

CHESHIRE EAST COUNCIL

REPORT TO: CABINET

Date of Meeting:	12 November 2012
Report of:	Jez Goodman Economic Development & Regeneration Manager
Subject/Title:	Accountable Body role for Cheshire & Warrington Local Enterprise Partnership
Portfolio Holder:	Cllr Jamie Macrae Prosperity & Economic Regeneration

1.0 Report Summary

- 1.1 The Cheshire & Warrington Local Enterprise Partnership (LEP) is one of 39 business-led sub-regional partnerships which cover England, and are recognised by the Government. It is being funded through a number of initiatives to drive economic growth and job creation, including the Growing Places Fund (GPF) and LEP Core Funding. However, Government funds that are allocated to the LEPs have to be managed by a local authority as legal Accountable Body.
- 1.2 This report seeks a number of decisions by the Cabinet to make proper arrangements for Cheshire East Council's role as Accountable Body for GPF and LEP Core funding received and to be handled on behalf of the LEP, and to establish the process of approving individual bids relating to GPF and the roles and accountabilities of the various bodies involved.
- 1.3 GPF and LEP Core funding are two of a number of Government funding programmes which are being directed through LEPs, with others anticipated in the near future. Agreeing to take on the responsibilities of Accountable Body, combined with our representation on the LEP's Board, would place the Council in a key position of influence both in supporting the operation of these and influencing their design and impact for the benefit of our local and sub-regional economy.
- 1.4 This report relates principally to GPF and LEP Core funding, but it also seeks to establish a principle that the Council act as generic Accountable Body role for any further Government funding linked to economic development and regeneration. This is on the basis that the terms of the funding issued by Government are broadly consistent and, given they are comparatively broad, their impact on the Council should be modest. Where there are significant implications identified by the Director of Finance & Business Services or Borough Solicitor, or the annual grant for each initiative is in excess of £100,000, further approvals will be sought from Cabinet.

2.0 Decision Requested

That Members agree that:

- i) Subject to 2.0 (iii) below the Council acts as the Accountable Body in respect of the Cheshire & Warrington Local Enterprise Partnership (LEP) for the administration of the Growing Places Fund and LEP Core funding, and that delegated authority is given to the Director of Finance & Business Services to permit the Council to undertake an Accountable Body role for future funding directed by the Government towards the LEP (up to £100,000 annual grant per initiative), subject to consideration by the Borough Solicitor and Strategic Director for Places & Organisational Capacity, and in consultation with the Portfolio Holder (Finance).
- ii) the Director of Finance and Business Services, in consultation with the Portfolio holder for Finance, has delegated authority to release grant monies and administer the GPF loan repayment scheme in accordance with the grant conditions imposed by the CLG, based on the detailed recommendations of the Investment Panel of the LEP who, after obtaining appropriate professional advice, will consider and process all applications.
- iii) each successful tenderer appointed by the Cheshire & Warrington Enterprise Commission (CWEC), in relation to the GPF scheme, to provide legal and / or appraisal advice has provided the Council with the same duty of care and indemnity that they would have if the Council had carried out the procurement exercise itself, and CWEC itself an indemnity against any loss sustained by the Council in its role of Accountable Body relating to either the appointment of the external advisors or as a result of relying on such advice and releasing funding or entering into the loan agreements.

3.0 Reasons for Recommendations

- 3.1 To ensure that the Council has adequate governance arrangements in place to establish and continue to support the operation of a sub-regional programme utilising the Government resources, and enable potential projects across the sub-region to benefit from this funding on the terms and conditions set out by Central Government.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 No explicit policy implications are identifiable at this stage. However, the focus of the Growing Places Fund on delivering jobs and housing directly connects it to key strategic objectives included within the Council's Economic Development Strategy and Housing Strategy.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 The Accountable Body function relates to the financial administration of the funding. The LEP will be responsible for the appraisal and selection of project proposals, and the formulation of firm and reasoned recommendations for bringing forward to CEC, seeking the final approval of funding for schemes preferred for funding. The respective roles of Cheshire East Council, the LEP, and CWEC are further outlined below.

- 7.2 The Council, as the Accountable Body, will undertake the following tasks. All costs associated with these, including staff time, will be recovered as a legitimate expense from the GPF and/or other funding directed towards the LEP, where there is provision for supporting revenue expenditure within the terms of the funding.

