

DUE DILIGENCE

This appendix sets out the current company structure, liabilities and risks as provided by the Cheshire and Warrington Local Enterprise Partnership (C&W LEP). The Council already has a 20% shareholding (membership) of the Cheshire and Warrington LEP and is proposing to take an additional 13% (and re-name the company Enterprise Cheshire and Warrington).

This due diligence therefore is based on the increase in shareholding and not as a new venture for the Council.

1. Company Structure

- 1.1 The C&W LEP is a company limited by guarantee, not having share capital, incorporated in England and Wales. It therefore has 'Members' and not 'Shareholders'.
- 1.2 Members of a company limited by guarantee do not make any contribution to the company's capital so long as the company remains a going concern. As the purpose of C&W LEP is to provide services to its Members and not to make a profit, then this is considered to be a suitable vehicle.
- 1.3 The C&W LEP has a subsidiary company, CWTB (trading as Marketing Cheshire), whose purpose is to promote commerce and marketing within the Councils' area. There are currently 12 Directors and the only Member is C&W LEP. CWTB is also set up as a Company Limited by Guarantee.

2. Memorandum & Articles of C&W LEP

- 2.1 The following are the main provisions of the Articles of Association of C&W LEP

(a) **Objects (Art.3) & Powers (Art.50).** The objects for which the Company is established are the promotion and furtherance of:

- the economic, cultural and social well-being of,
- investment and growth in, and
- economic development and regeneration and employment in, the Councils' area

The C&W LEP has a wide range of powers including; to raise and lend money, purchase or lease property, sponsor various activities, amalgamate with others and provide indemnities.

- 2.2 **Powers of Directors (Art. 6-9).** The Board has the power to make all decisions in relation to running the C&W LEP, unless the Members resolve that the Company shall take, or refrain from, a specific action. Therefore the current powers of the C&W LEP Board are very wide.
- 2.3 **Members (Art.29).** The 'Members' of the C&W LEP are the three Councils i.e. Cheshire East, Cheshire West and Chester and Warrington, and not individual councillors. There are also 2 non-local authority Members, who are the Chair

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& Vice-Chair of the Board. Each Member has a 20% share of the C&W LEP. Members may resign on 7 days' notice.

- 2.4 **Directors (Art. 4-5).** The Directors of the Company are divided into Class A & Class B Directors. Class A Directors are the Council Leaders or their nominees. Class B Directors are appointed by the Board. There can be up to 20 Directors in total (Class A & B) and Class B Directors are appointed for a three-year term.
- 2.5 **Quorum (Art. 14).** The quorum for a Board meeting is 50% of the Board members present, and there must be at least 4 Class B Directors (i.e. non-local authority) to form the quorum.
- 2.6 **Directors Remuneration (Art. 23).** Directors can be remunerated. The Company currently has 13 Directors and 2, the Chair and Deputy Chair, are remunerated at £26k and £10k p.a. respectively.
- 2.7 **Chair/Vice-Chair (Art. 25).** The Chair and Vice Chair are appointed from the Class B (i.e. non-local authority) Directors. They are then automatically Members of the company by virtue of this position.

3. Memorandum & Articles of CWTB

The following are the main provisions of the Articles of CWTB, a wholly owned subsidiary of C&W LEP:-

3.1 Objects (Art. 6)

The objects for which the Company is established shall be the promotion of commerce and:

- i. to encourage, stimulate, support and advise on and manage the development of the administrative areas of Cheshire and Warrington in order to maximise the social and economic benefits;
- ii. in co-operation with sub-regional organisations, local authorities, commercial members and other bodies to formulate, develop, maintain and update regularly a coordinated strategic marketing plan for the sub-region and an action or destination management Plan for the Sub-region;
- iii. to carry on any other business of any description which may be advantageously carried on in connection with or ancillary to the above objects of the Company;

3.2 Powers of Directors (Art. 46)

The Board has the power to make all decisions in relation to running the CWTB, unless the Member resolves that the Company shall take, or refrain from, a specific action. Therefore the current powers of the CWTB Board are very wide and include the power to borrow money.

3.3 Member (Art. 11-14)

The sole Member of the CWTB is the C&W LEP.

3.4 **Directors (Art. 38-45)**

There are up to 20 Directors, with one from each Council. No more than 4 Directors can be from the public sector (i.e. one from each Council plus the Chair). There are currently 12 Directors. Directors may be appointed by the Board but with the prior approval of C&W LEP as the sole Member. Appointments are for a three year term with the possibility of a further three year extension.

4. **Contracts**

Operational Contracts:

The C&W LEP have provided a list of their contractual obligations which extend beyond 1 April 2024. Only two contracts continue beyond this date:-

- i. Insurance expiring November 2024
- ii. Project Management Software expiring 1 July 2025
- iii. There are no outstanding invoices or disputes on either contract and they are low value i.e. approx. £15k or less.

