

<b>Bath &amp; North East Somerset Council</b>		
MEETING:	<b>Cabinet</b>	
MEETING DATE:	<b>13<sup>th</sup> July 2011</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 2271</b>
TITLE:	Establishment of the Local Enterprise Partnership (LEP) as a Company Limited by Guarantee	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
List of attachments to this report: None		

## **1. THE ISSUE**

- 1.1 This report relates to the involvement of Bath & North East Somerset Council in the West of England Local Enterprise Partnership (LEP). After considering various forms of legal entity, it was agreed by the Partnership Board, on 4th March, that the LEP should establish a Company Limited by Guarantee.
- 1.2 This report sets out recommendations for the establishment of the LEP Company.

## **2. RECOMMENDATIONS**

- 2.1 The Cabinet agrees that:
- 2.2 That Bath & North East Somerset shall become a member of the "West of England Local Enterprise Partnership Limited" being a Company Limited by Guarantee.
- 2.3 That the Leader of the Council be put forward as the Council's appointed Director of the above company.
- 2.4 That the Chief Executive, in consultation with the Leader of the Council, be authorised to conclude all necessary documentation, including signing the Articles of Association, and to take all necessary steps to effect these objectives.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 The LEP Company cannot take decisions that have an impact on Bath & North East Somerset Council resources, nor can the Leader when acting as a Director of the Company. Therefore no decision of the LEP can affect the Council's revenue, capital or land position, without the Council itself making the relevant decision.

### **4. CORPORATE PRIORITIES**

- 4.1 These proposals will help to "Make Bath & North East Somerset an even better place to live, work and visit", in particular, impacting on the achievement of the Council's following priorities:

*Directly:*

- *Sustainable growth*

*Indirectly:*

- *Improving life chances of disadvantaged teenagers and young people*
- *Improving the availability of Affordable Housing*
- *Addressing the causes and effects of Climate Change*
- *Improving transport and the public realm*

### **5. THE REPORT**

- 5.1 In June 2010, Vince Cable and Eric Pickles wrote to local authorities across England inviting them to submit their proposals to form Local Enterprise Partnerships (LEPs).

- 5.2 The new LEPs were to replace Regional Development Agencies, and be established on the following principles:

- Focussed on delivering jobs and growth
- Equal partnership between local authorities and business
- Covering a geographical area best representing the scale at which the economy functions.

- 5.3 In September 2010, the West of England authorities, in conjunction with business, submitted an outline proposal for a West of England LEP status setting out the priorities of the LEP, and is available at:

<http://www.westofengland.org/media/191203/west%20of%20england%20lep%20proposal%20september%20201.pdf>

- 5.4 Our proposal was subsequently accepted and we were asked to form our LEP.

- 5.5 The West of England LEP Board was subsequently formed and has met 3 times since the start of 2011.

5.6 At their meeting on 4th March 2011, the Board agreed:

- In principle, the LEP would become a Company Limited by Guarantee with the LEP Board acting as the Board of Directors.
- James Durie (Business West) and the Chief Executives of the Local Authorities would liaise over the preparations for implementation.

5.7 This Cabinet report is based upon a core report template prepared by Bristol City Council, in their lead role on behalf of the 4xUA West of England (WEP) authorities, in preparing a consistent report for use by all 4x involved Unitary Authorities in making our joint transition arrangements to the LEP company.

5.8 It is intended that reports to the current round of Council Cabinet meetings include a recommendation for 'in-principle' agreement to enter into a Company arrangement and to delegate to the Chief Executives authority to agree the Articles of Association once they are finalised.

5.9 In preparation of our own Bath & North East Somerset Cabinet report, under detailed examination, officers have flagged a series of detailed company composition issues that will have to be resolved prior to the full formation of the LEP Company. Work is underway by the legal teams of all 4x UAs, who have, via Bristol as the lead, commissioned external specialist legal advice. Financial and company structure implications have also been reviewed with Section 151 officers.

5.10 There is a significant workstream required to establish how the company will actually transact business, receive funding, employ staff, etc. For Bath & North East Somerset, as accountable body for the existing West of England Partnership (WEP), there may be potential implications and resourcing requirements for BANES in supporting the transition to a LEP. However, we believe that the scope of responsibilities and liability will not materially change. The report delegates this role to the Chief Executives.

