

Brighton & Hove City Council

Council

Agenda Item 33

Subject: Accountable Body for Local Enterprise Partnership
Legacy Funds

Date of meeting: 28 March 2024

Report of: Executive Director Governance, People & Resources

Contact Officer: Name: Nigel Manvell, Chief Finance Officer
Tel: 01273 291233
Email: nigel.manvell@brighton-hove.gov.uk

Ward(s) affected: All

1 Purpose of the report and policy context

- 1.1 Local Enterprise Partnerships (LEPs) were set up by Government in 2011 as business-led partnerships bringing together the public, private and education sectors to have a central role in determining local economic priorities and undertaking activities to drive growth and job creation. Coast to Capital LEP (C2CLEP) was set up to cover East Surrey, West Sussex and Brighton and Hove.
- 1.2 The future of LEPs has been uncertain in recent times and it has now been confirmed that from 1 April 2024 the Government will cease the distribution and management of government funds and loans through LEPs and the functions previously undertaken by LEPs will transfer to Upper Tier Local Authorities (UTLAs). The government has issued Transfer Guidance to assist LEPs and their Accountable Bodies to effect and manage the transfer of functions and the redistribution of funding. The government has stipulated that Accountable Body monitoring, reporting and oversight will need to be provided until 31 March 2025. Where LEPs were set up as companies, the government stopped short of mandating their liquidation and therefore these companies can continue beyond 31 March 2024 but cannot retain responsibility for LEP functions.
- 1.3 A report to Culture, Heritage, Sport, Tourism and Economic Development Committee on 7 March 2024 set out the key implications for the Council and outlined the steps being taken to put the council in a strong position to take advantage of the integration of transferred LEP functions to deliver improved outcomes for local businesses and residents, as well as ensuring a smooth and effective integration of functions into the council.
- 1.4 As the report noted, the council's role as the Accountable Body for the government funds managed by C2CLEP is a separate function covered by a contract with C2CLEP. This report is concerned with the proposal for Brighton & Hove City Council to continue to provide an Accountable Body role in respect of legacy funds previously managed by C2CLEP from 1 April 2024 to 31 March 2025 following the transfer of LEP functions to UTLAs.

2 Recommendations

That Council:

- 2.1 Agrees that Brighton & Hove City Council should continue to provide Accountable Body services, acting as agent for the Department for Levelling Up, Housing & Communities (DLUHC) and on behalf of relevant UTLAs, in respect of legacy funds previously managed by C2CLEP for the period 1 April 2024 to 31 March 2025.
- 2.2 Delegates authority to the Executive Director Governance, People & Resources, following consultation with the council's Chief Finance Officer, to make all arrangements necessary for Brighton & Hove City Council to deliver the Accountable Body services, including resourcing, finalising relevant agreements with the UTLAs and determining any outstanding agreements required relating to the transfer with the Coast to Capital company.

3 Context and background information

- 3.1 Following a competitive bidding process in 2021, the City Council became the Accountable Body for funds managed on behalf of government by C2CLEP from 1 April 2021. The council has continued to provide Accountable Body services via an agreement with C2CLEP until the present. The current agreement expires on 31 March 2024. This is a chargeable service similar to other financial and legal services currently provided by BHCC officers to the South Downs National Park and East Sussex Fire & Rescue Service.
- 3.2 Under existing government requirements LEPs are required by government to appoint an Accountable Body to oversee the proper administration of financial affairs in relation to the use and allocation of public funding held by the Accountable Body on behalf of government. This forms part of the LEP's Assurance Framework. The Accountable Body must be an eligible organisation within the LEP boundary and should ensure that the usual Local Authority checks and balances apply to the awards of public funding directed by the LEP Board and LEP committees. Accountable Bodies cannot use funding for their own purposes.
- 3.3 There are 3 primary functions for the current Accountable Body:
 1. An accounting function: involving holding public funds paid over by government until their allocation by the LEP.
 2. An oversight and assurance function ensuring that effective governance over the use and allocation of public funds is in place and that funds are used with propriety and regularity in accordance with relevant grant/fund conditions and deliver value for money. This includes S151 Chief Financial Officer and Monitoring Officer services and oversight.
 3. A support function including support and attendance at Board and Committee meetings, provision of treasury management services, and provision of legal and financial advice as appropriate.

