



Council

Thursday, 3 December 2020

Development Corporation

Report of the Chief Executive

Portfolio Holder for Strategic and Borough Wide Leadership Councillor S J Robinson

1. Purpose of report

- 1.1. As previously presented to Cabinet in February 2020, Council in March 2020 and Cabinet again in November 2020, the Ratcliffe on Soar site in Rushcliffe is one of the three sites in the proposals for an East Midlands Development Corporation (EMDC).
- 1.2. This report provides background on, and progress to date of, the creation of a East Midlands Development Corporation; specifically, to seek approval for Rushcliffe Borough Council's involvement in the establishment of an Interim Vehicle from January 2021, for a period of three years, to maintain the momentum prior to a Statutory Development Corporation being created by Parliament.

2. Recommendation

It is RECOMMENDED that Council:

- a) notes the progress made to date of the East Midlands Development Corporation Programme, towards the establishment of an Interim Vehicle
- b) approves the principle of a financial contribution to support the Interim Vehicle over the next three years in the sum of £500,000, subject to match funding from other affected local authorities and Government. The funding arrangements to be included within the Medium Term Financial Strategy for 2021/22 onwards and funding will be allocated over the course of the three years
- c) approves in principle entering into the Members' Agreement and participating in the incorporation of the Interim Vehicle Company Limited by Guarantee and delegates authority to the Leader and Chief Executive for agreeing the final form of the Members' Agreement and Articles of Association
- d) agree the nomination of the Leader of the Council as a proposed Director of the Interim Vehicle.

3. Reasons for Recommendation

- 3.1. A recommendation was approved by Cabinet on 10 November 2020, for the Chief Executive to prepare a report including further detail on the Interim Vehicle and Rushcliffe Borough Council's involvement in it, both financially and as part of the board of the Company Limited by Guarantee (CLG), to be ratified by Full Council in December 2020.
- 3.2. The Cabinet also approved recommendations in relation to funding the Interim Vehicle and that the Council become a member of the Company Limited by Guarantee (the Interim Vehicle) subject to approval by Council.
- 3.3. If established and supported with the required resources and expertise the Development Corporation would attract nationally and internationally significant investment and development into the East Midlands, and more specifically, in to the Ratcliffe on Soar Power Station site. It is believed that this type of investment is not something that Rushcliffe, or the owners of the power station, could attract on their own.
- 3.4. Following the Government announcement regarding the decommissioning of coal-fired power stations, Ratcliffe on Soar Power Station is due to be decommissioned by 2025. This could have a significant impact on the Borough both financially (loss of business rates) and with the potential to have a very large derelict site at the entrance to the Borough from the A453. The Development Corporation would provide greater certainty on the redevelopment of the site, leveraging investment and resources to support delivery.

4. Supporting Information

- 4.1. As previously reported (Cabinet in February and November 2020, and Council March 2020), 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, Ratcliffe on Soar Power Station site (in Rushcliffe), Toton and Chetwynd Barracks (in Broxtowe), and East Midlands Airport (in North West Leicestershire).
- 4.2. The Development Corporation programme is overseen by an Oversight Board (now known as The Alchemy Board) supported by an Executive Group. The Alchemy Board is made up of Leaders from the region's upper tier local authorities and directly affected districts (Rushcliffe, Broxtowe and North West Leicestershire) alongside private sector, business community, central government, LEP's, and university representatives. The Executive Group is a smaller group of executive officers. Both are chaired by Sir John Peace, as chairman of the Midlands Engine. Anthony May (Chief Executive of Nottinghamshire County Council and Chair of the Midlands Engine Operating Board) is the Senior Responsible Officer. The Executive Group will be superseded by the Company Limited by Guarantee as covered below.

