

REPORT OF THE LEADER OF THE COUNCIL

EAST MIDLANDS DEVELOPMENT CORPORATION – UPDATE ON SETTING UP THE INTERIM VEHICLE (EM DEVCO LTD) AND THE ESTABLISHMENT OF THE CORE TEAM STRUCTURE AND ASSOCIATED POSTS

Purpose of the Report

1. To update Members on the establishment of EM DevCo Ltd; to seek approval to establish the core team posts, as part of the Place Department; and to delegate authority to the Service Director Customer, Governance and Employees to negotiate and agree the associated agreements to bring this into effect.

Background

2. Some information relating to this report is not for publication by virtue of paragraph 5 of Schedule 12A of the Local Government Act 1972 because it comprises of information to which legal professional privilege applies. On balance the public interest does not override the application of the exemption because divulging the information would significantly damage the Council's commercial position. The exempt information is set out in the **exempt appendix** to this report.
3. In February 2019 the Government approved funding for a two year programme to explore the business case for a locally led development delivery vehicle for the East Midlands and asked the Midlands Engine to lead the work. The Midlands Engine was asked to consider three locations in the East Midlands: specifically, Toton and Chetwynd Barracks and Ratcliffe on Soar Power Station site (both in Nottinghamshire), and East Midlands Airport Area (in Leicestershire). The programme is also considering how the Development Corporation can have wider application across the East Midlands as a whole, building on the recent successful announcement of a Freeport around East Midlands Airport.
4. The overall ambition of the East Midlands Development Corporation (EMDC) is to supercharge a new era of growth for the regional economy. This will be achieved by enabling projects that build on the potential of HS2; the region's status as a major trade and logistics gateway; and its historic strengths in research and development and industrial innovation. Further background to the EMDC programme can be found in previous update reports to Policy Committee in February 2020 and December 2020.
5. On 9th December 2020, Policy Committee approved the establishment of an Interim Vehicle, EM DevCo Ltd, to drive forward the proposition whilst the Parliamentary processes required to

establish the proposed new model of Locally Led Urban Development Corporation (LLUDC) take place (taking up to three years). It was also agreed that the County Council will host the company on behalf of the member authorities.

6. In addition, the County Council approved the contribution of £1.5m in £0.5m annual funding contributions from 2021/22 to 2023/24. Similar approval has been given by the other directly affected Local Authorities, which are Leicestershire County Council, Broxtowe Borough Council, North West Leicestershire District Council and Rushcliffe Borough Council. Leicestershire County Council have approved a contribution of £0.5m per annum with Broxtowe, North West Leicestershire (confirmation of year 1 funding anticipated 16th March 2021) and Rushcliffe collectively contributing £0.5m per annum.

Progress to date

7. Since December's Policy Committee meeting, work has continued on the preparation of the detailed business case, which will set out to Government how the Development Corporation meets the criteria for public-sector intervention. The business case establishes the case for a LLUDC; a value for money assessment, commercial viability; financial affordability; and a route to delivery. The business case will be submitted to Government in March 2021 following discussions with MHCLG officials and final clarifications with key stakeholders.
8. Concurrently work has been on going to incorporate EM DevCo Ltd with the Legal Teams of the member Local Authorities. Following the finalisation of the company's Articles of Association and Members Agreement that set out the formal constitutional arrangements, EM DevCo Ltd will be legally incorporated with registration at Companies House. As detailed in the December Policy Committee report, the company will be owned by the five Local Authorities whose administrative areas cover the three initial sites within scope i.e. Toton and Chetwynd Barracks, East Midlands Airport Area and the power station at Ratcliffe on Soar.
9. A business plan for 2021/22 is under development, which will set out the activities and budget of EM DevCo Ltd for the year ahead and will be considered for approval by the EM DevCo Ltd Oversight Authority in April. An indication of the work of the Interim Vehicle is provided in the indicative work programme included at **Appendix 1**. The team structure outlined in **Appendix 2** represents the core team and proposed new posts required to undertake and manage the work outlined in Appendix 1, which will form the basis of the business plan. These deliverables are based on the confirmed year one Local Authority funding of £1.5m (detailed in paragraph 6). Through commissioning of services, the team could manage a larger budget (up to £3m in year one) should anticipated Government funding be confirmed. A range of operating budget scenarios have been developed to prepare for a range of potential operating budgets, dependent on the level of Government funding.
10. At the December 2020 Policy Committee it was agreed that the Company Limited by Guarantee; EM DevCo Limited will be added to the Council's Outside Bodies Register. It was also agreed for the Ruling Group Business Manager to make the required Member

appointments to the Oversight Authority and to delegate authority to the Chief Executive to make the required Officer appointment to the Board of Directors. Periodic progress reports regarding the Company business plan and establishment of the longer term statutory Development Corporation will be brought to the relevant Committee as appropriate.