The current agreement covers these functions and responsibilities.

- 3.4 Local Enterprise Partnerships (LEPs) are private sector-led partnerships between businesses and local public sector bodies. There were around 38 LEPs in England, each operating across more than one local authority. In this region, the Coast to Capital LEP (C2CLEP) was set up as a private

limited company. The main funds managed and allocated by LEPs on behalf of government were:

- a) **Local Growth Funds:** These were announced in 2013 as a single pot of around £12 billion of devolved funding aimed at delivering a range of initiatives to support local economic growth, running from 2015 to date.
- b) **Growing Places Fund:** Announced in 2014, this funding of around £730 million aimed to provide short-term repayable loans to kick-start economic development projects to facilitate growth in employment and housing that might otherwise have stalled or not got been able to secure financing.
- c) **Getting Building Fund:** This fund of £900 million was announced in July 2020 and aimed to support the UK's economic recovery following the COVID-19 crisis. Locally, circa £19 million was distributed by C2CLEP.

Other smaller grants and funding have been provided over the life of LEPs including Enterprise Adviser Network funding (careers advice). LEPs also received core grant funding from government for administrative expenses and Growth Hub funding to provide support and strategic leadership to help small and medium sized enterprises drive sustainable business success. Each local authority in the LEP area also contributed to the C2CLEP on a funding scale according to their size.

- 3.5 The C2CLEP has had different Accountable Bodies over many years for different elements of funding including West Sussex County Council, Croydon LBC and Brighton & Hove City Council. BHCC is the current Accountable Body for all funds under C2CLEP's management.
- 3.6 Following the government's announcement to cease LEPs and transfer their functions to UTLAs from 1 April 2024, the C2CLEP has been considering its options. At present it plans to continue as the Coast to Capital company providing a consultancy business. However, it will no longer provide LEP functions and it will have no responsibility for managing or administering government funds beyond 31 March 2024. This responsibility will transfer to UTLAs. In respect of legacy funds where schemes and loan agreements are still live and extant, the UTLAs within the existing LEP area have agreed in principle that Brighton & Hove City Council can continue to provide a single Accountable Body service to manage, monitor and report to government on legacy funds and loan books until 31 March 2025.
- 3.7 As the current Accountable Body, in accordance with the government Transfer Guidance, BHCC also has responsibility for working with C2CLEP to manage the wind-up of C2CLEP activities (with regard to its LEP functions only) including receiving any C2CLEP funds and reserves deemed to be public resources. This process will be completed following conclusion of the winding-up process and receipt of the audited accounts of the C2CLEP for the year to 31 March 2024. This process will inevitably extend beyond 31 March 2024 which government recognizes as a practicality.
- 3.8 Similarly, there may need to be legal novation or assignment of grant funding or loan agreements to Brighton & Hove City Council (as Accountable Body) where these were signed by C2CLEP and/or a previous Accountable Body. This process is in hand and ready to complete subject to Council's approval to the authority continuing to provide Accountable Body services.
- 3.9 Alongside the transfer of any public resources from the winding-up of C2CLEP, there are other legacy unallocated funds already held by BHCC

as Accountable Body pending allocation or redistribution. Subject to approval of the Council to continuation as Accountable Body, these funds will remain with BHCC until they can be released for redistribution to UTLAs as per Section 4 below.