- 4.3. The overall ambition of the East Midlands Development Corporation (“EMDC”) is to supercharge a new era of growth for the regional economy by enabling projects which build directly 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; particularly research and innovation related to the emerging low carbon economy.
- 4.4. For the purposes of Government assessment, the team considered a range of different scenarios. The initial analysis indicates that the emerging proposition, across the three sites, could deliver 4,500 homes, an additional 84,000 jobs across the region and £4.8bn GVA growth per annum for the region.
- 4.5. The EMDC will contribute substantially to inclusive, zero carbon growth and “levelling up” by initially realising the potential of the three key sites:
- HS2 Hub at Toton & Chetwynd - a new destination for knowledge-driven jobs and an exemplar zero carbon mixed-use community, showcasing next generation living, with a HS2 hub station offering unrivalled connectivity; and
 - Ratcliffe Power Station and East Midlands Airport Area that together will provide a demonstrator for new technologies and methods of:
 - production and energy generation and supply;
 - transport and digital connectivity;
 - a proposal to be the UK’s only Inland Freeport with the Country’s largest and only 24-hour dedicated air freight hub being its main entry point to the Freeport;
 - a global multi-modal hub and centre for trade and logistics with substantial housing growth proposed across the wider area; and
 - creation of “ZERO” on the Ratcliffe Power Station site, an international centre for the development of market-ready zero emission technologies.
- 4.6. In addition to the broad programme benefits outlined in Para 4.5, there are a number of specific benefits for each of the five authority areas (three districts and two counties). For Rushcliffe Borough Council, the identified benefits include the development of a comprehensive and integrated plan for the area in and around the Ratcliffe on Soar Power Station which will create a series of attractive and deliverable investment propositions including:
- A world-class green and blue environmental investment programme with R&D in climate change and zero carbon;
 - Employment opportunities and infrastructure investment;
 - Investment in major infrastructure improvements which include; enhanced links to the A453 and A50 – including the option to dual the A453 connection to the A42;
 - Enhanced transport links; and
 - Shared benefits from the key sites in the wider East Midlands Development Corporation programme.

- 4.7. Work is continuing on the preparation of the detailed business case, which will set out to Government how the proposals meet the criteria for public sector intervention. It will establish a case for change, a value for money assessment, commercial viability, financial affordability and a route to delivery. It is anticipated that this will be submitted to Government in March 2021.
- 4.8. The proposal for the Development Corporation in the East Midlands identified the need for a new form of Development Corporation to be established to meet the needs of the East Midlands creating a locally led urban Development Corporation. This model does not currently exist and, therefore, if agreed by Government it would require legislation to establish this hybrid model of Development Corporation.
- 4.9. There has been an ongoing and positive dialogue with Government regarding the most appropriate legislative pathway to establish this new type of Development Corporation:
- In January 2020, the Midlands Engine responded to the MHCLG 'Development Corporation Reform: Technical Consultation';
 - In July 2020, the Secretary of State confirmed his support for the establishment of an Interim Vehicle, to continue to build momentum prior to the creation of a statutory Development Corporation; and
 - In August 2020, the [Planning White Paper consultation "Planning for the Future"](#) included positive reference to the Development Corporation work on page 69 with the following statement:
"As we bring forward planning reform, we also want to ensure we have in place the right delivery mechanisms, including development corporations. A good example that we are already progressing is development at Toton in the East Midlands, where we have announced our intention to support the establishment of a development corporation to maximise the area's international links and create tens of thousands of new homes and jobs. We want to see more schemes of this kind, backed by modern delivery models, around the country."
- 4.10. The Parliamentary processes required to establish a new type of Development Corporation will take time and at the July meeting of the Alchemy Board, partners endorsed the establishment of an Interim Vehicle to maintain momentum, subject to approval of the five directly affected local authorities.

