13 December 2023

Community Infrastructure Levy: Supporting Information for Exceptional Circumstances Relief

BMW Mini Oxford

NORTON ROSE FULBRIGHT

Contents

1 Introduction

1.1 This Report is prepared by Norton Rose Fulbright to support an application for exceptional circumstances relief (**ECR**) from the community infrastructure levy (**CIL**) to Oxford City Council (**OCC**) on behalf of BMW (UK) Manufacturing Limited (**BMW**) at its MINI Plant in Oxford (the **Plant**).

1.2 The application for ECR is accompanied by the following, which together form the application:

(a) CIL form 11: ECR claim form;

(b) This Report;

(c) An Economic Statement prepared by Volterra;

(d) A Financial Viability Assessment prepared by DS2 LLP (**FVA**);

(e) A Domestic Subsidy Control Regime Report prepared by KPMG.

Details of the contents of the assessments at (c) – (e) are set out within Section 4 of this Report.

1.3 OCC has adopted a Discretionary Exceptional Circumstances Relief Policy (the **Policy**) pursuant to powers in Regulations 55 and 56 of the Community Infrastructure Levy Regulations 2010 (the **CIL Regulations 2010**). The Policy came into force on 1 June 2019. The Policy provides OCC with a discretion to grant relief from the payment of CIL which would otherwise be payable in respect of a development. The Policy sets out the qualifying criteria for an application for relief made pursuant to the Policy. In summary:

(a) planning permission has been granted for the proposed development, but not commenced;

(b) a s.106 obligation has been entered into;

(c) OCC considers that payment of CIL would have an unacceptable impact on the economic viability of the proposed development; and

(d) granting relief would be consistent with the domestic subsidy control regime.

1.4 On 12 December 2023, OCC resolved to grant full planning permission for extensions and alterations at the Plant (reference 23/02166/FUL) (the **Development**), subject to conditions and completion of a s.106 obligation. The description of development is as follows:

> "*Demolition of Buildings 30.5 and 31.5, extension of Integrated Logistics Centre (Building 80.0) and Body-in-White/Logistics building (Building 31.0/31.3), provision of new lorry parking area, expansion of external waste storage area, realignment of internal road and installation of associated landscaping, delivery decks, canopies, shutter doors, plant and equipment and all other associated works*."

The s.106 obligation required is to provide payment of a travel plan monitoring contribution to Oxfordshire County Council in the sum of £3,110. Details of the development that the planning permission authorises are set out within Section 2 of this Report.

1.5 A CIL estimate of £832,421 has been calculated by David Lock Associates, the planning consultants for the Development.

1.6 The FVA establishes that the Development is unviable when assessed against normal viability metrics. Even when developer's profit is set to zero as a sensitivity test, the development remains unviable.

1.7 The Economic Statement assesses the beneficial economic impact of the Development, and concludes that the Development would provide significant economic benefits for Oxford, and the UK as a whole.

1.8 Subsidy control in the UK is now governed almost exclusively by the Subsidy Control Act 2022 (**SCA 2022**). If ECR constitutes a subsidy under the SCA 2022 but is not given as part of a subsidy scheme, the SCA 2022 will apply and the ECR will need to comply independently with the subsidy control principles. A Domestic Subsidy Control Report prepared by KPMG establishes that the grant of ECR in respect of the Development of the Plant is compatible with the domestic subsidy control regime.

1.9 The purpose of this Report is to support BMW's application for ECR, and detail how the Development meets the terms of OCC's Policy and Regulation 57 of the CIL Regulations 2010. It concludes that exceptional circumstances exist to justify the grant of ECR, as the CIL charge would have an unacceptable impact on the economic viability of the Development. The Development would provide substantial economic benefits, and a refusal to grant ECR could jeopardise the delivery of the Development, and the realisation of those benefits; the grant of the subsidy would also be compliant with the SCA 2022.

2 The Development of the Plant

2.1 BMW

(a) This Report is prepared on behalf of BMW, a leading premium manufacturer of automobiles and motorcycles with more than 30 production and assembly facilities worldwide and a global sales network in more than 140 countries. As an innovation leader, BMW sets trends in production technology and sustainability across the industry. BMW is preparing to upgrade its production facilities to accommodate the future needs of the automotive industry in the UK. In particular, BMW is seeking to ensure that it has the capacity to facilitate the future electrification of its vehicle models.

(b) On 11 September 2023, BMW announced a proposed investment of more than £600 million in the MINI factories at Oxford and Swindon. The investment is to enable the production of the new generation of electric MINIs and paves the way for 100% electric car production in the future.

(c) The development of the Plant has Government support and as part of BMW's commitment to invest in its UK car manufacturing facilities, a £75 million Exceptional Regional Growth Fund grant has been granted to BMW by the Government (the **ERGF**). The Business and Trade Secretary, Kemi Badenoch, has explained that the Government provides "*some subsidy, very light subsidy, in the auto industry because it faces so much difficulty*" and recognises that if the Government asks for the support of "*manufacturers to transition to net zero, that creates additional costs*". The Government subsidy highlights the exceptional difficulties that the automotive industry has to overcome, and the adversity faced by the industry is only further compounded by the additional expenditure demanded by the transition to net zero.

2.2 The existing BMW MINI plant in Oxford

(a) In the UK, BMW has three manufacturing sites that are involved in MINI production, with the Hams Hall facility manufacturing engines and the Swindon facility producing body pressings. The existing BMW MINI plant in Oxford is the final assembly facility, and body shell production and paintwork also take place there. The MINI range of cars currently in production at the Plant include the MINI 3-door and 5-door Hatch, the MINI Clubman and the MINI John Cooper Works. As recently stated by Kemi Badenoch, "*The MINI is an iconic symbol of British engineering excellence and ingenuity*".