4 Management of Legacy Funds and Transferred Public Resources

- 4.1 C2CLEP has carefully considered the anticipated costs of winding-up its LEP activities. It has prudently set aside reserves to manage this process which are expected to include the following costs:
- Salary and retention payments to ensure continuity of critical services up to 30 September 2024 or until TUPE transfer or redundancy processes are concluded, if sooner;
 - Contingency for managing the Growth Hub until agreement across UTLAs is reached and TUPE transfer, if any, is concluded;
 - Redundancy and pension strain costs for staff not expected to ultimately TUPE transfer to UTLAs;
 - Core winding up costs including legal fees, accountancy and audit fees, long-tail insurance provision, and other exceptional administrative costs of winding-up.
- 4.2 C2CLEP has also determined that an element of its reserves have been built up from income (profit) generated by using officer capacity to provide independent consultancy services through competitive tenders for work. The Accountable Body has assured itself that this was not to the detriment of the company performing its LEP duties and has taken independent legal advice to confirm that these resources can be retained by the company. The company proposes to use this resource (less than 20% of total reserves) to provide it with working capital to continue as a private consultancy business beyond 31 March 2024.
- 4.3 All remaining reserves, after accounting for winding up costs and private company resources set out above, are regarded as public resources and will be transferred to the Accountable Body for distribution to UTLAs. The precise value of Private and Public resources will not be known until all costs and incomes are finalized and the audit of the company's accounts to 31 March 2024 is completed.
- 4.4 As noted in paragraph 3.9 above, the Accountable Body already holds other unallocated legacy funds, such as returned or withdrawn Local Growth Funds, and will continue to account for these until their redistribution to UTLAs at the earliest opportunity.
- 4.5 It should be noted that the C2CLEP has enquired about an indemnity from the Accountable Body regarding possible claims that may be made against it for activities undertaken while it performed LEP duties. This has emanated out of discussions with the government department (DLUHC) which has confirmed that government will not provide continuing LEP companies or their directors with any indemnifications.
- 4.6 BHCC will continue to explore the rationale and extent of any requested indemnity, which would only be provided if considered appropriate and ethical and compliance with the law and the Subsidy Control regime can be achieved. Any indemnity would be capped to the extent of government funds authorized to be held by the Accountable Body for the purpose and would only cover company activities as a LEP up to 31 March 2024.

- 4.7 In considering the decision as to whether to approve continuation of Accountable Body services, the Council is advised that no claims can be made against the authority directly for activities prior to 31 March 2024.
- 4.8 To deliver a continuing Accountable Body service, the council will need to ensure appropriate resources and expertise are provided. As the services are only required for 1 year in accordance with government requirements, and only require a proportion of officer time, it is proposed to enter into an agreement with the Coast to Capital company to secure these services rather than seek a TUPE transfer of staff.
- 4.9 The cost of providing resources to perform the Accountable Body services can be met from a number of funding sources including potential transitional funding from government, allowable 'capitalization' of (i.e. charging to) relevant government funds held by the Accountable Body, charging costs to transferred Public Resources/Reserves, or utilizing interest income from the Growing Places Fund loan book. The charges will be agreed with the UTLAs once cost estimates have been finalized but are expected to be similar to current charges and staffing costs and well within available funding. The principle of keeping charges to a minimum to maximize available resources and funding for redistribution to UTLAs will be upheld in determining any charges for Accountable Body services. For information, current costs and service charges for 2023/24, including relevant LEP staffing resources, are around £160,000 but 2024/25 is likely to involve considerable additional transitional work.

