Agenda Item No: 2.4

IMET Investment Update and Recovery Recommendations

To:	Business Board
Meeting Date:	10 November 2020
Public report:	This report contains appendices which are exempt from publication under Part 1 of Schedule 12A of the Local Government Act 1972, as amended, in that it would not be in the public interest for this information to be disclosed (information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption outweighs the public interest in publishing the appendices.
Lead Member:	Austen Adams, Chair of the Business Board
From:	John T Hill, Director Business and Skills
Key decision:	Key Decision for Combined Authority Board on 25th November 2020
Forward Plan ref:	2020/078
Recommendations:	The Business Board is invited to:

a) Recommend to the Combined Authority Board approval of pursuing clawback of Local Growth Funding in relation to the iMET LFG investment, by selling the iMET building on the open market for a cash receipt back into the recycled Local Growth Funding budget, through agreements with Cambridge Regional College and the Landlord Urban and Civic;

b) Recommend to the Combined Authority Board to approve to the Combined Authority owning and disposing of the iMET building to effect claw-back, if required. It is not the intention of the transaction as currently envisaged that CPCA would take ownership of the iMET Building. If CPCA do take ownership, it would only be for a short period of time before the iMET is transferred to the end purchaser;

c) Recommend to the Combined Authority Board, approval of a refocussed Grant Funding Agreement between Cambridge Regional College and the Combined Authority and that final sign-off of that agreement, in relation to the iMET equipment being retained and utilised by Cambridge Regional College to continue delivering learner outputs, is delegated to the Director Business and Skills in consultation with the s73 Officer and the Lead Member for Finance;

d) Recommend to the Combined Authority Board that delegated authority is given to Director Business and Skills, in consultation with the Section 73 Officer, the Monitoring Officer and the Lead Member for Finance, to finalise the form and then sign-off the Surrender or Assignment Option Agreement between Cambridge Regional College and the Combined Authority, once full and final agreement with the landlord has been achieved; and

e) Recommend to the Combined Authority Board that delegated authority is given to Director Business and Skills in consultation with the Section 73 Officer, Monitoring Officer and the CA Member for Finance to finalise Heads of Terms on an agreement with the landlord of the iMET building, which in turn facilitates the final sign-off of the option agreement with Cambridge Regional College.

1. Purpose

1.1 The purpose of this paper is to ask the Business Board to approve the partial recovery of the Local Growth Fund (LGF) investment of £10,502m in the legacy project design and build of a vocational training centre at Alconbury Weald.

1.2 The paper outlines the remaining option open for the Business Board to consider and to recommend an approach to dispose of the main asset to recover funding.

1.3 In parallel the Business Board is asked to consider a refocusing of the existing legal Grant Funding Agreement to enable the Equipment paid for by the LGF grant to continue to be utilised to achieve skills outcomes to benefit of the current and future cohorts of learners.

2. Background

2.1 Following the LEP investment in this project in 2016, ownership and management of the iMET Centre transferred to Huntingdonshire Regional College (HRC), with Urban & Civic retaining the freehold property rights. However, HRC subsequently ran into financial difficulty, and merged with Cambridge Regional College (CRC). The original outcomes for the Centre had largely failed to materialise, with the Centre operating at a considerable loss.

2.2 In line with the Local Assurance Framework and National Guidance, the Combined Authority, as the Accountable Body for the LGF, is charged with approving clawback of funds on underperforming or non-compliant projects. The Business Board, as administrators of the LGF make the recommendations to the CPCA on the risks and implications of recovery. A complicating factor is that CRC is the current owner of the asset, but not the original applicant for the iMET LGF grant, as the asset was novated to CRC following the merger with HRC. However, CRC is the legal entity against which any action to recovery funds will be taken.