(b) The Plant facilitates the building of up to 1,000 MINIs a day, which means it is the third largest vehicle manufacturing site in the UK. The Plant is the third biggest vehicle producer in the UK and by the end of this year 2023, will have produced over 13 million cars bearing the badges of 14 different brands.

(c) The Plant has been successfully producing the MINI Electric since 2019. Last year, the Plant was the largest manufacturer of all-electric vehicles in the UK, with one in four MINIs produced in Oxford being fully electric. This has required significant levels of investment by BMW over the years.

2.3 The development of the Plant

(a) The Development of the Plant will comprise eight separate areas and four principal areas:

(i) Technologie Karosserie Bau / Technologie Logistik, which will provide additional floorspace for logistics operations;

(ii) Integrated Logistics Centre, which will provide additional space for BMW's Body in White and Logistics Technology processes;

(iii) Waste Recycling Area;

(iv) Trailer Park Area, which will provide additional space to accommodate parking for heavy goods vehicles, an inspection canopy, and floorspace for office / welfare facilities.

(b) Through new investment, the Plant can prepare to build two new all-electric MINI models from 2026. The Plant will reach a production capacity of around 200,000 cars per year in the medium term. The MINI brand will become an entirely electrified brand by 2030 and the Plant will exclusively produce all-electric MINI models by the same deadline.

(c) The current footprint of the Plant presents a challenge for BMW in meeting these sustainability ambitions. The new investment aligns with the Government's 2023 announcement of the end of the sale of new petrol and diesel cars in the UK by 2035. The development of the Plant is fundamental to helping the UK to meet this target and achieve its wider net zero ambitions.

2.4 The community

(a) The Plant has been at the heart of its community for 110 years and supports approximately 3,400 high-skilled jobs, about a third of which are filled by Oxford residents. A further 16% are filled by residents of neighbouring areas within 10 miles of the site, and a total of 73% of workers reside within Oxfordshire. In addition, between £260m-£420m of direct Gross Value Added (**GVA**) is supported each year at the Plant, equating to 2%-3% of total vehicle manufacturing GVA across the UK. The Development of the Plant will bring significant jobs and substantial economic investment to Oxford.

(b) The Development of the Plant will secure operational resilience in an evolving market, future-proof the Plant's success and safeguard current employment levels. The Development of the Plant therefore signifies a major investment in the Plant and, subsequently, the Oxfordshire region. The Development of the Plant is pivotal to BMW's manufacturing activity and network in the UK and remains an important contributor to the local Oxford and wider UK economy.

(c) The response to the public announcement, together with ongoing positive engagement with OCC, represents a forward-looking and collaborative relationship between BMW, the local planning authority and Central Government in facilitating inward investment to the Plant, Oxford and wider economy. Prime Minister Sunak welcomes the Plant as "*another shining example of how the UK is the best place to build cars of the future*" and Chancellor Jeremy Hunt said the plans were a "*huge vote of confidence*" in Britain. Investment by all three bodies is essential for the project to be economically viable, with capex provided by BMW, granting funding provided by the Government, and ECR provided by OCC. The development of the Plant would not be economically viable if the full CIL contribution were payable. Granting ECR will help to achieve the desired objective of securing the economic benefits to the area, as recognised by the most senior members of Government.

3 CIL Regulations 2010 and the Policy

3.1 The CIL Regulations 2010 (as amended) set out the regulations for the grant of ECR.

3.2 Regulation 55(1) sets out that a charging authority may grant ECR in respect of a chargeable development if:

(a) It appears to the charging authority that there are exceptional circumstances which justify doing so; and

(b) The charging authority considers it expedient to do so.

3.3 Regulation 55(3) sets out that a charging authority may only grant ECR if:

(a) The charging authority has made relief for exceptional circumstances available in its area;

(b) A planning obligation under Section 106 of the Town and Country Planning Act 1990 has been entered into in respect of the planning permission which permits the chargeable development; and

(c) The charging authority considers that to require payment of the CIL charged by it in respect of the chargeable development would have an unacceptable impact on the economic viability of the chargeable development.

3.4 In accordance with Regulation 55(3):

(a) OCC has made ECR available in Oxford in accordance with Regulation 56 of the CIL Regulations 2010. OCC has been open to accept claims for discretionary ECR from 1 June 2019.

(b) In accordance with the OCC's resolution to grant planning permission for the Development, a planning obligation by way of unilateral undertaking will be given by BMW to Oxford County Council. It secures a financial contribution to Oxford County Council of £3,110 for travel plan monitoring costs.

(c) This Report alongside the Economic Statement and the Financial Viability Assessment, sets out that to require payment of the CIL to be charged by the charging authority in respect of the Development would have an unacceptable impact on the economic viability of the Development, and jeopardise the realisation of the economic benefits of the Development.

It therefore follows that the criteria of Regulation 55(3) are met and the OCC is able to grant ECR[1].

3.5 Regulation 57 sets out the procedure through which ECR must be claimed:

(a) The person claiming relief must be an owner of a material interest in the relevant land.

(b) A claim for relief must be submitted to the charging authority in writing on a form published by the Secretary of State.

(c) A claim for relief must be received by the charging authority before commencement of the chargeable development.

(d) A claim for relief must be accompanied by:

[1] If necessary, the grant of relief could be conditional on completion of the planning obligation, and issue of the permission, if not completed / issued in advance of the decision to grant relief. However, it is anticipated that the s.106 obligation will be completed quickly.

(i) An assessment carried out by an independent person of the economic viability of the chargeable development;

(ii) An explanation of why, in the opinion of the claimant, payment of the chargeable amount would have an unacceptable impact on the economic viability of the development;

(iii) Where there is more than one material interest in the relevant land, an apportionment assessment; and

(iv) A declaration that the claimant has complied with Regulation 57(6) (see paragraph (e) below).

(e) The claimant must send a copy of the completed claim form to the owners of the other material interests in the relevant land, notify those owners that the particulars are available on request and send a copy of those particulars to any owners who ask for them.

