

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

CABINET – TUESDAY, 30 MARCH 2021



Title of Report	UPDATE ON ESTABLISHMENT OF COMPANY TO BE KNOWN AS ‘EM DEVCO LIMITED’	
Presented by	Councillor Robert Ashman Planning and Infrastructure Portfolio Holder	
Background Papers	Report considered by Community Scrutiny – 28 October 2020 Report considered by Cabinet – 10 November 2020 Report considered by Council – 17 November 2020 Report considered by Council – 16 March 2021	Public Report: Yes Key Decision: Yes
Financial Implications	Council has agreed to provide a £500k contribution, £167k of which will be provided to support the interim vehicle in 2021/22 in advance of government funding being secured. The remaining funding will be provided upon confirmation of central government funding, to enable the establishment of the Interim Vehicle and Development Corporation during 2022/23 – 2023/24. This report seeks approval to make the £167k contribution in 2021/22. Signed off by the Section 151 Officer: Yes	
Legal Implications	The Council is working collaboratively with Rushcliffe Borough Council and Broxtowe Borough Council and joint external legal advice has been sought by the three districts. Legal advice has been received on the creation of the Interim Vehicle, the Members’ Agreement and Articles of Association, corporate governance and on the content of this report. Legal advice regarding State Aid has previously been provided collectively to the 5 Member Councils by external solicitors. This advice has been updated and the outcome is explained in this report. Signed off by the Monitoring Officer: Yes	

Staffing and Corporate Implications	No staffing implications. The proposal supports economic recovery and corporate Delivery Plan priorities
	Signed off by the Head of Paid Service: Yes
Purpose of Report	To seek delegations from Cabinet in relation to the funding agreement and decisions which the council needs to make as a member of the Devco, to confirm the arrangements for the appointment of a Director to the Devco and provide an update to Cabinet on the Project.
Reason for Decision	The proposed delegations in the report require Cabinet approval.
Recommendations	<p>THAT CABINET:</p> <ol style="list-style-type: none"> 1. APPROVES THE EXPENDITURE OF £167,000 TO SUPPORT THE INTERIM VEHICLE FOR THE FIRST YEAR 2. DELEGATES AUTHORITY TO THE STRATEGIC DIRECTOR (PLACE) IN CONSULTATION WITH THE PORTFOLIO HOLDER FOR PLANNING AND INFRASTRUCTURE TO APPROVE THE DETAILED TERMS OF THE FUNDING AGREEMENT AND ANCILLARY DOCUMENTS/AGREEMENTS TO GIVE EFFECT TO THE EXPENDITURE AND TO FACILITATE THE INCORPORATION AND OPERATION OF THE INTERIM VEHICLE 3. ENDORSES THE APPOINTMENT OF THE CHIEF EXECUTIVE TO ACT AS DIRECTOR OF THE INTERIM VEHICLE, ONCE ESTABLISHED, IN ACCORDANCE WITH THE COUNCIL'S RIGHT TO APPOINT ONE DIRECTOR UNDER THE TERMS OF THE PROPOSED ARTICLES OF ASSOCIATION AND MEMBERS AGREEMENT; AND 4. DELEGATES THE FUNCTION TO MAKE DECISIONS ON BEHALF OF THE COUNCIL AS MEMBER OF THE INTERIM VEHICLE, ONCE ESTABLISHED, TO THE PORTFOLIO HOLDER FOR PLANNING AND INFRASTRUCTURE

1.0 BACKGROUND

- 1.1 At Council on 17 November, members received a report which outlined the progress made in considering the strategic and economic case for the creation of a development corporation. Council agreed to join the Interim Vehicle, provide a financial contribution of £500,000 over three years, delegate the approval of the Members Agreement and Articles of Association to the Strategic Director (Place) and noted the decision of Cabinet to appoint the Portfolio Holder for Planning and Infrastructure as a

Director of the company. Members will recall that the funding contribution was subject to preconditions. It was subject to agreed funding contributions being secured from other affected local authorities and government.

- 1.2 Members agreed that the Council's financial contribution to support the interim vehicle would be met through the existing £100k provision within the 2020/21 General Fund revenue budget and £400k from reserves.
- 1.3 At its meeting on March 16 2021, Council agreed to reallocate the funding so that £167k is released in 2021/22, ahead of government funding being secured.

2.0 UPDATE ON PROGRESS TO DATE

- 2.1 The report to Council on 17 November 2020, set out in detail the financial implications of establishing a development corporation and confirmed that the five constituent local authorities have agreed (subject to individual council approval) that North West Leicestershire District Council, Broxtowe Borough Council and Rushcliffe Borough Council will contribute £500k each for the three years of the interim vehicle and Leicestershire and Nottinghamshire County Councils will both make a contribution of £500k per year for the three years. The other affected local authorities have, where required, now taken reports to their respective Council meetings and this precondition has been met.
- 2.2 In September 2020 the development corporation programme submitted a £18.6m bid to Government as part of the Comprehensive Spending Review 2020 (CSR) process to cover the first three years, which is awaiting decision. At this stage, government funding has not been secured, as due to coronavirus, the Chancellor did not undertake the CSR in Autumn 2020. However, the Programme Director of the Development Corporation Programme at Midlands Engine has written to all Chief Executive Officers of the five constituent local authorities to request funding for the interim vehicle in 2021/22 in advance of certainty of government funding. For North West Leicestershire District Council this would mean providing funding of £167,000 for 2021/22. The letter from Midlands Engine is attached as Appendix 1.
- 2.3 The funding for 2021/22 will enable the company and associated team to be established with a working budget. A schedule of the indicative deliverables expected to be included in the business plan is attached as Appendix 2 and include those that relate to East Midlands Airport. These will be crucial to positioning the development and infrastructure proposals for the three key growth sites and will support the Development Corporation and Freeport business cases alike.
- 2.4 For East Midlands Airport, in the First Year, the Interim Vehicle will:
 - Establish the scale of opportunity – agree red line with the public sector partners.
 - Align the level of ambition with the planning policy requirements to set the parameters for an EMAA strategic growth masterplan and policy framework.
 - Agree approach and scope for the strategic growth masterplan and high-level Infrastructure plan.
 - Identify opportunities to enter into **Memorandums of Understanding** with key strategic partners in the EMAA area (note aligned with the Freeport proposition).
 - Coordinate with the **Freeport** Proposals/Business case and make progress on an infrastructure funding bid through the LLUDC business case.
 - Undertake early scheme feasibility and high-level visioning to position the opportunity to stakeholders and partners and identify potential funding and delivery mechanisms.