- i) Enter into contracts (loan agreements) with funding recipients including appropriate clawback clauses/conditions, payment and repayment dates; contracts will include appropriate conditions to minimise risk to the council in terms of:
 - Misuse of funding
 - Non repayment of funding
 - State Aid and Procurement Regulations;
- ii) Make the payments directly to loan applicants as agreed in each loan agreement and directly receive repayments and interest on the loans, to be coded to the Growing Places Fund for reinvestment into other future schemes;
- iii) Establish clear financial management arrangements (including unique coding/ring fencing of Growing Places Fund, other funding grants and individual projects and project income);
- iv) Prepare for sign-off by the Chief Executive and Chief Internal Auditor the annual return to the Department for Communities & Local Government (DCLG) confirming that all use of funding has been in accordance with the grant conditions imposed by DCLG;
- v) Receive repayment of GPF funding and produce a quarterly statement of expenditure and receipts to the LEP Board;

- vi) Provide half-yearly detailed reporting to the LEP Board on the level of funds, including spend, interest, payback, re-investment and revenue, capital analysis;
- vii) Accrue interest on the GPF and other funding to be ring-fenced to support ongoing (revenue) programme management activities;
- viii) Undertake an annual audit and produce an Annual Audited Statement of Grant Expenditure for the LEP Board;

Cheshire & Warrington LEP (or, where required through CWEC) will

- i) Undertake appraisal of costs and end values of applicant schemes, in order to recommend selected projects to Cheshire East Council for approval of funding;
- ii) Review and recommend projects for funding, subject to agreed protocols;
- iii) Qualify financial standing of project applicants through a financial vetting process to be carried out by the HCA;
- iv) Procure appropriate legal / professional advice on state aid and appropriate debt rates and terms;
- v) Provide assurance on the terms on which the debt is offered is compliant with the rules governing the use of public money;
- vi) Receive quarterly financial reports from project proposers and undertake performance monitoring of projects providing progress reports to the LEP board and CEC as required but, as a minimum, 6 monthly. This will include revised financial data in relation to each project as it progresses;
- vii) Undertake a quarterly monitoring visit to ensure that the project is progressing and that appropriate records are being held;
- viii) Provide confirmation and evidence from projects that all GPF funding has been used for capital expenditure;
- ix) Undertake any necessary action to seek recovery of Growing Places Funding following a decision by the LEP Board;

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Local Economic Partnerships (LEPs) were set up in 2011 by the Department for Business Innovation and Skills (BIS) and are voluntary partnerships between Councils and businesses which to help determine

local economic priorities and lead economic growth and job creation within local areas. The three Councils which belong to the Cheshire & Warrington LEP are Cheshire East, Cheshire West & Chester, and Warrington. There are 14 Board members, including senior elected members from the three Councils and leading business community figures. LEPs do not have separate legal status and therefore are unable to hold and distribute funds themselves. Accordingly, it is necessary for one of the Councils to be nominated as “Accountable Body” for this purpose, and the LEP has determined that Cheshire East will undertake this role. There is consequently a need for appropriate governance arrangements to be put in place in relation to this role.

- 8.2 The Cheshire & Warrington Enterprise Commission is a company limited by guarantee and was registered in 2002. It now works in close association with C&WLEP. It was restructured in 2010 so that its operations were focused on acting as host organisation for the LEP support staff and associated LEP activities, and it is now wholly owned by the three Councils. One of its Board members is Cheshire East Council’s Strategic Director for Places and Organisational Capacity. As a limited company, it has legal capacity to enter into contracts.
- 8.3 On 13 February CLG made a decision¹ to award, amongst awards to other LEPs, the sum of £8,723,909 (capital) and £178,039 (revenue) totalling £8,901,948 to the Cheshire & Warrington LEP. Further sums were granted by two further decisions both of 23 March 2012; “No.5 (£3,440,237 capital) and “No.7” (817,482)², making a capital total of £12,981,628 and a revenue total of £178,039. The total sum has already been paid into the Council’s accounts. In October, CLG made the “Local Enterprise Partnerships Core Funding Grant Determination (2012/13 31/2086)” by which Core Funding of £125,000 (revenue) was granted to Cheshire East Council as accountable body on behalf of the LEP.
- 8.4 In relation to the Growing Places funding allocated to C&WLEP, CWEC has undertaken a tender process (‘Call for Expressions of Interest’ – see Para 8.13), on behalf of the LEP, to seek tenders from external lawyers to provide advice on the appropriate contents and drafting of loan agreements and State Aid legal issues, and from commercial property management advisors to provide full appraisals of projects wishing to bid for GPF, including details of, for example, how loans will be repaid, their terms and triggers etc. They will use a rigorous project appraisal methodology for this purpose. The legal advisors and the property management advisors preferred by the LEP, as a result of their tendering process, have both indicated that they are willing to provide a duty of care towards the Council in relation to advice to be given, as would be the case if the Council had procured their services direct (their advice will be used by the LEP for it to formulate recommendations to bring forward to the Council for funding to be released). Whilst these indemnities should be sought by the Council, it is considered that, in order to further safeguard the Council’s position, CWEC should also be required to provide the Council with an indemnity as outlined in 2.0 above.