3.6 In accordance with Regulation 57:

(a) BMW is claiming the ECR and BMW owns a material interest in the land[2].

(b) This Report is appended to CIL form 11: ECR claim form and submitted to OCC as charging authority.

(c) The Development of the Plant has not commenced.

(d) This Report is supported by:

(i) An assessment carried out by DS2 LLP of the financial viability of the chargeable development, amongst other assessments, a summary of which is provided in Section 4 below. OCC has previously confirmed to BMW that DS2 LLP, and the principal author of the FVA are considered an appropriate “independent person”.

(ii) Section 4 of this Report sets out the reasons why payment of the chargeable amount would have an unacceptable impact on the economic viability of the Plant.

(iii) There is not more than one material interest in the land, and as such as it not necessary to undertake an apportionment assessment.

(iv) BMW declares that it has complied with Regulation 57(6) (see paragraph (e) below).

(e) As there no other owners of material interests in the relevant land (the land within the red line of planning application reference 23/02166/FUL) BMW has not therefore sent a copy of the completed claim form to any such owners of other material interests in the relevant land, nor has it notified any such owners that the particulars are available upon request, and nor has it sent a copy of those particulars to any such owners that have asked for them. As there are no such owners, BMW has therefore complied with Regulation 57(6).

It therefore follows that the criteria of Regulation 57 have been met and BMW has complied with the statutory procedure through which ECR is claimed.

3.7 It is also necessary for BMW to demonstrate compliance with the process for applying for ECR set out in the Policy. This largely replicates the requirements of Regulation 57, but with a couple of differences. The process identified in the Policy is set out below:

[22] All of the land within the red line boundary of planning application reference 23/02166/FUL is owned freehold by BMW (UK) Manufacturing Limited. There are no leasehold or other interests in the said land. The relevant freehold title numbers are: ON131977, ON24275, ON345731, ON356269, ON53223, and ON53224.

(a) Exceptional circumstances relief can be applied for after planning permission has been granted but before development commences.

(b) Anyone wishing to claim exceptional circumstances relief must do so by following the procedures set out in Regulation 57 of the CIL Regulations 2010 (as amended).

(c) In order to qualify for the relief, all of the following criteria must apply:

  (i) A Section 106 agreement has been entered into in respect of the planning permission which permits the chargeable development; and

  (ii) Oxford City Council considers that:

    (A) Requiring payment of the Community Infrastructure Levy charged by the Council would have an unacceptable impact on the economic viability of the chargeable development; and

    (B) Granting relief would not constitute state aid.

(d) The application must be accompanied by:

  (i) an assessment carried out by an independent person of the cost of complying with the planning obligation mentioned in Regulation 55(3)(b);

  (ii) an assessment carried out by an independent person of the economic viability of the chargeable development;

  (iii) an explanation of why in the opinion of the claimant, payment of the chargeable amount would have an unacceptable impact on the economic viability of that development;

  (iv) an apportionment assessment where there is more than material interest in the land; and

  (v) a declaration that the claimant has complied with paragraph 6 of Regulation 57.

The Policy also states that:

- As set out in the regulations an independent person is a person who is appointed by the claimant with the agreement of the charging authority; and has appropriate qualifications and experience.
- The onus is on the applicant to demonstrate they qualify for this relief and appropriate evidence must be submitted with any application.

3.8 This application for ECR complies with the process for an ECR application set out in the Policy. How the application complies with the aspects of the process for applying for ECR set out in the Policy that are in common with Regulation 57 are not repeated. In respect of the aspects of the Policy that are different to the process set out in Regulation 57:

(a) It is considered that the authors of the FVA (Jack Savin-Taylor MRICS and Joe Crossley MRICS) have “appropriate qualifications and experience”. An experience statement has previously been provided to OCC.

(b) It is considered that “granting relief would not constitute state aid”; this is understood to now be a reference to the domestic subsidy control regime. A report by KMPG addresses this issue and concludes that granting the relief would comply with the Subsidy Control Act 2022.

(c) In paragraph 3.7 (d)(i) above it is noted that the requirement is to provide “an assessment carried out by an independent person of the cost of complying with the planning obligation”. The FVA addresses the viability of the Development as a whole; it also concludes that the Development cannot viably provide any financial contributions by way of planning obligations.

4 Exceptional Circumstances

4.1 In support of the application for ECR, several assessments have been prepared, and a summary of these assessments and their findings is set out in this section. The Economic Statement sets out the substantial benefits that the Development of the Plant will provide for Oxford and the UK, and these benefits can only be achieved if the Development proceeds. The FVA clearly demonstrates that the Development of the Plant would not be economically viable if the full CIL contribution was required.

4.2 Economic Statement

(a) Economy

(i) Despite a diminishing global influence over recent decades, the industry has unrealised potential in the UK that the Development of the Plant can unlock and restore. The automotive industry has been an integral part of the UK's manufacturing sector for the past century. Whilst the UK's overall car production total has stayed fairly constant, the UK's share of the global vehicle production market has decreased dramatically. In the early 1970's, the UK was responsible for approximately 7% of global vehicle production. As of 2021, this share has decreased to only 1% of the global market. The existing Plant has played a major part in the history, economy and identity of Oxford for more than one hundred years. Today, it is one of the few manufacturing facilities in the country that maintain the legacy of the British car industry while innovating to adapt to a market with shifting sustainability objectives and consumer needs. Estimates show that the UK automotive industry could be worth £106 billion by 2030 if it makes the most of current opportunities, the equivalent of over 4% of UK GDP.

