIF.
- 2.3 The principle of the RIF was originally accepted as part of the work undertaken to support the draft South East Plan. This has been reaffirmed in the course of the discussions that have taken place on the governance and accountability framework. Comments made by members during the course of those discussions have been incorporated into the final version of the framework (Annex 1).

3. The Investment Criteria

- 3.1 It will be for the Investment Panel to keep the investment criteria against which applications for funding from the RIF are considered under review. A draft of the proposed criteria has been drawn up (Annex 2).

- 3.2 While the criteria draw upon experience associated with the RIF established in the South West, they have been amended to reflect the regional planning framework that applies to our region. In particular the thresholds for the scale of associated development facilitated by the proposal reflect the criteria used by the regional bodies to identify proposals of regional significance.

4. Developing the Business Case

- 4.1 It will be for the Investment Panel to develop and manage the RIF Business Plan. This will evolve over time as proposals for funding come forward for the Panel's consideration.
- 4.2 Based on initial experience with the operation of the RIF in the South West it is likely that the number of proposals that are suitable candidates for RIF funding will initially be limited.
- 4.3 This is principally because in order for a proposal to be considered by the Investment Panel a local authority will have had to have been through a process of identifying the need for a piece of infrastructure. It will need to be able to identify how the infrastructure facilitates planned growth. It will also have had to identify the potential for the infrastructure to ultimately be paid for through contributions from the private sector collected via the planning system. Most importantly it will have identified a mechanism that will enable that contribution to be recovered; this could be via a standard charge, tariff or levy of some description.
- 4.4 An early contender for consideration for RIF may well be Ashford. Here the local authority, in partnership with regional and local stakeholders, has identified the infrastructure required to support its planned growth. It has identified the contribution that might be expected from the private sector through the planning system and set a tariff through which this contribution will be collected.
- 4.5 The implementation plan for Ashford identifies a number of critical pieces of infrastructure that need to be delivered in order to unlock the delivery of new houses and employment sites. Ultimately the cost of this infrastructure will be recovered through the tariff, however the initial capital sum required to deliver the infrastructure cannot be provided up front by the developers.
- 4.6 Assembly/SEEDA officials are working closely with Ashford to enable an application for funding from RIF to be considered at the earliest opportunity. Another early contender for support from the RIF is the provision of the green infrastructure and access management services required to mitigate the impact of development in the area surrounding Thames Basin Heaths.

5. Providing the Funds for the RIF

- 5.1 The RIF will be established using public sector funds that are available as part of the Regional Funding Allocation process. The SEEDA Corporate Plan for the 3-year period from 2008/09 identifies a commitment to provide just over £10m towards the RIF. The Regional Transport Board has agreed to make £25m available for the three year period from 2008/09.

- 5.2 It is important to remember that the funding identified as available through the RIF will only be drawn upon when a scheme is accepted by the Investment Panel. Any funds invested via the RIF will be recovered and then reinvested in new projects. In this way the RIF will increase the leverage effect of public sector funding.
- 5.3 The intention remains to secure a contribution towards the RIF from the 'housing' fund that forms part of the RFA process. Discussions with CLG officials have identified the concerns that need to be addressed in order to enable them to consider this proposition further. The critical issue is the need to demonstrate the contribution that the RIF will make towards delivering affordable housing targets agreed between CLG and HMT.
- 5.4 As part of the longer term strategy to develop the RIF SEEDA has commissioned work that will explore the potential of using the funds identified to lever in additional funds from the private sector for investment in the region.

6. Next Steps

- 6.1 The region now needs to submit its proposal for the RIF to Government departments for its consideration. Assuming that the region's proposal is accepted the first meeting of the Investment Panel is likely to be held in early autumn.

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SOUTH EAST ENGLAND REGIONAL INFRASTRUCTURE FUND

Governance and Accountability Framework

1. The Regional Infrastructure Fund

- 1.1 The Regional Infrastructure Fund will provide added value to the delivery of sustainable economic development either by:
- a) removing barriers to delivery
 - b) speeding up delivery
 - c) making the development more sustainable by earlier delivery of key infrastructure
 - d) leveraging in additional investment from the private sector.
- 1.2 Operation of the RIF will be undertaken on behalf of the region by an Accountable Body. The Accountable Body will operate the RIF in accordance with a Business Plan. The Business Plan will be prepared by the Accountable Body within a framework agreed at a regional level by an Investment Panel.