Investment Contracts:

The C&W LEP is a partner in two Life Sciences Funds. The funds invest in start-up Life Sciences businesses. Life Sciences Fund 1 was established in 2016 and is expected to run until 2031. No further investment contributions are required to this fund. Life Sciences Fund 2 was established in 2022 and is expected to run until 2037. C&W LEP is committed to investing £5 million in this fund and £3.75 million remains outstanding. This commitment is expected to be funded from the returns of Life Sciences 1 or, if returns have not been received in time, temporarily from the C&W LEP administered Growing Places Fund.

C&W LEP has also entered into grant agreements with developers to facilitate the construction of commercial properties within the Enterprise Zone. The grants have been funded by C&W LEP borrowing from the respective Local Authority depending on the location of the development (see section 8). C&W LEP will repay the borrowing from the resulting “pool” of additional retained business rates. Repayment of individual project loans may take until 2039. The grant agreements place conditions on the developers which protect the expected business rate income until the loans are repaid.

5. **Staffing**

As a local authority-controlled company, there may be an issue of equal pay as C&W LEP could potentially be considered an ‘associated company’. Equal pay means that someone must not be paid less compared to someone who is of the opposite gender when they are doing equal work for the same or an “associated” employer. Therefore, even if C&W LEP is deemed an associated company and pays a higher rate of pay for a similar job role to the Councils,

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that won't give rise to an equal pay claim unless the reason for the difference in pay is linked to sex.

For a successful equal pay claim, a Council employee would have to be working in the same work or work that has been graded the same. They would then need to show that the disparity in pay disproportionately affects female or male employees. The C&W LEP have provided a list of their current establishment and the Councils have considered this against their own establishment to ascertain whether there are any potential equal pay issues. CEC/WBC/CWAC have no equal pay risks from the staffing at the C&W LEP but this should be kept under review.

The C&W LEP have different terms and conditions to the Councils. They have advised that there are no outstanding disciplinary issues or claims from staff.

6. Subsidy Control

A subsidy is where a public body provides support to an organisation that gives them an economic advantage, meaning equivalent support could not have been obtained on commercial terms. A function of the C&W LEP is to provide grants to external organisations. Grant agreements therefore place responsibility on recipients to seek a subsidy control opinion, to only use the funds for the purposes awarded, and to indemnify the LEP should there be a requirement for the subsidy to be repaid. However there is a risk that an organisation would be unable to repay any subsidy given to them, and the C&W LEP would be responsible for repayment. C&W LEP also takes independent legal advice on subsidy control prior to making grants.

7. Risks disclosed by C&W LEP

The C&W LEP have provided a copy of their risk register, which discloses that their highest risks relate to the current uncertainty in the transition to local authority ownership. These risks will be mitigated if the Councils' shareholding is increased.

8. Loans from the Councils

Each of the Councils provided the C&W LEP with a £10 million loan facility. Individual project loans are drawn under this facility and there are currently six separate project loans with a total outstanding principal value of ca. £10 million. They make repayments on this loan through the retention of the business rates in the Enterprise Zone. There is a risk that if the collection rate goes down, then the loan repayments will not be met. However, this risk already exists and is regardless of the amount of the Councils shareholding. The C&W LEP mitigates this risk by carrying a significant reserve of retained business rates (£1.5-2 million)

9. C&W Development Limited Partnership/C&W DF (GP) Limited

The Council also has a Limited Liability Partnership with C&W LEP, for the management of EDRF fundings totalling £20M. As part of the necessary arrangements to manage the funds and investments, a Limited Partnership (Cheshire and Warrington Development Limited Partnership) was established. A limited company (Cheshire and Warrington DF (GP) Limited); owned by the Council; was set up as the general partner. The Council is the sole shareholder in the Limited Company and is the 'limited partner' in the Partnership. The Council received external legal advice from Addleshaws in 2020 regarding the governance arrangements, and this advice has yet to be implemented. The current directors of the CEC limited company (as opposed to the limited partnership) are the Growth Director from Warrington Council and the CEO of the LEP, and CEC has not yet taken up its representation.

10. Accountable Body

A number of funding streams which the LEP has received have required the money to be held and assurance given by an 'accountable body'. This function has been provided by Cheshire East Council for many years and most recently is covered by an Agreement with C&W LEP dated 15 June 2022, by which CEC takes on the role of accountable body for some of the C&W LEP funding streams and takes responsibility for the following:-

- i. Ensuring that the decisions and activities of the C&W LEP in relation to devolved funding conform with legal requirements with regard to equalities, social value, environment, subsidy control, public procurement etc;
- ii. Ensuring (through the Council's s151 Officer) that the funds are used appropriately and in accordance with the conditions placed on the grant. It is acknowledged that the revenue derived from funds includes management fees and interest, paid over as fee income. The use of those funds is approved as part of the LEP's annual budget setting process;
- iii. Ensuring that the Assurance Framework, as approved, is being adhered to;
- iv. Maintaining the official record of decisions relating to devolved funding;
- v. Ensuring that there are arrangements for local audit of funding allocated by C&W LEP at least equivalent to those in place for local authority spend.

On the understanding that Cheshire East Council will remain the accountable body, this Agreement should be reviewed and amended if necessary post 1 April 2024 to ensure it reflects the new governance arrangements.