(ii) The Development of the Plant presents an opportunity to stimulate the vital businesses that form the supply chain for the production of electric vehicles (**EVs**). The ability of the UK economy to meet the increased demand for EVs is heavily dependent on its ability to access the number of complex parts that make up the vehicle. The automotive manufacturing sector supports a wide number of businesses across the UK, ranging from small repair and maintenance shops to large importers and distributors. More businesses may join the wider sector with the shift towards EVs, and existing suppliers will likely see opportunities to increase the value of their products. Recent estimates show that the direct supply chain generates approximately £5.7 billion in GVA each year. The Plant will reach a production capacity of around 200,000 passenger cars per year, which would be equivalent to 27% of the UK's overall passenger car production level as of 2022. This figure would be almost three times higher than the existing UK automotive production of EVs. With this scale of production, the Plant would enable the company to compete at a global level, leveraging its diverse supply chain and significant research and development opportunities in its new facility.

(iii) In addition to connecting a vast network of businesses in the UK, the Plant will encourage international relationships and cement the UK's presence in the global automotive industry. The automotive sector is the UK's largest source of exports for manufactured goods. In 2021, UK automotive exports accounted for £34 billion, 11% of UK's total goods exports and 5% of overall exports. About 80% of all vehicles produced in the UK are exported, and these exports reach 150 markets. Given this scale of exports, the Government has placed the automotive sector right at the heart of its Made in the UK, Sold to the World export strategy. As part of this strategy, the Government has committed to targeting export orientated foreign direct investment to build resilience and competitiveness among UK automotive manufacturers. The existing Plant manufactured 186,000 vehicles in 2022, and the MINI model made up most of this total with 160,000 units built. In 2022, the MINI was not only the most manufactured model in the UK, but it was also the most exported model.

(b) Environment

(i) A golden opportunity exists to capitalise on the green manufacturing revolution. It is estimated that 16% of total greenhouse gases are produced by the transport sector, of which, more than half comes from passenger vehicles. Removing tailpipe emissions is therefore a clear priority to decarbonise the sector. With no tailpipe, pure electric cars produce no carbon dioxide or other harmful emissions when driving. In over a year, just one electric car on the roads can save an average 1.5 tonnes of carbon dioxide.

(ii) The Government's commitment to supporting the automotive sector is clear. Several key strategies clearly signify the UK's ambition. Recent strategies and the relevant measures the Government is taking to support automotive sector growth include: Build Back Better (2021) which sets out the Government's plan to support growth through significant investment in infrastructure, skills and innovation, and to pursue growth that levels up every part of the UK; Net Zero Strategy: Build Back Greener (2021) in which the Government has highlighted the need to grow and level up the economy through sustainable economic growth; and Levelling Up and Net Zero (2022) in which the levelling up agenda makes manufacturing a priority sector given its potential to provide a range of employment opportunities in a highly productive economic activity. Of particular importance is the Automotive Roadmap (2022), which is the Government's delivery plan to 2035 to transition the automotive sector to net zero. Supporting the supply chain and manufacturing industry and investing in the future workforce are key ambitions of the Automotive Roadmap. It also details a commitment to invest £5 billion across infrastructure, manufacturing and research and development, including initiatives and programmes to develop the design and manufacturing of batteries and growing and supporting the supply chain for EVs. In addition to the decarbonisation policies, the Government proposed a Zero Emission Vehicle mandate, which requires an increasing percentage of a manufacturer's annual new car and van sales to be zero emission, reaching 100% in 2035.

(iii) In this regard, the production of EVs at the Plant will be a crucial piece of the puzzle facilitating the achievement of the Government's ambition of a net zero economy and levelling up the UK. BMW has committed to sustainable operation measures at the Plant, which include: the provision of solar photovoltaic panels on-site and an energy efficient building design; and minimising waste, such as by harvesting rain water to flush the toilets around the site.

(c) Employment

(i) Car makers provide thousands of highly productive jobs across the UK's regions. The average worker in the automotive manufacturing industry supports GVA of £76,900 per year. This is 21% higher than the overall UK average of £63,500 per year. The Development of the Plant would support a significant number of jobs in the sector, therefore helping to close the UK productivity gap.

(ii) Oxford currently plays a substantial role in the UK's automotive manufacturing sector and will be vital to maximising the opportunities the sector presents. In Oxford, automotive manufacturing jobs are almost 5 times as concentrated as the national average. The high concentration of jobs indicates that there is a clear local specialism for automotive manufacturing in Oxford. The automotive sector is recognised by OCC as being crucial to making the most of opportunities to grow the economy and improve society across the respective industry areas. Specifically, Oxford's Economic Strategy notes the automotive sector as having a key role to play in the move towards a low carbon economy.

(iii) The existing Plant is one of Oxford's largest employers and is a significant contributor the UK's automotive manufacturing sector. The Development of the Plant will play a crucial role in safeguarding this employment and the shift to EV production could secure and potentially increase employment in Oxford from 2026 onwards.

(d) Expenditure and tax revenues in the locality

(i) The economic benefits that the Plant generates for the UK supply chain go beyond supporting the suppliers of car parts. The Plant also provides additional income to local businesses, such as retail and leisure outlets, near the site. It is estimated that the average worker at the existing Plant spends approximately £14 each day on site and in the local area. It is estimated that workers at the existing Plant spend on average £5 million on-site and in the nearby area each year. It is estimated that the economic activity at Oxford supports a further 7,370 jobs in the wider UK supply chain.

(ii) The Plant will have a substantial economic impact during the 17-month construction period alone. It is estimated that the Plant will support an average of 1,220 construction jobs over the construction period. It is also estimated that the average construction worker at the Plant would spend approximately £12 each day in the local area. Construction workers are expected to spend £1.6 million on-site and in the nearby area each year of the construction phase, and £3.1 million across the entire construction period.

(iii) OCC will also receive significant economic benefits directly, through the tax collected from the Development of the Plant. It is estimated that the Plant would support annual gross tax revenues of between £75 million - £170 million. It is also estimated that the existing Plant pays approximately £5 million in annual businesses rates each year, rising to £5.5 million by 2026. This translates to between £2 million - £2.1 million going to OCC each year.