5 Future Governance Arrangements

- 5.1 The management of legacy LEP funds will include monitoring the achievement of key objectives and performance indicators built into funding and loan agreements and taking appropriate action where these appear to be delayed or falling short. These mechanisms will be set out in the collaboration agreement or Memorandum of Understanding (MoU) with UTLAs so that all parties are clear what governance processes will apply and what redress the Accountable Body will seek in given situations. This will not be dissimilar in principle to current processes designed to satisfy the Assurance Framework, which will be updated and appended to the agreement/MoU.
- 5.2 Similarly, any redistribution of unallocated government funds to UTLAs by the Accountable Body prior to 31 March 2025 would only be undertaken subject to provision of satisfactory evidence of appropriate application or allocation processes by each UTLA and appropriate monitoring and reporting arrangements being put in place.
- 5.3 As currently, conflicts of interest will need to be effectively managed, and particular clarity will be needed for the City Council if it continues as Accountable Body. Other LEP areas are managing this in many different ways but one option could be to create an oversight board with a representative from each UTLA, with potential attendance from DLUHC and/or for DLUHC to act as arbiter in cases of dispute.

6 Analysis and consideration of alternative options

- 6.1 The council could elect to cease providing Accountable Body services for legacy funds and loans. However, as the current Accountable Body this would present significant challenges for UTLAs who would need to quickly stand up alternative Accountable Body services. Inevitably, BHCC would still

need to be heavily involved in the transfer and redistribution of funds and loan books as the current Accountable Body.

- 6.2 As noted earlier in the report, providing Accountable Body services also provides a small income to the council similar to other contracted services for external bodies. However, this must be balanced with the inevitable dilution of officer capacity required to support Accountable Body services, particularly in relation to S151, Monitoring Officer, financial and legal officers.

7 Community engagement and consultation

- 7.1 Discussions have been ongoing with the C2CLEP, DLUHC and the relevant UTLAs. The other UTLAs (West Sussex and Surrey) have agreed in principle for BHCC to provide a single Accountable Body service for legacy funds and loans but not for any new funds or any funds redistributed to UTLAs. A collaboration agreement or Memorandum of Understanding will need to be drawn up with UTLAs as soon as possible to set out how the redistribution of funds and resources will be managed by the Accountable Body between 1 April 2024 and 31 March 2025

8 Conclusion

- 8.1 As the current Accountable Body, the continuation of this service by BHCC for a further year to 31 March 2025, when government reporting requirements cease, is a pragmatic and efficient solution preferred by DLUHC and accepted in principle by the UTLAs within the existing LEP area. While the provision of these services does dilute some officer capacity there is financial recompense, and the council has managed provision of these services effectively for the previous 3 years.

9 Financial implications

- 9.1 The charges to government funds and other resources for Accountable Body services will be calculated to recover the council's costs, including applicable overheads and any commissioned/contracted external support, to ensure that the council is not financially disadvantaged.
- 9.2 The provision of any indemnities to the Coast to Capital company, if it elects to continue beyond 31 March 2024, will be at zero cost to the council and will only be provided if legally compliant.
- 9.3 Providing Accountable Body services carries potential risks as the distribution or allocation of government funds to schemes or projects that are not compliant with grant funding terms and conditions, or have not been subject to appropriate due diligence or governance, may be subject to clawback of funds by government, causing a potential loss to the Accountable Body (BHCC). This is considered very low risk and no such sanction has been applied in the 13 years of the LEP area's existence.

Finance officer consulted: James Hengeveld Date consulted: 19/3/24

10 Legal implications

- 10.1 The responsibilities on the Accountable Body for proper use of Government grant monies are significant and can include Government clawback of funding. It is therefore important to ensure that the respective responsibilities and accountabilities of the Council are clear and agreed. There will need to be put in place an agreement or Memorandum of Understanding with UTLAs which will set out the roles, responsibilities and accountabilities of both the

UTLAs and the Council. It is for these reasons and to be able as the Council, as an Accountable Body, to address any outstanding issues and take all necessary steps, that this report proposes to give officers delegated powers.

Lawyer consulted: Abraham Ghebre-Ghiorghis Date consulted: 19.3.24

11 Equalities implications

11.1 None identified.

12 Sustainability implications

12.1 Government funds are provided with the aim of achieving regional economic recovery in a way that is stronger, smarter and greener and as the Accountable Body, the council will be providing services supporting the delivery of these objectives.