Establishment of the Interim Vehicle

- 4.11. Since the report to Council in March, more work has been done by the consultant teams, Development Corporation programme team and officers from Rushcliffe to establish the detail of the arrangements for the Interim Vehicle. The proposal is for the Interim Vehicle to be a company limited by guarantee (CLG).
- 4.12. Subject to the approval of the recommendations in this report, the Interim Vehicle, to be known as EM Devco will be incorporated in January 2021. The five local authorities with administrative responsibilities within the current scope

of the programme (Toton, Chetwynd Barracks, East Midlands Airport Area and the power station at Ratcliffe on Soar), will be the members of the company and shall all need to approve similar recommendations:

- Broxtowe Borough Council;
- Leicestershire County Council;
- North West Leicestershire District Council;
- Nottinghamshire County Council; and
- Rushcliffe Borough Council.

4.13. The Interim Vehicle will, in part, mirror the intended form of the statutory Development Corporation and will consist of:

- An Oversight Authority comprising the five local authorities who will be the guarantee holders and corporate 'Members' of the CLG (this is different to the Alchemy Board);
- The Board of directors shall be 11, made up of six independent directors and five directors appointed by the councils, each council having the power to appoint a director and remove that director. The Chair shall be an independent director but will not have a casting vote. The independent directors will be appointed following a transparent process and subject to the approval of members in accordance with the members agreement; and
- Local delivery vehicles/ special purpose vehicles or joint ventures for each site.

4.14. The Interim Vehicle will not have any statutory powers (eg planning), these will remain with the relevant local authority partners until the establishment of the statutory Development Corporation.

4.15. The draft Members Agreement and draft Articles of Association set out the formal constitutional arrangements for the CLG. Approval to establish the Interim Vehicle will confirm the authority's agreement to the details within these documents. The two County Councils (Leicestershire and Nottinghamshire) have jointly commissioned Bevan Brittan and the three District and Borough Councils (Rushcliffe, Broxtowe and North West Leicestershire) Browne Jacobson to provide independent advice. These documents have been based on an agreed set of principles developed between the five Local Authorities.

4.16. Members of the Board will be appointed as Directors of the CLG. The Leader of the Council is proposed in this report as the director representative for Rushcliffe Borough Council.

4.17. There remain a few matters outstanding to be resolved between the Councils; however, these are being narrowed. At present the key matters to be agreed are:

- The form of funding contribution and the documentation to support this;

- Agreement on how changes to the articles may be brought about as well as the process for moving from this Interim Vehicles to a development company;
- Division of liability for staff or upon winding up the Interim Vehicle; and
- The process for approving director conflicts of interests to ensure that directors appointed by a council with an interest in a decision are able to take part in discussion and vote.

The terms of funding, including structure, timing and ability to withdraw or cease funding has not yet been discussed or agreed. Council is advised that the terms of the funding from each member council would need to be captured in a separate legal agreement.

4.18. Once established, the first key task will be to consider appointments and develop a business plan. It will be the responsibility of the Board to deliver the business plan which will need the approval of the Oversight Authority and which will be reviewed on an annual basis. Approval will be required of the Oversight Authority for decisions that fall outside the business plan especially those which have a budgetary implication.

4.19. Broadly speaking, the role of the Interim Vehicle will be:

- Developing the proposals and full business case for the Development Corporation;
- Masterplanning, submitting conventional planning applications and other development control applications;
- Agreements and land negotiations;
- Discussions with funders;
- Raising finance;
- Acquiring land;
- Delivering early infrastructure; and
- Selling serviced land.

4.20. Where any decision is reserved to the member councils (rather than the board of directors) then the members will have weighted voting rights. With each county having a vote representing 33% of the rights and each district having a vote which has 11% of the rights (this reflects the Councils' financial contributions.) As drafted presently, the agreement provides that certain matters are reserved to the member councils to decide upon. These decisions are split into matters requiring all councils to agree to and those which require members holding not less than 75% of the voting rights (both county councils and at least one district council) to agree to. The approval of the annual business plan and the appointment of independent directors will require unanimous approval of all members.