2.3 The Business Board at its meeting on 26th May 2020 considered options for reuse or financial recovery of the iMET assets in light of the project closing down delivery in April 2020 at the LGF funded site in Alconbury Weald and agreed to note the potential options available to the Business Board in relation to the iMET investment that will be explored further by the Chief Officer of the Business Board, complimented with legal advice and reported back to the Business Board. See Appendix A for the range of options that were considered at that Business Board meeting.

2.4 The Business Board report dated the 27th May 2020 (for the meeting on the 26th May) set out several commercial options for reusing the asset and its net value should it be possible to liquidate the asset, to generate new and additional skills and jobs outcomes for the economy, and those potential options were discussed and agreed.

2.5 The Business Board option of legal action to enable recovery of the funding was noted by the Business Board at the meeting. It was agreed that legal action was unlikely to result in a successful claw-back outcome as recovery of the original grant value would place CRC under serious financial pressure. The analysis of risks and implications is attached again to this paper at Appendix B.

2.6 The Director of Business & Skills acting as directed by the Business Board has explored all the options laid out in the May Business Board meeting with the primary option of finding a Vocational Educational Provider to agree to take over the lease of the iMET with a view to continuation of Educational and Skills activities and outputs on the site as per its current granted use by the Landlord.

2.7 Several Educational Provider Organisations had shown interest in buying the facility with a view to continuing the delivery of Educational activities but none of the discussions have concluded in any deal. Discussions finally concluded in Early October 2020 with the last remaining interested Educational Provider withdrawing interest in purchasing the site.

2.8 The other disposal options explored in parallel did not conclude with any successful outcomes or interest, so this leaves the only 'do-something option' being to take the current lease for the building to the open market. This requires an option agreement between Combined Authority and Cambridge Regional College (CRC), the current owners of the lease for a surrender or transfer of the lease when a buyer has been found.

2.9 In conjunction with the proposed agreement with CRC, LGF Officers are negotiating with the Landlord, Urban and Civic, around agreement for lease sale with change of use in a new lease plus option on the sale of the freehold of the land under the building to maximise the likely sale value.

2.10 Legal advice was sought in respect of the existing lease and landlord arrangements to shape the collaboration route to realise value from the building asset. Please see confidential Appendix C for copy of that legal advice, this legal advice is included so that Business Board members can note that advice has been sought rather than members having to fully digest the whole appendix.

2.11 The resulting financial receipts are proposed to be recycled into new LGF grants, awarded to deliver new outputs and outcomes in the LGF programme and potentially to fill the funding gap between the expenditure of the current LGF by 31 March 2021, and the anticipated arrival of new Shared Prosperity Funding in April 2022.

Proposed Recovery Plan

This proposal is submitted on the assumption that the parties to the arrangements are willing parties. The subsequent Agreement will be made strictly subject to contract and without prejudice to the parties rights and/or legal remedies. Please see Appendix D for flowchart of the proposed structure of agreements to facilitate sale of iMET building and reuse of equipment.

Cambridge Regional College (CRC) DEAL:

The following proposal is made to facilitate a release of CRC from its obligations under both the Grant Funding Agreement with CPCA as well as the IMET Lease with Urban & Civic. The proposal will also potentially maximise the restitution of monies paid under the Grant Funding Agreement back to CPCA, as the accountable body.

CRC are now the contracting party under the Grant Funding Agreement (replacing HRC);

including being responsible for the finances and educational outcomes as required under the Grant Funding Agreement.

CPCA are now the accountable body for monitoring financial spend and the educational outcomes in the Grant Funding Agreement paid to HRC for the IMET Building. CPCA are obligated to ensure that they can fully account for all spend at IMET in any future audit carried out by Central Government.

CPCA and CRC agree that some of the building, accounting and educational outcomes under the Grant Funding Agreement have not, and continue to not, be best achieved. The Parties therefore wish to come to a mutually agreeable accommodation in relation to those outcomes, which will both ensure CPCA meets its obligations to get best use of public funds as accountable body and also route-maps how CRC can end its on-going obligations and liabilities under the Grant Funding Agreement and the IMET Lease.