(e) Education

(i) BMW is committed to the development of local skills and providing pathways for Oxford residents into the manufacturing industry of the future. The existing Plant provides employment for all skill levels, with an emphasis on operational jobs that require vocational qualifications or on-the-job training. This represents a significant number of positions with a profile that caters to the approximately 30,000 working age people in Oxford who have NVQ 1 - 3. Workers at the Plant would be upskilled with on-the-job training in new EV technologies, helping to drive new skillsets among Oxford residents and contribute to the transformation of the local and national automotive industry workforce into a new zero-carbon skilled workforce. Over the last four years alone, the BMW has supported around 100 apprenticeships at the existing Plant. Safeguarding these opportunities, which are not widely available in Oxford, will be key to maintaining the employment rate of this particular portion of the population. The Plant will see the continuation of the apprenticeships programme, which will be updated to adapt to the rapidly changing needs of the industry.

(ii) As one of the largest employers in the city, BMW has been an important partner in the design and implementation of OCC's skills and employment plans and strategies. The existing Plant has a dedicated schools engagement team that runs a programme that aims to support the local community in terms of employability, nurturing the soft skills within students that are needed for the world of work. BMW is keen to explore further ways that the Plant can provide educational opportunities by engaging with local schools, aligning with Oxford Technical Advice Note 2: Employment & Skills policy.

(iii) BMW has also collaborated with Oxford University through a scheme that allows students to gain an insight into manufacturing and sustainable production. Students are offered the opportunity to work with the team at the existing Plant to identify where further developments could be made in employee wellbeing, the local Oxford community and the existing Plant's environmental impact. Building on this, the Plant would allow for further research into the latest EV manufacturing techniques, providing a mutually beneficial partnership for both the Plant and the University.

4.3 Financial Viability Assessment

(a) The Plant will deliver works that will facilitate expansion of capacity at the existing Plant and will secure its long-term future. The financial outputs outlined in this assessment show that when assessed using the standard planning viability methodology on an objective and non-applicant specific basis, the scheme cannot viably provide additional financial contributions.

(b) The Plant will be assessed using the residual method of valuation to determine the Residual Land Value (**RLV**) which is then, in turn, measured against an appropriate Benchmark Land Value (**BLV**). If the BLV is in excess of the value of the Plant, the scheme is deemed to be in a viability deficit and, therefore, unlikely to come forward for development unless the level of financial contributions can be reduced. A CIL contribution cannot viably be made and there is a case for ECR. If vice versa, and the value of the Plant is in excess of the BLV, the scheme is deemed to be in a viability surplus and the scheme can, in theory, provide additional financial contributions by way of planning obligations. A CIL contribution can, in these circumstances, viably be made.

(c) The total value of the aggregated area of the existing Plant is £39,742,495 once purchaser's costs have been applied at 6.8%. The adopted BLV is £39,742,495.

(d) On a present-day basis, the Plant derives a RLV of -£21,840,270 which, when measured against the BLV of £39,742,495, generates a deficit of -£61,582,765.

(e) Sensitivity analysis was undertaken to examine the effects of changes in key inputs, and to address the potential for variation in residual valuations. The results of the sensitivity testing demonstrate that through a combination of changes to the sales and build cost inputs, an improvement in the RLV can be achieved however the development of the Plant remains financially challenged and unviable in all scenarios.

(f) The Plant is not a typical property type that is often tested using a planning viability methodology. To further test the robustness of the approach adopted to ensure that the conclusions remain accurate, an additional approach whereby it is assumed that only an owner-occupier would bring forward the Plant is considered. An owner-occupier may not seek to extract the same level of development profit return as a typical developer, with the primary business focus being the expansion of existing facilities and the long term future of the business. The impact of removing profit from the appraisal was tested. On a no-profit basis, the Plant derives a RLV of -£6,554,592 which, when measured against the BLV of £39,742,495, generates a deficit of -£33,187,903. The appraisal results that assume no profit is extracted demonstrate there remains a viability deficit. Therefore, even on a no-profit basis, the maximum viable level of CIL is exceeded.

(g) To further examine the robustness of the conclusions, sensitivity analysis of the industrial yield adopted was undertaken. The results demonstrate that the Plant can generate a positive land value, albeit the Development of the Plant remains in a viability deficit when assessed against the BLV under every scenario. This demonstrates that the conclusions drawn remain accurate and robust, and as the Plant cannot viably support the payment of CIL, it qualifies for ECR.

(h) The financial outputs outlined in this assessment show that when assessed using the standard planning viability methodology on an objective and non-applicant specific basis, the Development cannot viably provide any financial contributions by way of planning obligations. This assessment therefore satisfies one of the requirements for an application for ECR.

5 Domestic Subsidy Control Regime

5.1 The Domestic Subsidy Control Report considers whether the grant of ECR in respect of the development of the Plant would constitute a subsidy for the purposes of the SCA 2022.

5.2 Regulation 55(3)(c)(iii) of the CIL Regulations 2010 previously set out that a charging authority may only grant ECR if it was "satisfied that to grant relief would not constitute a State Aid which is required to be notified to and approved by the European Commission". Subsidy control was governed by the EU's State Aid regime however, with one exception, EU State Aid rules ceased to apply in the UK following the end of the transition period on 31 December 2020.

5.3 This exception is the Windsor Framework, formerly known as the Northern Ireland Protocol. Regulation 55(3)(c)(iii) of the CIL Regulations 2010 was removed at the end of the transition period on 31 December 2020 by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020/1470. Article 10 of the Windsor Framework provides that various provisions of EU law "shall apply to the United Kingdom ... in respect of measures which affect that trade between Northern Ireland and the Union which is subject to this Protocol". Annex 5 of the Windsor Framework includes the EU State Aid regime as a provision of EU law which continues to apply in the UK. Consequently, State Aid continues to apply if Article 10 is engaged. Article 10 was supplemented by a Joint Declaration of the EU and the UK in the Joint Committee Established by the Agreement on the Withdrawal of the UK from the EU of 24 March 2023 on the Application of Article 10(1) of the Windsor Framework (the **Joint Declaration**). The Joint Declaration confirms that:

(a) A measure must have a genuine and direct link to Northern Ireland to have an effect on trade that is subject to the Windsor Framework and for a measure to have such a genuine and direct link, the measure "needs to have real and foreseeable effects on that trade" and those effects "should be material, and not merely hypothetical or presumed".