4.21. As stated above, it is important to note that until such time as a statutory Development Corporation is established, planning powers would remain with the local authority so not achieving equal voting rights on the board may not carry any particular detriment to Rushcliffe Borough Council.

- 4.22. The core costs for 2019-20 and 2020-21 of the Midlands Engine Development Corporation programme so far have been funded by Government, through the Ministry of Housing, Communities and Local Government (MHCLG). The total funding was £2 million, spread equally across two years (2019/20 and 2020/21). The programme team has also received additional resources through a mix of direct funding and in-kind support from partner Local Authorities.
- 4.23. The Interim Vehicle will require additional funding to bring forward the proposals. As such, in September 2020, the programme submitted a £18.6m ask to Government as part of the Comprehensive Spending Review 2020 (CSR) process to cover the first three years, which is awaiting decision (Appendix B).
- 4.24. The CSR proposition includes the establishment of a dedicated and focussed team and governance structure to rapidly progress delivery. Given the situation with Covid, and the postponement of the November budget, there is a real risk there will be a lack of clarity in terms of government support.
- 4.25. Over the three years, this funding will pay for the Programme Team as well as costs such as; concept masterplan, site investigation, planning application and the business case for the Centre for Zero Carbon Futures.
- 4.26. The Council wants to play an active role in the Development Corporation. It has been identified, therefore, that the Council could contribute up to £500k to be paid over the three years that the Interim Vehicle is established. This would be conditional on Government funding being secured and approval of Council.
- 4.27. As ratified at Full Council, a Development Corporation Reserve of £100k utilised from 2019/20 projected revenue efficiencies has been provided in order to support the project. This will, therefore, now need to increase to £300k over three years and be included as part of the Medium Term Financial Strategy presented to Full Council in March 2021. A further £200k would be allocated from the Climate Change reserve in recognition of the proposal for the National Centre for Integrated Zero Carbon Futures at Ratcliffe on Soar. This takes the total investment to £500k to be allocated over three years (2021, 2022 and 2023).
- 4.28. Rushcliffe along with the other four constituent local authorities have agreed (subject to individual council approval) that North West Leicestershire District Council, Broxtowe Borough Council and Rushcliffe Borough Council will contribute up to £500k each for the three years of the Interim Vehicle and Leicestershire and Nottinghamshire County Councils will both make a contribution of £500k per year for the three years.
- 4.29. A revised spend profile based on a reduced amount has been prepared; however, the ask of Government remains at £18.6m. All authorities are expected to have approved decisions by the end of December 2020.

5. Planning

- 5.1. In advance of the statutory Development Corporation, it is anticipated that the Interim Vehicle would work with respective local authority partners to develop masterplans and supportive policy frameworks for the sites.
- 5.2. The five councils who will be the members of the Interim Vehicle will support it either individually or together through the following means:
 - Providing planning policy expertise and related information associated with the three areas;
 - Engaging in site masterplanning and ensuring consistency with Local Plan review processes;
 - Consulting with the Interim Vehicle and engaging their planning teams on land use and transport planning policies being developed as part of the current reviews of local plans and strategies; and
 - Consulting with the Interim Vehicle and engage their planning teams on planning applications and other development management decisions relating to the development of the sites.
- 5.3. At this stage, the broad principles for the statutory Development Corporation would likely mean planning powers would only be sought for land within the proposed Development Corporation area. The range of powers may include, as examples, plan-making; development management and associated revenue raising (e.g. CIL and s106) and CPO powers. Should any planning powers be provided to the Development Corporation, consideration will be given to how they will interact with the powers held by the surrounding planning authorities in respect of both how the powers are expressed and how they will be exercised.
- 5.4. The requirements under the duty to co-operate will apply between the Development Corporation and local authorities, should the Development Corporation obtain plan-making powers. Community engagement and consultation will be enshrined from the outset through the preparation of a statement of community involvement (SCI) and with a statutory consultation process envisaged.
- 5.5. It is anticipated that planning fee income, which operates on a cost recovery basis only, will be paid to the Development Corporation for planning applications within its boundary. The partners will seek to ensure that the constituent local authorities will have an important role as statutory consultees for planning applications (and policy through the duty to co-operate and the SCI), which would ordinarily fall within their respective administrative areas.
- 5.6. It is anticipated that the Development Corporation will act as the s.106 and/or CIL authority for associated infrastructure and where appropriate this may include the Development Corporation requiring developers to contribute to strategic infrastructure outside of the Development Corporation's area.