11. In addition to the Core Team, EM DevCo Ltd intends to fund an interim Managing Director (initially part-time) who will be responsible for the running of the company and answerable to the Board of Directors. Due to the specialist nature of the role and the short timeframe available, the Managing Director will be temporarily commissioned separately to the recruitment of the remaining post proposed in the structure. Should it be considered beneficial at a future point to add the Managing Director to the staffing establishment, approval to establish an additional post will be sought from the relevant Committee.
12. The Core team (outlined in Appendix 2) includes specialist planning, programme management and delivery roles that reflects the scale and nature of the work required to be undertaken. The Programme Director will actively support the evolution of proposals and business cases for the developments, whilst maintaining effective relationships with Government, regional and local partners. The Group Manager will lead the technical infrastructure and planning workstream, and will be responsible for developing the overall proposition, business cases and undertaking early infrastructure planning for the proposed developments in accordance with the Business Plan. The Group Manager will be supported by a Transport and Infrastructure Manager and a Regeneration and Economic Development Manager, who will seek and manage opportunities associated with the EMDC proposition. A Senior Executive Officer and Executive Assistant will provide high level business support to the Managing Director and Programme Director as well as coordinating the project team activities to ensure that they are delivered in accordance with the business plan. A part time Media and Communication Manager will build upon the strong stakeholder engagement and media strategy that has been key to the programme's successes to date. This small team will be further strengthened (subject to resource) by the commissioning of external support for specified deliverables within the Business Plan, once approved by the Oversight Authority.
13. Recruiting to the core team of regeneration, development and infrastructure specialists will provide EM DevCo Ltd with access to new skills and levels of expertise in planning and delivering a scale of development and infrastructure the region has not experienced for several generations. The cost of the core team will be funded from EM DevCo Ltd's operating budget.
14. The participating councils have been in discussion and consider that the key drivers and objectives for the staffing structure are around speed and expediency, namely:
 - To attract the best candidates.
 - To be able to staff the Company swiftly in order to demonstrate to the Government that they can deliver at pace.
 - To have flexibility in dismantling the staffing structure if during the interim period it became clear that it will not be possible to move to a new form of delivery vehicle supported by changes in legislation.

15. The participating councils consider that the optimum way to deliver the objectives above will be for one of them to recruit and employ the staff and then make them available to the Company, i.e. act as host. This is because having a council employer with established and supported recruitment processes should enable the recruitment of staff to take place much quicker and would give more security and be more attractive to potential recruits.
16. The view of the partner authorities is that Nottinghamshire County Council is best placed to be the host council as it already acts as host for the Development Corporation Programme Team, which is currently part of the Council's Place Department (as detailed in December Policy Committee Report). The councils have agreed the principle of sharing the costs of the host council. Work is ongoing around arrangements for sharing that cost and potential liabilities between the 5 partner local authorities. No recruitment will be undertaken until these arrangements for sharing costs and liabilities have been agreed.
17. There are a number of different employment options available, which are set out below. Legal advice on the options is attached in the exempt appendix.
- Services agreement: The Council recruit and employ the core team staff and enter into an agreement with the company to provide the agreed services. Under this model the control of the staff providing the services would remain with the Council but would link to objectives set by the board of directors.
 - Secondment: The Council recruit and employ the core team staff and enter into a secondment agreement with the company.
 - Direct employment of the staff by EM DevCo Ltd: The company employ the core team as its own employees.
 - Joint employment: The staff are recruited by the Council and then employed jointly by the Council and the company.
18. Legal advice has been sought on the staffing models for the Core Team, described above. Taking that into account it is recommended that the secondment model is the most suitable one in this case. Such an arrangement will require a secondment agreement between EM DevCo Ltd and the Council and any residual liabilities relating to the Council's employment of the staff will be shared between the five partner authorities through an appropriate legal agreement. Delegated authority is sought for the Service Director Customers, Governance and Employees to negotiate and finalise detailed terms of any agreements in consultation with the Group Manager, Legal and Democratic Services.
19. Subject to Policy Committee approval, the secondment arrangement will be implemented for the team structure and associated posts detailed in Appendix 2, with the current interim programme team resources being replaced by a Development Corporation Team, within the Place Department. Establishing the posts within the Council's structure will assist with recruitment for the reasons highlighted in paragraphs 14 -15 above.