2. The Investment Panel

- 2.1 The purpose of the Investment Panel will be to direct the investment of the RIF and manage the RIF Business Plan in order to best aid the delivery of key pieces of infrastructure required to support sustainable growth. Investment decisions will be taken within the framework of existing regional strategies, against clear criteria and using a consistent and transparent assessment process.
- 2.2 Membership and Structure of the Investment Panel
- 2.2.1 It is proposed that the Investment Panel will comprise the following representatives:
- a) Representatives from the SEEDA Board
 - b) Representatives from the Regional Assembly
 - c) Representative from the Regional Housing Board
 - d) Representative from the Regional Transport Board
 - e) External representatives from the private sector drawn from experts in infrastructure provision, risk management, investment processes.

GOSE will be invited to attend as an observer.

- 2.2.2 Membership of the Investment Panel will be limited to between 8-12 members. A quorum of a majority of the members will be required, if there were a temporary vacancy in the Panel membership, the quorum shall be reduced.

Declarations of interest will be required and those with a particular interest in specific schemes that may come before the Panel will not be involved in the decision making process.

2.2.3 The Panel will normally meet quarterly to take decisions and review the Business Plan; more frequent meetings may be required early in the life of the RIF in order to consider schemes for inclusion in the initial RIF Business Plan.

2.3 Role and Responsibilities

2.3.1 The role and responsibility of the Investment Panel will be to:

- a) To direct the investment of the RIF within South East England and to advise the Accountable Body on those investments.
- b) To manage the RIF Business Plan ensuring investments are balanced appropriately with available resources.
- c) To consider schemes for inclusion in the Business Plan and to produce an amended Plan accordingly.
- d) To take due account, where appropriate, of established regional priorities in investment decisions.
- e) To ensure that the Accountable Body's required appraisal, financial and audit processes are met with regard to each RIF investment.
- f) The Panel will consider all proposals for investments from the RIF and make recommendations to the Accountable Body on the level of investment, any specific conditions to be applied, etc.
- g) The Accountable Body shall ensure that all other necessary consents/approvals in connection with the investment level are satisfied, i.e.:
 - i) Decisions to invest sums above £10m from the economic development element of the RFA will need to be authorised by BERR.
 - ii) For transport schemes that are part of the RFA process, the Panel's decision to invest funds from the RIF will need confirmation by DfT.

2.4 Relationship to other regional structures/organisations

2.4.1 The Investment Panel will not be formally linked to other regional boards (i.e. in reporting terms) but by drawing on representatives from relevant organisations clear links will be established.

2.4.2 A key criterion for RIF investment is delivery of regional priorities established through the South East Plan and Regional Economic Strategy, and supported by other initiatives such as the designated Growth Areas, New Growth Points and/or eco-town proposals. The Panel will operate in the context of these agreed regional priorities, taking due account of them for individual investment decisions and, if required, to prioritisation between investments.

- 2.4.3 The Investment Panel will not be a forum for discussing the merits of particular pieces of infrastructure but will focus on the degree to which a RIF investment adds value to the delivery of sustainable economic growth.
- 2.4.4 Formal agreements with the relevant Local Authorities will be required before RIF funds are invested to ensure that the RIF element is repaid to the Accountable Body. SEEDA, acting as the Accountable Body will enter into contractual arrangements with Local Planning Authorities and/or land owners or developers, in order to secure the return to the Fund of the relevant developer contributions. SEEDA will contract with the relevant infrastructure provider who will be expected to guarantee delivery and accept the cost risk.

2.5 Accountability

- 2.5.1 The Investment Panel will advise the Accountable Body on all aspects of the investment. The Panel's Business Plan and investment advice will be made public. The Accountable Body will ensure proper records and accounts are kept such that they can be scrutinised. An annual audit of those accounts shall be carried out and provided to the Investment Panel for the purposes of assisting management of the Business Plan.
- 2.5.2 Similarly, the Accountable Body shall ensure that the information requirements of any other funding contributor are met.