6. Alternative options considered and reasons for rejection

- 6.1. Not to establish the Interim Vehicle is not desirable because momentum would stall, and the deliverability of the benefits set out in this report would be put into considerable doubt.
- 6.2. As outlined, there is an expectation that local authority partners contribute to the funding of the Development Corporation Interim Vehicle for its planned three years of operation. Providing this funding will ensure that Rushcliffe has a seat at the table to play a key role in shaping the Development Corporation in to the future to ensure the delivery of maximum benefit for Rushcliffe and the region.
- 6.3. The alternative option for Rushcliffe Borough Council is to not support this proposal. However, the Development Corporation could continue without the support of all local authority partners, although this would be far from ideal. In the short term, the Borough Council will retain planning control but in the longer term (when the formal Development Corporation is established) this is unlikely to be the case and therefore the Council would lose any control of the site and its future development.

7. Risks and uncertainties

- 7.1. There are risks that the Development Corporation does not get approval from Government or the required level of funding, in the immediate or longer term, and so it does not deliver or does not progress beyond the initial three-year Interim Vehicle stage. Throughout the process, the Borough Council will maintain a close working relationship with Uniper and will support them with the development of the site in this instance (in line with planning considerations). Given the situation with Covid, and the postponement of the November budget, there is a real risk there will be a lack of clarity in terms of government support.
- 7.2. There is a risk that after the initial three-year term, further funding will be required from local authority partners to support the Development Corporation. This will need to be reviewed by each individual partner at that point in time if required and based on outputs delivered to date. There is no commitment from Rushcliffe Borough Council to fund beyond the initial three years. It is expected that if a statutory Development Corporation is set up by Government in the future it will be funded and will be able to borrow and secure private investment to deliver the ambitions.
- 7.3. At this stage there is limited legal risk in deciding to become a guarantee holder of the Interim Vehicle because there are no overly onerous obligations within the documentation, there is no obligation to contribute a specific amount of money and Rushcliffe Borough Council is able to leave the Interim Vehicle by giving notice.
- 7.4. Having an RBC Director and being involved in the Consent Matter decisions increases Rushcliffe Borough Council's control over and involvement with the project and is preferable to not being a member of the Interim Vehicle.

- 7.5. The Council will retain its statutory powers, including planning powers. It is not until the Development Corporation is formally established following the passing of relevant primary legislation and an order having been made by the Secretary of State that the Development Corporation will be afforded any statutory powers. The extent of the powers afforded to the Development Corporation will depend on the nature of the primary legislation passed and also the Order made by the Secretary of State. Early involvement in the Interim Vehicle may assist the Council in shaping the nature of the Development Corporation. The loss of powers on the part of the Council can be mitigated by the extent to which the oversight authority retains power over any matters. This is likely to be influenced by the balance that can be struck in the interim period.
- 7.6. Depending on the exact nature of the final form of Development Corporation in the primary legislation, the Council may lose financial income from Section 106 contributions, community infrastructure levy payments and business rates. This, however, will only impact at the point of the Development Corporation being established and not the Interim Vehicle, and it is preferable for the Council to be actively involved during this interim period so as to have the opportunity to influence the potential longer term position.