20. Following approval by Policy Committee in December for Nottinghamshire County Council to be the host authority for EM DevCo Ltd, detailed work has been undertaken to scope the support services that will be provided to the Company. Service Level Agreements (SLA) have been developed that detail the services that will be provided as listed below. Finance, Legal and Audit support will be commissioned externally in order to secure the required company specific skills and to avoid any conflicts of interest with the County Council as joint owner of the company.

- HR
- Procurement
- ICT
- Document Services
- Business Systems Centre.

21. The SLAs are being developed to comply with state subsidy and public procurement rules. The cost will be validated by the finance team to ensure charges are compliant with these rules. The programme will also be the subject of a separate funding agreement between the five member authorities and EM DevCo Ltd. It is proposed that the finalisation of hosting arrangements, including the SLA's, funding, secondment and sharing liabilities and risks (detailed in paragraph 16) will be delegated to the Service Director Customers, Governance and Employees in consultation with the Group Manager Legal and Democratic Services.

Legal Implications

22. Legal implications of the respective options for engaging the Core Team are set out in the Exempt Appendix. As this is expected to involve a secondment arrangement it is not envisaged that public procurement rules will apply. The SLAs in respect of the hosted support services are being developed to comply as appropriate with any relevant state subsidy and public procurement rules.

Financial Implications

23. The EM DevCo Ltd structure detailed in Appendix 2 has an indicative budget of £500k (subject to job evaluation) and will be funded from EM DevCo's operating budget, as set out in paragraph 6 above.

24. Provision of support services to EM DevCo Ltd will deliver an income to the County Council. The annual support services charges will be validated by the finance team to ensure charges are legally compliant. The provision of services is documented within SLAs between EM DevCo Ltd and the County Council support services.

Other Options Considered

25. Other options considered are detailed in paragraph 17 and the exempt appendix.

Reason/s for Recommendation/s

26. Following approval of the establishment of EM DevCo Ltd by the five owning Local Authorities, a decision on the most appropriate staffing model for the core team will allow the deliverables and benefits to Nottinghamshire and the wider region to be progressed. Year one deliverables are detailed in Appendix 2 and the wider benefits of the Development Corporation programme were detailed in the December 2020 Policy Committee report.

Statutory and Policy Implications

27. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required. With regard to the public sector equality duty, it is not considered that establishing EM DevCo Ltd will disproportionately impact people with protected characteristics. This will be kept under review as part of the business planning process.

RECOMMENDATION/S

It is recommended that Policy Committee:

- 1) Approves the establishment of the 6.5 FTE core team posts as part of the Place Department (detailed in paragraphs 12-13 and appendix 2), subject to appropriate legal agreements being put in place;
- 2) Delegates authority to the Service Director Customers, Governance and Employees in consultation with the Group Manager Legal and Democratic Services to negotiate and finalise the legal agreements required to give effect to the secondment and support services arrangements.

Councillor Mrs Kay Cutts MBE
Leader of the County Council

For any enquiries about this report please contact: Adrian Smith, Deputy Chief Executive and Corporate Director Place, adrian.smith@nottscc.gov.uk

Constitutional Comments (SSR 08/03/2021)

28. The recommendations set out in this report fall within the scope of decisions that may be approved by Policy Committee.

Financial Comments (RWK 18/02/2021)

29. The financial implications of the report are set out in paragraphs 23 and 24 of the report. The employment costs of the staffing structure and payments to the County Council for the provision of services listed in paragraph 20 will be funded from EM Dev Co Ltd's operating budget. The

payment for services provided by the County Council will provide an additional income stream for the County Council.

HR Comments (JP 18/02/2021)

30. The posts detailed in Appendix 2 will be subject to job evaluation and recruitment processes will be undertaken in line with County Council Employment Policy and procedures.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- [Midlands Engine Development Corporation Establishment of the Interim Vehicle - Policy Committee - December 2020](#)
- [Midlands Engine Development Corporation Update - Policy Committee - February 2020](#)
- [Midlands Engine Development Corporation Funding and Delivery Team - Policy Committee - June 2019](#)
- East Midlands Development Corporation, Comprehensive Spending review (CSR) 2020, Proposition

Electoral Division(s) and Member(s) Affected

All