- 8.5 As well as the advice to be provided by the external property advisors, the Homes & Communities Agency (HCA, the role of which is to discharge the statutory objectives set out in the Housing and Regeneration Act 2008) also offers a service, for which it makes no charge, to provide a business appraisal service, applying due diligence to checking the financial viability of applicants. The HCA has provided a draft Service Level Agreement for this purpose and invited the Council to sign up to it; however, it is considered that this advice should be provided by the HCA to the LEP direct, and there is no need for the Council to sign the SLA; the indemnity sought in 2.0 above addresses this.
- 8.6 Section 31(1) of the Local Government Act 2003 empowers a Minister of the Crown to pay a grant to a local authority towards expenditure incurred or to be incurred by the authority. The amount of such grants and the manner of payment can be such as the person paying it (i.e. the Minister) may determine, and they can be paid on such conditions as the person paying it may determine. Conditions may, in particular, include provision as to the use of the funding, and provision as to the circumstances in which the whole or part of this must be repaid.
- 8.7 The capital element of the GPF grant was expressed to be capable of being used only in accordance with Regulations made under Section 11 of the Local Government Act 2003. However, although S11 provides for Regulations to be made to make provision about the use of capital receipts by a local authority, it appears that no such regulations have yet actually been made.
- 8.8 The tranches of the GPF grant were further on the condition that the Chief Executive and Chief internal Auditor of each authority which receives capital grant, are required by not later than 31 December 2012, to sign and return to the Growth and Infrastructure Team of CLG, a declaration to the effect that “to the best of our knowledge and belief, and having carried out appropriate investigations and checks, in our opinion, in all significant respects, the conditions attached to the Growing Places Fund [(No.2) / (No.5) / (No.7)] Grant Determination 2011/12: 31/1983 have been complied with”.
- 8.9 The GPF conditions go on to prescribe that if an authority fails to comply with these requirements, the Minister of State may reduce, suspend or withhold grant, or by notification in writing to the authority may require the repayment of the whole or any part of the grant, and such sum shall become repayable to the Minister immediately. Therefore, there are significant financial risks to the Council in its Accountable Body role if it makes any errors, even inadvertently, in the use of this grant funding. The Core Funding decision does not on the face of it appear to identify any conditions upon which this element of funding is granted (nor any penalty for non-compliance), although it does provide that “the purpose of the grant is to provide support to local authorities in England towards expenditure lawfully incurred or to be incurred by them”.