8. Financial implications

- 8.1. As ratified at Full Council, a Development Corporation Reserve of £100k utilised from 2019/20 projected revenue efficiencies has been provided in order to support the project. The request is now that this be increased to £300k over three years based on the conditions set out earlier in this report. The timing of any advances are to be agreed. It is anticipated the £300k will be funded from the Rushcliffe element of the 2020/21 Nottinghamshire Business Rates Pool surplus (as reported in the Quarter 2 Financial Monitoring Report).
- 8.2. A further £200k to be allocated from the Climate Change reserve in recognition of the proposal for the National Centre for Integrated Zero Carbon Futures proposal for Ratcliffe on Soar. This takes the total investment to £500k over three years (2021, 2022 and 2023).
- 8.3. The financial contribution will also be subject to match funding from other local authorities partners and Government funding. It will be included as part of the Council's MTFS.
- 8.4. It is also anticipated that there is 'no detriment' clause on business rates so the Council is not disadvantaged by the loss in business rates from the closure of the power station.

9. Legal implications

- 9.1. Appendix A sets out the background advice received on the setting up of the Development Corporation.

- 9.2. By joining the Interim Vehicle, the Council will not delegate any of its statutory powers to the Interim Vehicle. The Council will retain control of these powers and any planning decisions will revert to each Council to be taken. The Council will not be bound by the considerations of the Interim Vehicle in exercising those powers.
- 9.3. The table below sets out the decisions to be taken by the Council in relation to the Interim Vehicle and the relevant decision making body within the Council:

| Governance | |
|---|-----------------------|
| Decision | Decision Maker |
| To join the Interim Vehicle | Full Council |
| To contribute financially to the Interim Vehicle | Full Council |
| To nominate an RBC councillor to be a director in the Interim Vehicle | Full Council |

10. Equalities implications

Inclusive growth is a key theme in the business case ensuring that, as far as possible, the Development Corporation brings benefits for all. As well as creating jobs the focus is on the quality as well as the accessibility of those jobs.

11. Section 17 of the Crime and Disorder Act 1998 implications

There are no crime and disorder implications associated with this report.

12. Link to corporate priorities

| | |
|--------------------|---|
| Quality of Life | The Development Corporation has the potential to benefit local residents' quality of life through the provision of new jobs, open space and green infrastructure. |
| Efficient Services | |
| Sustainable Growth | <p>The development of Ratcliffe on Soar Power Station through the Development Corporation and Freeport could attract a significant number of new businesses and approximately 20,000 jobs.</p> <p>The Development Corporation could deliver significant improvements to connectivity enabling more people to access opportunities at the three sites and in the wider region.</p> |
| The Environment | Beyond the economic benefits, the developments will enhance and improve the environment, take account of the |

| | |
|--|--|
| | <p>need to reduce emissions and achieve net gains in natural capital.</p> <p>The proposal for Ratcliffe on Soar is for a National Centre for Integrated Zero Carbon Futures putting Rushcliffe at the forefront of driving climate change.</p> <p>In addition, an integral part of the proposition is the connectivity between the sites and more broadly across the region. The focus of this is green infrastructure and public transport, minimising the impact on the environment.</p> <p>The proposition includes the creation of a wildway which is an active transport link between the sites enhancing and protecting the existing areas specifically around Attenborough Nature Reserve, River Trent and the canal network.</p> |
|--|--|

13. Recommendations

It is RECOMMENDED that Council:

- a) notes the progress made to date of the East Midlands Development Corporation Programme, and the establishment of an Interim Vehicle
- b) approves the principle of revising the financial contribution to support the Interim Vehicle over the next three years in the sum of £300,000, subject to further negotiation and subject to match funding from other affected local authorities and Government and, thereafter, the funding arrangements to be included within the Medium Term Financial Strategy for 2021/22 onwards
- c) approves in principle the Council entering into the Members' Agreement and participating in the incorporation of the Interim Vehicle Company Limited by Guarantee and delegates authority to the Leader and Chief Executive for agreeing the final form of the Members' Agreement and Articles of Association
- d) agree the appointment of the leader of the Council as a proposed Director of the Interim Vehicle.