The CPCA wish to enter into an agreement with CRC which offers two potential outcomes

1) An option Assignment of the existing Lease to CPCA, in which CPCA can call upon CRC to assign the existing Educational Lease to CPCA (after informing the Landlord). This will take place if CPCA can find an Educational Partner to provide the required Educational Outcomes at the IMET

2) If no suitable Educational Partner can be found by CPCA then CRC will enter into an option to surrender with CPCA. At CPCAs request CRC will either offer to or accept from the Landlord a Surrender of the Lease

Urban and Civic (U&C) DEAL:

CPCA and U&C have had several positive meetings to discuss how CPCA may deal with the IMET Building once they have contractual control thereof from CRC. CPCA and U&C have agreed to collaborate to maximise the sale value of IMET to ensure the biggest return to CPCA.

The three options envisaged by the parties are:

1) CRC assign the Lease to CPCA who then further assign/underlet the existing lease (with a consent and change of use from U&C)

2) CRC surrenders the Lease back to U&C, then U&C and CPCA contemporaneously enter into a new lease of IMET which allows CPCA to assign or underlet without restrictive user

3) CRC surrenders the Lease and CPCA and U&C enter into an agreement to market and sell the IMET Building and then share (at proportions to be agreed) the capital receipt

The parties are looking at the open market values for each of the above options and will agree which one maximises a capital receipt which shall then become the preferred option (unless advice from external surveyors is to market in a specific manner)

Inter Dependency:

The above three options are totally inter dependent and we must have agreement under both bi-lateral deals for any deal to produce a capital receipt for CPCA.

In line with the Local Assurance Framework and National Guidance the CPCA, as the Accountable Body for the LGF is charged with approving any changes or modifications to existing Grant Funding Agreements and any claw-back of funds on underperforming or non-compliant projects. However, the Business Board as the administrators of the LGF, should make clear recommendations to the CPCA on the risks and implications of recovery.

National Guidance only deals specifically with the claw-back of funds, rather than assets, hence Officers have consulted with BEIS on the proposed recommendations the Business Board is making to the Combined Authority and BEIS have confirmed that the recovery of assets is a matter for the Accountable Body which in this case is the Combined Authority.

The original grant agreements set out the claw-back arrangements in the event of pursuing funding recovery where there had been non-compliance, misrepresentation or underperformance. The grant recipient has achieved the outcomes so far as the building construction is concerned but the educational outputs were not fully achieved. The conclusion is that pursuing full cash claw-back of the whole £10.5million grant is not likely to be achieved through a legal process and so the alternative plan set out in this paper is to recover some value from the asset itself based upon current market value.

The desired direction with the proposed recovery plan is now based on mutual cooperation between the parties involved to conclude an outcome that provides partial recovery of the original LGF grant and a continuation of achieving some of the Apprenticeship and Jobs outputs with the original grant recipient, Cambridge Regional College.

The Business Board is asked to consider three parts to this recovery plan that require Business Board to approve decisions to recommend to the Combined Authority Board in relation to the iMET project:

- Firstly, in relation to the current grant funding agreement with Cambridge Regional College (CRC) for the iMET;

- Secondly, in relation to an option agreement with CRC in relation to the lease for the iMET; and

- Thirdly, in relation to an agreement with Urban & Civic (U&C) on the sale of the iMET

Refocusing the Grant Funding Agreement

The original grant funding agreement was made between Huntingdonshire Regional College and The Greater Cambridge Greater Peterborough Local Enterprise Partnership (GCGP LEP).

Cambridge Regional College have replaced HRC and CPCA have replaced the GCGP LEP in relation to the contractual obligations under the grant funding agreement.

Most of the outputs in the original grant funding agreement have been achieved; in that the IMET building has been successfully fully built out.