- 2.5 The year one deliverables identified above will be compatible with the on-going work in relation to the Councils Local Plan review and will align with the infrastructure challenges faced with the Councils aspirations for growth in the district.

3.0 FINANCIAL IMPLICATIONS

- 3.1 The core costs for 2019-20 and 2020-21 of the East Midlands development corporation programme so far have been funded and resourced through a £2 million allocation of funding from Ministry of Housing, Communities and Local Government (MHCLG) and resources through a mix of direct funding and in kind support from partner Local Authorities.
- 3.2 Midlands Engine Partnership have now requested confirmation of financial contributions to enable the establishment of the Interim Vehicle, specifically in relation to funding for 2021/22 in advance of certainty of Government funding. The request from district councils is £167k in 2021/22, with the remainder of the £500k allocation (£333k), spread over 2022/23 and 2023/24.
- 3.3 At its meeting on 16 March 2021 Council approved making the contribution of £167k in 2021/22, in advance of government funding being secured.

4.0 LEGAL AND GOVERNANCE IMPLICATIONS

- 4.1 Given that all local authorities have confirmed their support for establishing the interim vehicle, preparations are being made to incorporate the company. Once it is incorporated it will need funding in order to function and start delivering on its deliverables.
- 4.2 The provision of funding by the local authorities will be subject to the local authorities entering into a funding agreement with the company, which will set out the terms on which the funding will be provided (including that it will only be funding for Year 1), and the local authorities confirming agreement to an annual business plan. The funding agreement is currently in draft form and being negotiated on behalf of the various local authorities and therefore delegated authority is being sought from Cabinet for the Strategic Director (Place) in consultation with the Portfolio Holder for Planning and Infrastructure to agree the final form of that agreement and any associated documents/agreements to give effect to the expenditure and to facilitate the incorporation and operation of the Interim Vehicle
- 4.3 Updated subsidy control (formerly state aid) advice has been sought and confirms that the proposed basis for providing the funding as documented in the draft funding agreement complies with the subsidy control regime.
- 4.4 The Chief Executive will be appointed as director upon incorporation of the company and Cabinet is asked to endorse the decision that has been made under the constitution to appoint her as director. In the event that the director needs to change in the future, the Chief Executive has powers under the constitution to make an alternative appointment.
- 4.5 In addition to the role of director, the Council needs to ensure arrangements are in place to make decisions on its behalf as a member of the company. The Head of Legal and Commercial Services has the delegated power to make changes to the constitution which are necessary as a result of fact and law. Making decisions on behalf of the Council as a member of a company is an executive function and therefore the changes proposed at Appendix A will be made to the constitution to reflect this.

- 4.6 It is proposed that the company will have an ‘Oversight Authority’ that will consist of representatives from each local authority to make decisions on their behalf as members of the company. Cabinet is therefore being asked to delegate authority to the Portfolio Holder for Planning and Infrastructure to make decisions on behalf of the Council as member of the company (rather than making decisions on behalf of the company, which will be the Chief Executive as director).

Policies and other considerations, as appropriate	
Council Priorities:	<ul style="list-style-type: none"> - Support for businesses and helping people into local jobs - Developing a clean and green district - Local people live in high quality, affordable homes - Our communities are safe, healthy and connected
Policy Considerations:	Planning implications considered in report to Council on 17 November 2020
Safeguarding:	None identified
Equalities/Diversity:	The Development Corporation will work at levelling up to deliver jobs, business and growth accessible across the East Midlands.
Customer Impact:	None identified
Economic and Social Impact:	The Development Corporation is targeting transformational economic and social benefit to the region.
Environment and Climate Change:	Positive impacts of carbon neutral development, blue and green infrastructure and natural capital gain.
Consultation/Community Engagement:	Community engagement and consultation will be enshrined from the outset for the Statutory Development Corporation with the preparation of a statement of community involvement (SCI). Statutory consultation will include community groups.
Risks:	Risks identified in the report to Council on 17 November 2020. The risks identified are unchanged other than making a year one funding available in advance of the announcement of government funding as set out in the report.
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Appendix A

Proposed changes to the Constitution to reflect the functions of the Council as member or shareholder in any companies it is or may become a member of

Section 4 of the Council's constitution sets out the Responsibility for Executive Arrangements. Paragraph 2 of that section sets out which functions are the responsibility of Cabinet.

It is proposed that a new paragraph be inserted into paragraph 2 of section 4 to confirm that the making decisions on behalf of the Council as a member or shareholder of a company is a Cabinet decision (unless delegated by Cabinet).

A new paragraph 44 that states:

44 To make decisions on behalf of the Council as member or shareholder in any companies that the Council is, or may become, a member or shareholder.

[Extract from constitution]

The Monitoring Officer has authority to make changes to the constitution to reflect changes of fact and law. The Monitoring Officer can use this authority to make the above changes to the constitution to reflect the fact that the Council is now entering into a company and therefore the constitution needs to be clear where the functions to act as member of a company sit.