| | |
|--|--|
| For more information contact: | Kath Marriott Chief Executive kmariott@rushcliffe.gov.uk |
| Background papers available for Inspection: | EM DevCo- High Level Issues and Risks LOG |
| List of appendices: | Appendix A – Legal briefing note Appendix B – Comprehensive Spending Review submission |

Appendix A

1. Legal Implications of the Proposed Development Corporation

1.1. The Midlands Engine has instructed Pinsents to advise it in relation to this matter. Pinsents have given detailed advice in relation to the various potential options for establishing a Development Corporation which has been reviewed by Browne Jacobson on behalf of the district/borough councils. Four key features were identified as needing to be satisfied for the Development Corporation:

- To be locally led in order to better meet the needs of the local area. An oversight authority is proposed, potentially comprised of local authority membership to have oversight and control of various powers of the Development Corporation;
- To have wide financial powers so as to be able to access a wide range of funding including private and public equity and debt finance, and grants and other investments. It is also proposed that the Development Corporation be given powers to become a community infrastructure levy charging authority;
- To have two streams of planning powers. Firstly plan making powers, and secondly operational and enforcement powers to include the ability to approve planning applications; and
- To be able to undertake delivery of projects and infrastructure, including the ability to determine planning applications and grant development orders. This will avoid multiple applications to separate local authorities where applications span more than one local authority area.

1.2. A number of existing forms of vehicles were considered with a view to meeting these requirements:

- A simple joint venture – considered to be inappropriate because it would not have the requisite power to progress this project with the complex make up of authorities and stakeholders involved;
- A Locally Led New Town Development Corporation – whilst this form of vehicle enjoys many of the powers identified for this project and is locally led, under existing legislation it would not have plan making or planning enforcement powers and it does not have the power to become a community infrastructure levy charging authority and so is limited in the funding streams it may be able to access;
- An Urban Development Corporation – there are many benefits to this form of vehicle, however the Secretary of State has the power to give binding directions with which the vehicle must comply and so it does not have the benefit of being truly locally led; and
- A Development Consent Order – these vehicles can have wider ranging powers but do have restrictions in terms of transport and economic development powers.

1.3. As none of the above existing vehicles are considered to meet all of the requirements of the proposed Development Corporation a new form of Locally Led Urban Development Corporation is proposed. This will require new primary

legislation to be passed by Parliament. If legislated as suggested then this new form of vehicle will offer the greatest benefits to the local authorities going forwards. However, at this stage the benefits are of course only hypothetical and represent a significant drawback to the proposed structure.

2. Power to Establish the Development Corporation

- 2.1. The power to establish the proposed form of Development Corporation will come through primary legislation, in a similar way to the current forms of Urban Development Corporation and Locally Led New Town Development Corporation. In both of those cases there is primary legislation in place which broadly provides a power to the Secretary of State to designate an area for the relevant purpose and to establish the relevant vehicle by way of an order of the Secretary of State. Such an order will provide certain powers to the vehicle established by the order, with the Secretary of State potentially being able to exclude powers. Depending on the nature of the vehicle proposed there are differences as to the process to be undertaken and also the nature of the order that may be made by the Secretary of State. In both cases, Parliamentary approval of the order is required.
- 2.2. The proposal for the new form of Development Corporation follows a similar process. Primary legislation will be required in order to provide the Secretary of State with the power to designate an area and establish a Development Corporation by way of an order. Parliamentary approval of the proposed order will be required.
- 2.3. As such, the Council will not take a formal decision to establish the proposed Development Corporation. This will be a matter for the Secretary of State with the approval of Parliament. The Secretary of State will however be required to consult in relation to the designation of an area and the making of an order to establish the Development Corporation. The Council will have the opportunity to respond to that consultation with a view to shaping the nature of the Development Corporation and the powers afforded to it. The Council may also make proposals directly to the Secretary of State in relation to the Development Corporation.
- 2.4. The possibility of the primary legislation itself establishing the Development Corporation without further steps being required by the Secretary of State is being explored. However, whether this is required will depend on how the primary legislation progresses.
- 2.5. Early involvement through the Interim Vehicle will be beneficial to the Council in helping it to shape the nature of the proposed Development Corporation, in particular with a view to ensuring a locally led position is established. The position that is established with the Interim Vehicle is likely to be reflected in the Development Corporation in due course.

