

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY
EXECUTIVE COMMITTEE**

Date: 14 December 2007

Subject: **Regional Infrastructure Fund**

Report of: Director of Development

Recommendation:

It is recommended that the Committee:

- (i) Consider and comment on the draft framework for the Governance and Accountability of the Regional Infrastructure Fund;
- (ii) Look to SEEDA to identify, as part of their Corporate Plan, a contribution towards establishing the Regional Infrastructure Fund;
- (iii) Request the input of the Regional Housing Board and Regional Transport Board into the preparation of the initial Business Plan for the Regional Infrastructure Fund.

Purpose of Report:

To inform Committee members of the progress made in establishing the Regional Infrastructure Fund and to seek views on the draft framework for Governance and Accountability.

Key Issues:

The Regional Infrastructure Fund (RIF) is a key part of the package of measures identified in the Implementation 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 RIF has been jointly promoted by the Assembly and SEEDA, and both organisations are committed in principle to having the Fund established and operational from April 2008.

In its initial life the RIF will be established by funds from the public sector. The Governance and Accountability arrangements similarly need to be established within the public sector. However those arrangements need to be developed in such a way as to enable the RIF to develop over time in such a way that the scope to work more closely with the private sector is not fettered.

1. What is the Regional Infrastructure Fund?

- 1.1 Its primary purpose is to facilitate the timely provision of regionally or sub-regionally significant infrastructure that supports the delivery of planned growth as set out in the Regional Spatial Strategy and/or the Regional Economic Strategy.
- 1.2 The RIF **is not** about supporting delivery of infrastructure where that can be secured through traditional funding mechanisms
- 1.3 The RIF **will** focus on bridging the gap in situations where the cost of infrastructure will ultimately be met either in full or in part, through private sector contributions but where the availability of those contributions is itself dependent upon development taking place (the 'catch-22' of delivering planned growth)
- 1.4 In other words the RIF 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.
- 1.5 The funds allocated to the RIF are recycled – i.e. the initial investment is recovered through contributions received from third parties. Hence the RIF will increase the leverage effect of public sector funding. The recycling of funds means that a small initial sum can be used to deliver a much larger investment in the region.

2. Developing a Governance and Accountability Framework

- 2.1 Using the framework developed between the South West and the DfT as a template we have prepared a (working) draft setting out how the governance and accountability framework might work in our region (Annex I).
- 2.2 The key elements of the framework are:
 - a) SEEDA be identified as 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.
- 2.3 Given that the architecture of regional governance is in a state of transition post the Sub National Review the working proposition is that during the initial (pilot) phase of the RIF the Investment Panel should evolve out of the current arrangements for liaison between the Regional Assembly and SEEDA.
- 2.4 Given the scale of the RIF in its initial stage will be limited and given that the identification of investment opportunities will be clearly related to existing regional priorities (as set out in the South East Plan and Regional Economic Strategy) we believe that an Investment Panel along the lines set out in the draft framework for Governance and Accountability will provide an appropriate way forward.

- 2.5 The inclusion of either one or both of the Chairmen of the Transport and Housing Boards would ensure an appropriate level of linkage with the investment advice provided with the remainder of the RFA programme. The suggestion to include some external representation on the Investment Panel draws upon the model being developed in the South West. It would enable specialist advice to inform the Panel during its discussions; it would also provide a mechanism for beginning a longer-term dialogue with the private sector in terms of its potential role in the evolution of the RIF.
- 2.6 The framework set out in Annex I is an initial draft that draws heavily upon the example developed by the South West. Using this as a template should help us reach agreement with central Government departments on our own RIF proposal more readily than might otherwise be the case. However the document is very much a first draft and it will require further work. This is being taken forward by a small working group of officials from the Assembly and SEEDA working closely with GOSE.

3. Operating Procedures

- 3.1 Along with the Governance and Accountability framework it will be necessary to develop a set of Operating Procedures that will govern the way in which the Investment Panel would operate.
- 3.2 The working proposition is that the Investment Panel will take decisions within the framework of its Business Plan which will have a 10 year life-span. The Panel will have two decision making processes:
- a) A decision to include a scheme in the Business Plan
 - b) A final decision to invest the RIF.
- 3.3 It is not envisaged that there will be a formal bidding process as part of the operating procedures. Instead it is proposed that officials within the Assembly/SEEDA will work with the Local Authorities in existing priority areas for investment to identify infrastructure requirements that could benefit from the RIF approach.
- 3.4 Infrastructure requirements identified through this dialogue will then be considered by the Investment Panel. If the Panel concludes that the proposal satisfies an agreed set of criteria it will be included in the RIF Business Plan. This would result in the allocation of both an indicative amount and timing for the investment, including when the investment can be expected to be repaid. The criteria used by the Panel would be published to ensure transparency in the process. Infrastructure proposals could be submitted to the Panel anything up to five years in advance of the predicted provision of the infrastructure.
- 3.5 It is envisaged that Local Authorities would be able to express interest in including a particular scheme in the RIF Business Plan at any time by writing to the Regional Assembly/SEEDA. Discussions between the Local Authority and the Regional Assembly/SEEDA will ensue and be reported to the next relevant Panel meeting.