(b) If the measure is granted to a beneficiary in Great Britain (rather than Northern Ireland), "the mere placement of goods on the Northern Ireland market is not sufficient, on its own, to represent a direct and genuine link..." it must be further demonstrated that the economic benefit of the subsidy would be wholly or partially passed onto an undertaking in Northern Ireland or through the relevant goods placed on the market in Northern Ireland, for example through selling below market price.

5.4 The Domestic Subsidy Control Report considers that ECR would not fall under Article 10 of the Windsor Framework, and therefore the State Aid regime should not apply, on the following basis:

(a) BMW is a company incorporated in England and Wales and all of its manufacturing sites are situated in England. It has no sites in Northern Ireland or elsewhere in the UK. CIL is levied by OCC on new developments in the area. As a result, it is arguable that the effect of any exemption from CIL is inherently and exclusively confined to that area. If so, it cannot be said to relate to Northern Ireland and therefore have any effect on the trade between Northern Ireland and the EU. The very small size of the ECR applied for (circa £800,000), as compared to the size of BMW, further indicates that there is no foreseeable effect on trade in any event.

(b) Although it is likely that the MINIs produced at the Plant will be placed on the Northern Ireland market, there is no evidence that the economic benefit of the grant of ECR will be passed on through the placing of the MINIs onto that market, for example through selling below market price. The number of MINIs placed on the Northern Ireland market will not fluctuate depending on whether the MINIs are produced at the Plant or anywhere else. It is therefore reasonable to conclude that if ECR is granted, there will be no effect on goods placed in Northern Ireland.

5.5 After the transition period, subsidy control was governed by the Trade and Cooperation Agreement between the UK and the EU (the **TCA**). Most of the provisions of the SCA 2022 came into force on 1 January 2023 and it broadly displaced the TCA. The TCA arguably continues to apply as a relevant factor which OCC should take into account when deciding whether to grant

ECR, at least to the extent that its principles are not replicated in the SCA 2022. The Domestic Subsidy Control Report takes the view that the TCA and the SCA 2022 are sufficiently similar that if a subsidy is permissible under the SCA 2022, it is likely to be permissible under the TCA (save, perhaps, in exceptional circumstances).

5.6 OCC's Discretionary Exceptional Circumstances Relief Policy was most recently approved in 2019 and it states that OCC may only grant ECR if it is satisfied that "granting relief would not constitute state aid". The Domestic Subsidy Control Regime Report considers that this criterium is only stated in OCC's Discretionary Exceptional Circumstances Relief Policy because it has it not yet been updated. It is understood that OCC has advised BMW that references to "state aid" should now be taken to be a reference to the domestic subsidy control regime pursuant to the SCA 2022.

5.7 If ECR constitutes a subsidy under the SCA 2022, the SCA 2022 will apply. Section 2(1) of the SCA 2022 sets out the definition for a subsidy, stipulating that it means financial assistance which:

(a) Is given, directly or indirectly, from public resources by a public authority;

(b) Confers an economic advantage on one or more enterprises;

(c) Is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services; and

(d) Has, or is capable of having, an effect on:

(i) Competition or investment within the UK;

(ii) Trade between the UK and a country or territory outside the UK; or

(iii) Investment as between the UK and a country or territory outside the UK.

5.8 Section 2(2) of the SCA 2022 states the means by which financial assistance may be given, including "the forgoing of revenue that is otherwise due". ECR will qualify in principle as financial assistance because it is an exemption from a levy which, if granted, will involve OCC foregoing revenue otherwise due to it under CIL. In accordance with Section 2(1):

(a) ECR will be given, from funds from public money (for example, council tax) by the OCC, a local county council that exercises functions of a public nature as a public authority. Section 6 of the SCA 2022 set out various exclusions of a public body, but the OCC would not fall into any such exclusion.

(b) ECR confers an economic advantage on BMW, relief from having to pay CIL is clearly advantageous for BMW from both a cash and an economic perspective.

(c) ECR will benefit BMW over any other enterprise that has had to pay CIL in materially similar circumstances (and / or who have applied for but have been refused ECR).

(d) ECR is capable of having an effect on competition and investment within the UK, since it is likely to assist BMW in securing a greater share of the electric vehicle market in the UK. It is also likely to affect trade between the UK and a country or territory outside of the UK given that it may affect the balance of trade between the UK and other countries.

There are various exceptions to the criteria set out in Section 2(1) that the Domestic Subsidy Control Report assesses and subsequently concludes are not applicable in these circumstances. It therefore follows that ECR is likely to constitute a subsidy for the purposes of the SCA 2022. This conclusion has been reached because the grant of ECR involves the provision of financial assistance by a public authority; it confers an economic advantage; it is specific; and it has, or is capable of, having an effect on competition and investment in the UK. Accordingly, the SCA 2022 is engaged in respect of the application for ECR from CIL.