3. Nature and Structure of the Development Corporation

3.1. The powers of the proposed Development Corporation will depend on the nature of the primary legislation that is ultimately passed. Whilst at this stage this is uncertain, it is proposed that this form of Development Corporation will be able to take on powers in its area to include acting as:

- Planning authority;
- Highways authority; and
- Local transport authority.

3.2. It is also proposed that the powers of the Development Corporation will potentially also include those relating to air quality, tourism and housing under a combined authority model.

3.3. The Council's main role following establishment of the Development Corporation will be within the proposed oversight authority. The functions available to the oversight authority will be conferred by the legislation and the order creating the Development Corporation, but proposals include:

- The ability to give directions to the Development Corporation;
- The ability to appoint members of the Development Corporation;
- A requirement to give consent or approval to the acquisition or disposal of land by the Development Corporation; and
- A requirement to give consent in the event that the Development Corporation seeks to have additional powers conferred on it by a subsequent order.

3.4. Again, the benefit of the Council being involved in the Interim Vehicle is that the position that is established is likely to be reflected in the Development Corporation in due course, and this provides the Council with the ability to influence the nature of the future Development Corporation.

4. Legal Implications for the Council of the Proposed Development Corporation

4.1. The key legal implication for the Council of the proposed Development Corporation is that to the extent that any powers in respect of a particular area are afforded to the Development Corporation, the Council will no longer be able to exercise such powers. As such the Council will lose a degree of control over those matters, the functions in respect of which are then to be exercised by the development corporation.

4.2. The potential for the legislation to include an ability for powers of the Development Corporation to be "switched on and off" is being explored. For example, certain powers may be afforded to the Development Corporation for certain phases of development, and otherwise revert to the Council. Again, this is only a proposal at this stage and what is ultimately the position will depend on the nature of the proposed primary legislation.

5. The Interim Position – ie Prior to Government Legislation

Power to Join the Interim Vehicle

- 5.1. In the interim, it is proposed that an Interim Vehicle be established as set out in this report. This Interim Vehicle is proposed to be in the form of a company limited by guarantee. The Council's power to join a company limited by guarantee comes from the general power of competence in Section 1 of the Localism Act 2011 ("the 2011 Act"). This gives the Council the power to do anything that an individual might do. The power is restricted by Section 4 of the 2011 Act which requires that a thing done for a commercial purpose must not be something that the Council is required to do by statute, and must be something that the Council may also do for a non-commercial purpose. Pursuant to Section 4, when doing something for a commercial purpose the Council must do this through a company, which includes a company limited by guarantee.
- 5.2. Development and regeneration areas have regularly utilised the general power of competence, and the Council may do so in the current matter.

6. Nature and Structure of the Interim Vehicle

- 6.1. As stated above, the Interim Vehicle will take the form of a company limited by guarantee. This means that the company will have no share capital, and the local authorities will be the guarantee holders and, therefore, the 'members' of the company.
- 6.2. Guarantees cannot be sold in the same way that shares can, therefore if a local authority wishes to leave the company, they would hand their guarantee back and leave. They could not pass their guarantee on to another body or organisation. The local authorities may leave the company at any time by giving 12 months' notice to the other authorities that they wish to leave.
 - While guarantee holders, the local authorities can exercise their control over the company in two key ways:
 - Each local authority can appoint a director to the board, who will have a say in the day to day running of the company; and
 - As members, the local authorities together can take direction on the 'Consent Matters' set out in the Members Agreement.