3. Accountable Body

- 3.1 The Regional Development Agency (SEEDA) will be the accountable body for Regional Infrastructure Funds. It will hold any uncommitted RIF funds and receive back payments, which can then be recycled into further investments. It will undertake the day to day operation of the fund, and will manage the process of project and financial appraisal and ensure that appropriate monitoring and evaluation processes are implemented.

4. Realising Opportunities and Delivering Sustainability Through RIF Investment

- 4.1 RIF offers an opportunity to enhance the sustainability of new development through the timely provision of infrastructure, encompassing earlier delivery, delivery of whole packages of infrastructure in parallel, more appropriately sequenced delivery and potentially more innovative solutions.
- 4.2 National, regional and local government and agencies all have a role to play in establishing environmental standards for new development. The Investment Panel will wish to ensure that the schemes it supports meet the highest standards of environmental sustainability set by others. Where clearly defined standards exist for particular types of development (the Code for Sustainable Homes for example) the Panel may adopt additional criteria so that only schemes meeting the required levels will be considered for investment.

- 4.3 As part of the annual Business Plan review process and the on-going monitoring and evaluation process, the Investment Panel will assess the extent to which RIF investments have realised the benefits that were set out in the original case made for investment.

5. The RIF and Risk

- 5.1 The Investment Panel will determine its own risk strategy and approach to risk, in consultation with the Accountable Body, and manage it through the Business Plan process. Given the overarching objectives of the RIF and its role in delivery, risks for the RIF can be identified and separated from the normal risks associated with infrastructure delivery which will remain with the delivery agent.

Risks for the RIF

- 5.2 Non-payment of developer contributions back in to the RIF
- 5.2.1 The foremost risk to the RIF is the non-payment, late payment or deferred payment of the developer contributions that it forward-funds. Non-payment will obviously lead to the Fund failing to become self-sufficient. This will be managed by the Investment Panel by firstly setting aside a contingency from its initial fund to cover such circumstances and mitigated by its contracts with landowners or developers and some direct charges.
- 5.2.2 The RIF Criteria will also require schemes to demonstrate the robustness of the agreements in place to secure the relevant contributions and/or the framework for seeking future relevant contributions from developments that are not yet in the planning system, before a decision to invest is made. The Investment Panel may adopt an approach whereby a minimum percent of the investment must be secured through secured legal agreements, balanced against those due to flow from future developments (with or without permission) that are not yet secure.
- 5.2.3 In exceptional cases, where significant RIF investments are at risk due to the failure of development land (benefiting from the investment) being brought forward in the planning process, the use of Compulsory Purchase powers will be considered by the Accountable Body with the aim of bringing forward land for development in accordance with agreed planning timescales.
- 5.3 Non-return of developer contributions from Local Planning Authority (LPA) to RIF
- 5.3.1 Developer contributions can be made to non-LPAs, but legally only LPAs can enforce agreements made under S106 of the Town and Country Planning Act. For reasons of simplicity, the Accountable Body is unlikely to sign S106 agreements, or receive developer contributions directly, instead the LPA, as the enforcing body for S106 agreements, will receive payments and then pass them back to the RIF. In some cases, the RIF (in the form of the Accountable Body) may enter into agreements directly with the landowner/developer that secure specific contributions. This would need to be done in agreement with the LPA who might be required as a consequence to amend their S106 requirements.