- 3.6 The presumption is that the Investment Panel will undertake an annual Business Plan review and that the financial activities of the RIF will be audited and reported annually.

4. Developing an initial Business Plan

4.1 Critical to establishing the RIF is the development of an initial Business Plan. Preliminary discussions have identified investment in the green infrastructure that helps unlock housing delivery in the Thames Basin Heaths and support for the delivery of infrastructure that unlocks the South Hampshire Economic Zone should be priorities for investment through the RIF. However, in order to develop an initial Business Plan it is necessary to consider other potential opportunities where the RIF might, in its initial life, secure 'quick wins'.

4.2 There are three potential areas of work during the course of the next 6 months that provide us with the opportunity to work with Local Authorities to identify such opportunities. They are:

- a) We are currently updating the investment proposals identified in the Implementation Plan associated with the South East Plan. The investment frameworks include proposals that will be funded either wholly or in part through developer contributions. The process of updating the investment frameworks provides the opportunity to identify schemes that could be accelerated through investment made by the RIF;
- b) The Regional Housing Board will be considering the Housing Corporation's proposed investment programme at its meeting in January 2008. As part of that process the opportunity exists for the RHB to work with the Housing Corporation and identify potential situations in which forward funding of infrastructure might accelerate the delivery of affordable housing;
- c) The Regional Transport Board has embarked upon a refresh of the region's transport priorities. The Board has previously made an informed judgement of the potential for developer contributions to support scheme delivery. The refresh process provides the opportunity to identify existing regional priorities whose delivery could be accelerated if an investment was made available through the RIF.

5. Providing the funds for the RIF

5.1 It is currently proposed that the RIF would be established using funds from CLG through the RFA process. The refresh of transport priorities (to be undertaken in 2008) provides the opportunity to identify a funding stream from DfT through the RFA process. The preparation of the SEEDA Corporate Plan provides the opportunity to use a proportion of the economic development stream of the RFA to support the RIF.

It is interesting to note that the RIF in the South West is being established with financial contributions from both the transport and economic development streams of the RFA.

- 5.2 The Government has recently announced its intention to proceed with the introduction of a Community Infrastructure Levy. The enabling legislation has the potential to allow for the CIL to include a contribution that will fund investment that is of sub-regional/regional significance. Clearly the RIF retains the potential to forward fund infrastructure investment that is recovered through the planning system as part of the CIL.
- 5.3 Ensuring that the two processes work together presents a major opportunity but requires two key issues to be considered in more detail. Firstly there is a need to establish a set of criteria that enables a piece of infrastructure to be identified as being of sub-regional/regional significance. Secondly there is a need to develop guidance to Local Planning Authorities as to how that element of the CIL is to be managed.
- 5.4 Through the Assembly we are in the process of commissioning advice that will assist us in both respects. However as the initial funds to establish the RIF in April have already been identified from existing regional sources this work can be undertaken in parallel.

6. Next Steps

- 6.1 We remain focused on the need to have the RIF established and operational by April 2008. In order to realise this objective there is a need to:
 - a) Develop the draft framework for Governance and Accountability in light of comments of this Committee and comments from SEEDA;
 - b) Take forward the three areas of activity set out in section 4 above as a part of the work to prepare the initial Business Plan;
 - c) Take forward work to provide clarity on how the operation of the RIF will relate to the introduction of the Community Infrastructure Levy.

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SOUTH EAST ENGLAND REGIONAL INFRASTRUCTURE FUND

Governance and Accountability Draft 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 an Investment Panel be established. 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) Representatives from the Regional Housing Board and./or Regional Transport Board
 - d) External representatives from the private sector drawn from experts in infrastructure provision, risk management, investment processes

It is proposed that GOSE would 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 It is proposed that 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 SI06 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 It is proposed that the initial success criteria for RIF should 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. Draw-down of Resources from Regional Funding Allocation

- 8.1 [NOTE: this section will be developed in light of ongoing discussions with central Departments with regards their expectations on draw-down]

9. Returning surpluses

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

10. Facilitating other contributors to the RIF.

- 10.1 It is currently proposed that the RIF would be established using funds from CLG through the RFA process. The refresh of transport priorities (to be undertaken in 2008) provides the opportunity to identify a funding stream from DfT through the RFA process. The preparation of the SEEDA Corporate Plan provides the opportunity to examine the potential for a funding stream from BERR through the funding for economic development.
- 10.2 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.
- 10.3 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.
- 10.4 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.

11. Growing the RIF by capturing development value uplift.

- 11.1 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).

11.2 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).

12. The RIF and private sector investment

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

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

13. State Aid

13.1 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.

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

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