5.9 The SCA 2022 contains a number of prohibitions, that if applicable, would make it unlawful for ECR to be granted. The Domestic Subsidy Control Report identifies each of these prohibitions, and concludes that the grant of ECR from CIL would not be prohibited under the SCA 2022. One such prohibition is set out in Section 31 of the SCA 2022, and it prohibits a subsidy subject to a mandatory referral to the Competitions and Markets Authority (CMA) when a referral has not yet been made or completed. Section 52 of the SCA 2022 stipulates when a public authority must request a report from the CMA, such as before giving a “subsidy of particular interest”. The SCA 2022 is supplemented by various regulations, one of which is the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022/1246 (the **SCR 2022**). Regulation 3(2) of the SCR 2022 defines a subsidy as a subsidy of particular interest if the subsidy:

(a) Exceeds £1 million;

(b) If the total amount of the subsidy and any other related subsidy given to the same enterprise exceeds £10 million during the elapsed part of the current financial year and the two financial years immediately preceding the current financial year; and

(c) None of the provisions mentioned in Regulation 4(4) of the SCR 2022 apply.

5.10 The Domestic Subsidy Control Report concludes that the grant of ECR from CIL would not be a subsidy of particular interest because:

(a) The value of ECR is circa £800,000 and therefore falls below the £1 million threshold. In the event that the amount of ECR increases above £1 million threshold, the Domestic Subsidy Control Report considers the other criteria that must all be met for ECR to qualify as a subsidy of particular interest.

(b) A £75 million ERGF grant has been given to BMW by the Government and the Domestic Subsidy Control Report considers whether this is a ‘related subsidy’. Regulation 5 of the SCR 2022 states that related subsidies must pursue the same policy objectives. The policy objectives of the ECR are to mitigate local economic disruption, particularly the potential loss of high-skilled jobs due to factory closures, and to promote green employment and facilitate the transition to zero emission vehicles. The policy objectives of the ERGF are to prevent the economic shocks caused by the potential loss of high skilled jobs in the event of a factory closure, to support green jobs, and to accelerate the shift to zero emission vehicles. It therefore appears that ECR and the ERGF pursue the same policy objectives, and as such, ECR and the EGRF should be considered as related subsidies. If the grant of ECR does exceed £1 million and it is a subsidy of particular interest, then it be referrable by OCC to the CMA and any ECR would automatically be prohibited pending the outcome of that referral.

(c) For completeness, none of the provisions mentioned in Regulation 4(4) of the SCR 2022 applies.

5.11 A public authority can voluntarily request a report from the CMA, such as before giving a “subsidy of interest”. Regulation 4(1) of the SCR 2022 defines a subsidy as a subsidy of interest if the subsidy:

(a) Is not a subsidy of particular interest; and

(b) If the total amount of the subsidy and any other related subsidy given to the same enterprise within the applicable period exceeds £5 million.

5.12 The Domestic Subsidy Control Report concludes that the grant of ECR from CIL would be a subsidy of interest because:

(a) As already established, ECR is not a subsidy of particular interest.

(b) The ECR and the ERGF, the related subsidy, together exceed £5 million.

It is at OCC's discretion to make a voluntary referral to the CMA, and the CMA may decide to prepare a report, and it would be open to OCC to delay a final decision until the CMA had completed its report (if any).

5.13 Although the grant of ECR would not be prohibited outright by the SCA 2022, it cannot lawfully be granted unless it complies with the remainder of the overall subsidy control framework. A subsidy will not be permissible unless it complies with various subsidy control principles or it is given as part of an otherwise lawful subsidy scheme.

5.14 Section 12 of the SCA 2022 provides that a public authority:

(a) Must consider the subsidy control principles before deciding to give a subsidy; and

(b) Must not give the subsidy unless it is of the view that the subsidy is consistent with those principles.

5.15 The Domestic Subsidy Control Report considers that the grant of ECR is likely to be compatible with the subsidy control principles, and in accordance with Section 12 of the SCA 2022:

(a) The grant of ECR and application of the subsidy control principles is ultimately a matter for consideration and determination by OCC.

(b) Schedule 1 of the SCA 2022 sets out seven subsidy control principles to consider before a public authority can decide whether it is appropriate to provide a subsidy to an enterprise. These are as follows:

(i) Common Interest. The policy objectives of the ECR are to mitigate local economic disruption, which represents an equity rationale and therefore a common interest.

(ii) Proportionate and necessary. The grant of ECR would represent less than 0.1% of the total project cost, a minor portion of the overall expenditure.

(iii) Designed to change economic behaviour of beneficiary. The grant of ECR would contribute to the bridging of the gap between the required return as per BMW's investment policy and the currently calculated return. The grant of ECR would therefore influence the project's financial viability, and potentially impact the investment decision.

(iv) Costs that would be funded anyway. In the absence of ECR it is possible that BMW's internal rate of return (**IRR**) threshold for the investment to proceed would not be reached, and so the associated costs would not be incurred.

(v) Least distortive means of achieving policy objective. BMW has verbally confirmed that a loan is not an option, that its ultimate holding company does not undertake external loan financing for capex related projects and that it would not positively influence the IRR calculation.

(vi) Competition and investment within the UK. If the electrified MINI is produced at alternative premises outside the UK, any pricing impact appears likely to be highly immaterial, as the grant of CIL Relief represents a very small portion of market revenue, and production costs are not materially different.

(vii) Beneficial effects to outweigh negative effects. Given that the evidence gathered indicates that any potential negative impacts on competition or investment are likely to be extremely immaterial, the beneficial effects of the grant of CIL Relief would appear to be likely to outweigh the negative effects.

5.16 Section 12 of the SCA 2022 also provides that a public authority:

(a) Must consider the subsidy control principles before making a subsidy scheme; and

(b) Must not make the scheme unless it is of the view that the subsidies provided for by the scheme will be consistent with those principles.

The Domestic Subsidy Control Report considers the Subsidy Control Database maintained by the Government. There does not appear to be any scheme for the giving of a subsidy in the form the grant of ECR (or any other exemption to CIL) and therefore ECR would not be given under a subsidy scheme.