5.11 The legal work currently in train will take account of all these matters to define the full LEP Company Articles of Association, which will be available to each of the authorities to allow Chief Executives to conclude the company formation process under the delegated authority sought within the recommendations of this Cabinet report.

5.12 Until that information is available, Bath & North East Somerset's position is that a decision in principle only is possible, subject to satisfactory definition of the Articles of Association.

## **6. RISK MANAGEMENT**

6.1 The report author and Lead Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

6.2 Cabinet are asked to agree to our involvement in the LEP Company, subject to a risk assessment being carried out once the necessary legal documentation has been finalised.

## **7. EQUALITIES**

7.1 Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

- (1) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
- (2) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
  - a) remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
  - b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
  - c) encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (3) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
  - a) tackle prejudice; and
  - b) promote understanding.

7.2 Providing local authority advice and support to the LEP is a ‘West of England Stakeholders group’. This group supersedes the West of England Partnership Board, and provides an effective forum for cross-party engagement from the 4 interested local authorities, as well as engagement from Third Sector representatives, the health sector and a range of other stakeholders who can advise on the impact of LEP activities on various communities across the area.

## **8. RATIONALE**

8.1 Establishing the LEP as a Company will support the delivery of Bath & North East Somerset’s Economic Strategy and Sustainable Community Strategy. A Company will be able to receive funds and hold assets, allowing for more effective delivery of economic development projects across the area.

## **9. OTHER OPTIONS CONSIDERED**

9.1 At their Board meeting on the 4th March, LEP Members considered various options for the legal entity of the LEP, including:

- Company Limited by Guarantee
- Company Limited by Shares
- Community Interest Company
- Unincorporated Association

9.2 The advice offered to the Board was that:

“...if the LEP is to be a decision making body in its own right and be responsible for assets and expenditure, its directors might be exposed to potential liabilities. In this instance, a company limited by guarantee would provide the appropriate protection of limited liability to its directors acting within the terms of their appointment. If the LEP is not going to receive public funding or be a decision making body in its own right (i.e. it would provide direction to its constituent organisations but they would take the decisions individually), then an unincorporated association could be appropriate. An unincorporated association cannot provide limited liability to its members. Separate advice has been sought on Directors liability insurance.”

9.3 Following discussion on the various options, the business and local authority members of the LEP Board agreed to pursue the ‘Company Limited by Guarantee’ model.

## **10. CONSULTATION**

10.1 This report has been prepared in consultation with Cabinet members, the Enterprise, Economy and Development Overview & Scrutiny Panel; and Partners in the LEP.

10.2 Externally, the structure and establishment of the company has been the subject of extensive discussions between the interested local authorities (being North Somerset Council, South Gloucestershire Council, Bath & North East Somerset Council and Bristol City Council), the business element of the LEP (represented by Business West), and the law firm instructed by Business West to draft the articles of association for the company.

10.3 The 4 interested local authorities have also jointly obtained independent, external legal advice.

## **11. ISSUES TO CONSIDER IN REACHING THE DECISION**

11.1 Customer Focus; Sustainability; Property; Corporate; Other Legal Considerations

## 12. ADVICE SOUGHT

12.1 Legal Power to participate: The Council has the legal power to participate in a company limited by guarantee by virtue of section 2 of the Local Government Act 2000 and section 111 of the Local Government Act 1972. Participation in the company is consistent with the Council's community strategy and participation is likely to achieve the promotion or improvement of the economic, social or environmental well-being of the Council's area.

12.2 Company documentation: Legal Services has received expert advice on the draft Articles of Association of the company, which confirms that the draft documentation is a suitable basis for a company limited by guarantee, however, various matters need to be finalised before the documentation could be regarded as complete and meeting the Council's specifications. Further legal advice will be required before the Council takes membership of the company.

12.3 Procurement and assets: The membership of the company comprises public sector and private sector members, therefore, despite the Council's participation, Cabinet should note that the company must be treated as a third party company. The Council must comply with the applicable legal regimes in all its dealings with the company.

12.4 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

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<b>Sponsoring Cabinet Member</b>	Councillor Paul Crossley
<b>Background papers</b>	Enterprise&Economic Development O&S Panel papers and meeting notes, 22nd March 2011.
<b>Please contact the report author if you need to access this report in an alternative format</b>	