- 5.3.2 It is possible that the LPA could receive back repayments and then not return them to the RIF. To prevent this possible occurrence, the Accountable Body will sign agreements with LPAs to legally secure the return of relevant developer contributions to the RIF. The signing of such agreements will be required before a decision to invest is made.
- 5.4 RIF is not a large enough Fund to be effective – too many schemes
 - 5.4.1 It is likely that the number of potential candidates for RIF investment will be limited in its early stages. However, in the medium to longer term this risk can also be mitigated by introducing stricter, or more targeted eligibility criteria. In future, there are of course opportunities for the RIF to grow as others make contributions to it (see below) and if options to secure some of the uplift in development value that RIF investment will bring about are pursued (see below).
- 5.5 No schemes come forward for RIF Investment – too few schemes
 - 5.5.1 If no appropriate or eligible schemes come forward for RIF investment then the committed funds will be returned to the relevant part of the RFA.
- 5.6 RIF Investment is required in too large amounts at the same time
 - 5.6.1 There is some potential for a number of eligible schemes to require RIF investment at the same time making the investment process more difficult to manage. There is also potential, if the sums required at the time are greater than the investment value remaining in the Fund, for issues of scheme priority to arise. The Investment Panel will manage this issue through its Business Plan monitoring process and in circumstances where there are competing schemes, will seek guidance from other regional stakeholders on suitable additional criteria for determining priority.
- 5.7 Slippage in the Business Plan due to delivery delays
 - 5.7.1 Infrastructure schemes can be difficult to deliver to a planned timetable, no matter how well managed. There are inherent planning and development risks. This slippage, if unrecognised by the Business Plan, could lead to it becoming a relatively inaccurate Plan as to when investment is required. The Panel will mitigate this risk by requiring quarterly reports from LPAs on scheme progress, leading to amendment and refinement of the Business Plan as appropriate.

Normal risks of infrastructure delivery that will not fall on the RIF.
- 5.8 Cost overruns
 - 5.8.1 The RIF investment will forward-fund an identified and valued developer contribution only. If the total scheme costs rise, then there is no facility for the RIF investment to grow accordingly. If further investment is needed from RIF, to cover enlarged (and agreed and secured) contributions from developers, then the Panel will take a further investment decision.

5.9 Delivery delays

5.9.1 See above under 5.7.

6. Success Criteria for RIF Investment

6.1 It is important to establish criteria against which the operation of the RIF might be judged. However it is also important to ensure that the criteria are realistic, measurable and do not place an undue burden in terms of monitoring requirements.

6.2 The initial success criteria for RIF will include:

- i) At least a (to be established) percentage of contributions are returned to it.
- ii) Planned growth is delivered earlier.
- iii) Essential infrastructure is in place earlier.
- iv) Measurable/identifiable additional sustainability is secured through investments.
- v) Some developer contributions are realised sooner.
- vi) Additional developer contributions are realised through leverage.

7. The RIF and Value for Money

7.1 The Investment Panel will assess the value for money of RIF investment based on the expected return of its investment and the scale of early delivery of growth that it brings about. The Panel will not assess the wider value for money of the actual infrastructure it is investing in; the Panel will require that this assessment has already been completed satisfactorily before an investment decision is made.

7.2 Any scheme RIF invests in (or decides to invest in) will have to have been through (or go through) all necessary consent regimes and assessment processes. For RFA transport schemes this will include the Major Scheme Bid process, and for non-RFA schemes the Local Transport Plan process. Affordable Housing schemes that are also supported by public subsidy will have to go through the Housing Corporation's Affordable Housing Programme. Health schemes will go through NHS value for money processes etc.

7.3 The value of RIF investment in each scheme will be assessed in detail using a standard financial modelling process. This process will also establish the financial viability of the whole development and will aid LPAs in arriving at a realistic and fair contribution package during negotiations with the developer.

7.4 The RIF concept itself offers the public purse value for money in that it will be a recycling resource. It will also aid in delivering infrastructure earlier, thereby reducing the cost of its delivery.

8. Returning Surpluses

- 8.1 If a publicly funded RIF begins to make surpluses then these will be redistributed to the funding organisations.

9. Facilitating Other Contributors to the RIF

- 9.1 There is potential for additional funding from other government departments (e.g. Health, Children Schools and Families) and similarly amongst existing and proposed regional and national non-departmental public bodies that have a role in supporting the delivery of sustainable economic growth. RIF will have the ability to deliver any type of infrastructure early, be it houses, affordable houses, schools or transport schemes.
- 9.2 The Investment Panel will commit to spending relevant amounts on particular types of infrastructure (not everything will come forward as part of a package) and will be able to make similar commitments to any future contributors. The Business Plan will offer additional confidence for other contributors that their investment will deliver particular outcomes or priorities. Allocations can easily be made to the RIF through the Accountable Body.
- 9.3 A well-funded RIF operating with a distinct regional branding will have momentum and vitality, building on existing enthusiasm and a feeling of regional ownership and benefiting from wide support for its agreed priorities for investment in particular places. It will offer simplicity and consistency through a single investment process.