- 8.10 It is apparent that the grant conditions, whilst clear as to sanctions for misuse, at least in relation to the GPF, are more vague as to what steps must be taken to ensure the proper use of these funds.
- 8.11 However, the Growing Places Fund Prospectus (issued by CLG in November 2011³ sets out the three overriding objectives of the Fund, as identified in the bullet points at 10.1 below.
- 8.12 It is apparent from the background to receipt of this funding that Government's intention is to provide an arrangement whereby applicants are granted loans through Accountable Bodies on behalf of their LEPs, on appropriate terms, to enable development and growth, with the funding to ultimately be repaid by the grantees, so that it can be recycled into further schemes with similar objectives.
- 8.13 Following the call for Expressions of Interest, eleven bids totalling £19.96 million have so far been submitted for funding and need to undergo detailed appraisal, particularly as the applications exceed the total funding available. Five are employment schemes, five are residential and one is a mixed use scheme. Three are in Cheshire East, four in Cheshire West, and four in Warrington. The work done by the LEP so far is set out in 10.3 below.
- 8.14 Whilst the Council as Accountable Body will release the funding in terms of the sums granted, it will rely upon decisions made by the LEP as to which projects are to be granted loan funding on this and, in turn, the LEP will rely on the advice of its external lawyers, property advisors and the Homes and Communities Agency (HCA).
- 8.15 As well as the safeguards outlined above, the Council will seek an indemnity from CWEC (which includes representation from Cheshire West & Chester Council and Warrington Borough Council) to safeguard Cheshire East Council against any possible clawback of GPF funding by CLG in respect of non-compliant grant of funding to projects. Whilst ideally indemnities might also be sought from the other two Councils involved in the LEP, the fact that CWEC is wholly owned by the three Councils involved, and the delay which may be involved in seeking indemnities from the other Councils may lead to the judgment that a CWEC indemnity alone is sufficient, although this involves an increased potential risk, since the circumstances in which any future clawback may be sought from Cheshire East Council, or the likelihood, cannot at present be foreseen with certainty.
- 8.16 Whilst the substantive legal advice on content and term of loan agreements will be provided to the LEP by external legal advisors as described above, there is also an internal resource requirement for the process of signing loan agreements for which funding has been released.

9.0 Risk Management

- 9.1 Cheshire East Council is legally responsible for the funding acting in the role as Accountable Body and this carries a degree of risk, in that inappropriate use of the funding could result in repayment to CLG being required. However the arrangements in this report seek to mitigate this risk as far as possible through appropriate governance and audit arrangements. 8.4 draws attention to the comparative risks of different indemnity arrangements.
- 9.2 As the C&WLEP's GPF scheme is developed, fuller consideration will be given to the management and mitigation of risks.

10.0 Background and Options

- 10.1 Over the past 12 months, Cheshire & Warrington Local Enterprise Partnership (LEP), one of 39 business-led partnerships covering England, has been allocated £13.1m from the Government's Growing Places Fund (GPF). This fund has three overriding objectives:
- generating economic activity in the short term by addressing immediate infrastructure and site constraints and promote the delivery of jobs and housing
 - allowing LEPs to prioritise the infrastructure they need, empowering them to deliver their economic strategies
 - establishing sustainable revolving funds so that funding can be reinvested to unlock further development and leverage private sector funding.
- 10.2 More recently, it has been announced that each LEP will be awarded £125k for 2012/13 as core funding, with the opportunity to draw down up to £250k per annum for the two following years⁴. This draw down will be subject to evidence of "pound for pound" match funding and to satisfying government's conditions which will be published this autumn. All LEPs will have to apply for future years' funding, probably by December 2012.
- 10.3 Other funding is expected by directed by the Government towards the LEPs, which will require an Accountable Body role. While the level, nature and conditions of these funds are not yet known, they are likely to be of a similar nature to GPF and core funding awards and require the Council to be prompt in response to its co-ordination of the funding with regards to the LEP.
- 10.4 The LEP has the discretion as to how the GPF and other funds are invested across the sub-region. In relation to GPF, the process to date has been:
- to issue an 'open call' for proposals from across the sub-region
 - to evaluate these against key criteria

- to invite shortlisted projects to present their cases in more detail at a panel comprising representatives of the LEP, local authorities and other advisers
- to negotiate on potential GPF loan deals
- to appoint specialist legal, commercial, financial and technical advisers to undertake a full appraisal of each preferred project and the terms of the GPF loans.

10.5 As explained in the legal advice above, it is necessary for the GPF and other funding to be administered by a local authority. Cheshire East Council has offered to undertake the role of Accountable Body, and the LEP Board has accepted. A formal decision is now required because:

- the accountable body will have to ensure that the funds are allocated and spent in accordance with local government accounting procedures and the grant terms including any state aid issues.
- loan payments will have to be made in the Council's name, albeit based on the LEP's decisions.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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References

¹ The "Growing Places Fund (No. 2) Grant Determination 2011/12: 31/1983"

² No.5 (£3,440,237 capital) and "No.7" (£817,482)

³ <http://www.communities.gov.uk/documents/regeneration/pdf/2024617.pdf>

⁴ <http://www.communities.gov.uk/news/newsroom/2217598>