5.17 Schedule 2 of the SCA 2022 sets out nine energy and environment principles that a public authority must consider before deciding to give a subsidy in relation to energy and the environment. A subsidy in relation to energy and the environment cannot be given unless it is consistent with both the ordinary subsidy control principles and the energy and environment principles. "Energy and environment" does not appear to be defined in the SCA 2022 and there is no case law on the proper interpretation of that phrase however, given the aim of the Development which is being pursued by BMW, and for which the application for ECR is being made, there is a reasonable argument that the grant of ECR would constitute a subsidy in relation to energy and the environment. The Domestic Subsidy Control Report concludes that the energy and environment principles are likely to be met, so the grant of ECR would be permissible under the SCA 2022.

5.18 The effect of the SCA 2022 is that ordinary principles of public law are part of the subsidy control considerations which OCC should be aware of when deciding whether to proceed with granting ECR. At present, BMW's IRR has not yet been achieved (even if the grant of ECR is approved). The fact that the IRR has still not yet been achieved is a point which OCC may want to bear in mind when considering the application for ECR. It is important from a public law perspective that any grant of ECR is conditional on BMW commencing and continuing its Development of the Plant. If the development does not proceed or is aborted because it does not meet the required IRR, then BMW would not ask for, claim or continue to pursue ECR.

5.19 Section 33(1) of the SCA imposes a statutory duty imposed on any public body to add an entry on the subsidy control database in respect of any subsidy given by it. The OCC should therefore be aware of its obligation to add an entry in respect of the grant of ECR if the application is allowed.

6 Conclusion

6.1 This Report demonstrates that there are compelling benefits relating to the Development of the Plant. The investment of BMW will deliver positive economic impacts in both the local and national economies, and will ensure that Oxfordshire maintains its position as one of the leaders of the automotive manufacturing sector in the UK.

6.2 The preceding paragraphs demonstrate that the Plant has received support at a national level, providing support for OCC to grant ECR from CIL. The investment in the wider project by BMW, and the Government, and the grant of ECR from CIL by OCC in relation to the Development together provide the financial basis for the successful delivery of the project and the securing of the benefits it (and the Development) will provide.

6.3 It is considered that the relevant requirements and tests in respect of ECR as set out in Regulations 55 and 57 of the CIL Regulations 2010, and the Policy are met. OCC is asked to grant ECR from CIL for the Plant removing the requirement that BMW pay an estimated £832,421 in CIL.

6.4 Both the construction of the Development and its operation at the Plant will deliver significant benefits in terms of the environment, jobs and economic investment. The benefits have previously been identified in this Report. ECR is required to bring the Development of the Plant forward and to realise those benefits; the application should qualify for ECR on the following grounds:

(a) The restoration of the UK's market share against competing international automotive plants for which the Development of the Plant is the catalyst;

(b) The creation of a sustainable supply chain for local and wider businesses in the UK;

(c) The transformed automotive production offer that aims to increase the UK's exports for manufactured goods;

(d) The sustainability built into the design and logistics of the Plant, including cleaner lorries, solar energy and measures to minimise waste;

(e) The maintenance of BMW's position as one of Oxford's largest employers in an area of local specialism;

(f) The significant economic investment into Oxford resulting from worker expenditure;

(g) The direct boost to the local construction industry and employment, with indirect benefits for the supply chain;

(h) The delivery of other financial benefits for OCC, including an increase in business rates;

(i) The anticipated operational jobs and apprenticeships that the Plant would generate;

(j) The skills and employment plans and strategies that will be designed and implemented to ensure the maximum level of local employment is achieved;

(k) The provision of a collaborative scheme with Oxford University, which enables a step change in employee wellbeing, the local Oxford community and environmental impact, with opportunities for new and improved EV manufacturing techniques;

(l) The development of the Plant substantially accords with adopted planning policy;

(m) The development of the Plant cannot support the local CIL charge as the Plant derives a RLV which, when measured against the BLV, generates a deficit of -£61,582,765;

(n) Sensitivity testing demonstrates that through a combination of changes to the sales and build cost inputs, an improvement in the RLV can be achieved however the development of the Plant remains financially challenged and unviable in all scenarios; and

(o) The impact of removing profit from the appraisal was tested, and on a no-profit basis the Plant derives a RLV of -£6,554,592 which, when measured against the BLV of £39,742,495, generates a deficit of -£33,187,903.

6.5 The Domestic Subsidy Control Report confirms that the subsidy control regime is applicable and makes the following conclusions:

(a) The EU State Aid regime as applicable to economic activity in Northern Ireland will not be engaged via Article 10 of the Windsor Framework. If and to the extent that the TCA remains relevant to this case, then in light of the similarities between the TCA and the SCA 2022, the provision of ECR is likely to be equally permissible under the TCA as it is under the SCA 2022;

(b) The grant of ECR in respect of the Development of the Plant would constitute a subsidy for the purposes of the SCA 2022;

(c) None of the outright prohibitions in the SCA 2022 will be engaged by the application for ECR and consequently, the provision of ECR will not be a prohibited subsidy. A mandatory referral to the CMA should not be necessary as the subsidy would not be a subsidy of particular interest as the ECR, if granted, is less than £1 million. The grant of ECR is likely to be considered a subsidy of interest, and as a result, the OCC may make a voluntary referral to the CMA;

(d) Provision of ECR is considered to be consistent with the subsidy control principles. ECR would not be given as part of a subsidy scheme, it will therefore need to comply independently with the subsidy control principles. If and to the extent that the energy and environment principles are engaged, the provision of ECR will likely not be in breach of those principles;

(e) It is recommended that OCC is aware of the public law principles applicable to OCC's consideration of subsidy control questions and the decision-making process in the application for ECR; and

(f) OCC has a statutory duty to add an entry to the subsidy control database in respect of any subsidy granted by it for ECR.

6.6 The Development of the Plant is not capable of viably supporting the payment of CIL. ECR is required in order for the Development to be delivered. Therefore, it is considered that there are exceptional circumstances which justify the charging authority considering it appropriate and expedient to grant ECR in this case.

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