10. Growing the RIF by Capturing Development Value Uplift

- 10.1 RIF investment will have associated benefits for developers and land-owners. Some of these benefits are clearly fundamental to why a RIF is being developed: to enable development to proceed by assisting the developer's cash-flow and to ensure the early delivery of infrastructure. RIF will also assist in reducing development risks; any infrastructure required to be in place before certain development phases can proceed past a particular point will be in place earlier. The early delivery of infrastructure will also unlock other development sites, reducing planning risks and potentially development costs (cost of capital etc).
- 10.2 Within an Area Action plan formula or standard charge process it would be possible to value and 'charge' for this uplift. Further work will be required to set out the relationship between the RIF and the proposed Community Infrastructure Levy (CIL).

11. The RIF and Private Sector Investment

- 11.1 It is clear that securing private sector investment in the RIF will be of most benefit to the public purse.

11.2 We will need to consider this issue from our region's perspective as part of the longer-term development work associated with the RIF.

12. State Aid

12.1 Risk sharing between public and private sector investors must be at least equal. Security of returns should be related to the scale of investment – no private sector investor should be able to invest without accepting some risk.

12.2 It is intended that the RIF will operate without conferring any state aid.

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**SOUTH EAST ENGLAND
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Scheme Criteria

Schemes must meet all the criteria for a decision to invest, the general and strategic criteria for inclusion in the Business Plan.

General:

1. Scheme is 'infrastructure' as defined in the South East Plan and for which a developer can legitimately be required to make a contribution.

Strategic:

2. Infrastructure is required to support the delivery of development that is supported by and consistent with the priorities established in the South East Plan and the Regional Economic Strategy.
3. Priority will be given to infrastructure that adds value to the delivery of sustainable growth within one of the regional hubs/diamonds for growth/growth areas/new growth points.
4. Infrastructure must be related to the development of a large growth site, a number of linked developments or unlocking capacity. Associated development(s) must be of greater size than:
 - i. 500 houses
 - ii. 10 hectares of retail/office/employment
 - iii. Mixed used development containing a component that meets the thresholds for housing or retail/office/employment

Or:

 - iv. Be of recognisable significance in the South East Plan/Regional Economic Strategy.
5. Infrastructure and related development must be embedded in a robust Local Development Document (Core Strategy or Area Action Plan) or an adopted Local Plan.
6. There must be:
 - a) A realistic timetable for the infrastructure provision and of the associated development and detail as to when Regional Infrastructure Fund investment will be required.
 - b) Initial details as to the likely value of Regional Infrastructure Fund investment required.

- c) Full justification under the current planning obligations regime and legislation, for seeking developer contributions for the infrastructure.
 - d) An initial proposed timetable for the repayment of the developer contributions that Regional Infrastructure Fund will forward-fund.
7. Full justification and reasoning as to why inclusion in the RIF Business Plan is being sought.

Financial:

8. Full justification and reasoning as to why Regional Infrastructure Fund investment is being sought demonstrating clearly the additionality and benefits that the Regional Infrastructure Fund investment will bring.
9. The related development is demonstrated to be wholly viable with other funding sources (public agencies included) for the infrastructure committed.
10. A robust timetable for the repayment of developer contributions equivalent to the Regional Infrastructure Fund investment being sought, as evidenced by unilateral undertaking from developer(s), or agreed draft S106 clauses.

Process:

11. Infrastructure must have planning permission and achieved all necessary consents and/or approval - for example programme entry in accordance with the Department for Transport Major Scheme Guidance.
12. The Local Planning Authority has signed an agreement with the Regional Infrastructure Fund accountable body to return agreed developer contributions to the accountable body.

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