However, the outputs relating to the provision of educational services and apprenticeships have not been fully achieved. The current parties to the grant funding agreement have therefore agreed to modify these outputs to reflect the current situation, by moving the legacy engineering equipment used by the current learner cohort at the IMET building to a new location at CRCs main site in central Cambridge in return for CRC agreeing updated outputs for apprenticeships and jobs from future cohorts of students.

In contractual terms the parties have agreed that, because all of the building outputs have been achieved and only the educational outputs remain, the current grant funding agreement can be modified to firstly, confirm that the building outputs have been achieved and secondly, agree a revised schedule relating to the new educational outputs to be agreed.

CRC will provide CPCA with its proposed new educational outputs and it is proposed that final approval of these outputs and sign-off on the refocused Grant Funding Agreement is delegated to the Director Business and Skills in consultation with the s73 Officer and the Member for Finance.

The parties to the grant funding agreement (CRC and CPCA) have agreed to give CPCA contractual control of the iMET building in the following manner set out below. Please see Heads of Terms for this agreement at Confidential Appendix E.

Assignment Agreement between CPCA and CRC related to iMET building

The parties have agreed to enter into an option agreement (or similar type of document) which will give CPCA contractual control over the iMET for a period of three years. There will be possible extension for further two years to this agreement as agreed by the parties.

If at any time during those three years CPCA require immediate control of the IMET building they will notify CRC in writing; at which point CRC will use reasonable endeavours to complete either a deed of surrender or an assignment of the lease to CPCA.

The reason why we need to complete an option type agreement is because in either case when we exercise the option the co-operation of the landlord, Urban & Civic, will be required.

For CPCA and CRC to complete the option agreement utilising a deed of surrender, the landlord will have had to have offered CPCA a new lease of the iMET building. If a new lease is not possible then CPCA and CRC shall push for an assignment of the existing lease to CPCA (again whilst this will require the consent of the landlord it is easier to obtain than a surrender and new lease).

The CPCA and CRC shall negotiate and enter into the option agreement, as soon as possible which shall set out the terms of the option. It is confirmed that the parties have agreed heads of terms to facilitate this option agreement.

However, due to necessary involvement of the landlord the parties cannot finalise the terms of the option agreement. The Business Board is therefore requested to recommend that delegated authority is given to the Director Business and Skills in consultation with the s73 Officer, the Monitoring Officer and the Lead Member for Finance to finalise the form and to sign-off the option agreement, once full and final agreement with the landlord has been achieved.

Agreement between CPCA and Urban & Civic on Marketing iMET

In relation to the agreement with Urban & Civic (U&C) it is confirmed that negotiations with the landlord are in early stages and the exact process to market the iMET building will need to be finalised.

Strutt and Parker have provided indication of the value for the iMET asset (see confidential Appendix F) but the actual value to be marketed will only be confirmed at the point in time when the iMET building is offered to the open market and once agreements are in place with CRC and the Landlord, This is likely to be before end of 2020 calendar year.

CPCA and U&C will need to agree to market the iMET building either as a leasehold or as a freehold. There will be differing levels of value achieved with a freehold sale clearly providing higher financial return for both CPCA and U&C. This requires cooperation and agreement with the landlord as to the most appropriate approach at the point of time the iMET building is offered to the open market.

Once Officers have met with U&C we will have a better understanding of the requirements of U&C as the landlord, Officers will be able to finalise heads of terms with the landlord, which in turn will also facilitate finalisation of the heads of terms on the other option agreement with CRC and so a delegation is sought.

Significant Implications

3. Financial Implications

3.1 There are no direct financial implications of not pursuing a deal to the Combined Authority or Business Board – while significant grant allocation has been made, there are no ongoing costs as the asset it owned by CRC.

3.2 In the event that a lessee, or buyer if the freehold is surrendered by U&C, is found the Combined Authority would receive the net profit from the asset transactions as a substantial capital income, this has been independently valued by a desk-top analysis and is attached as confidential Appendix F.

3.3 As the income would be accounted for either as a capital receipt, or as a repayment of a capital grant, the receipt cannot be used to offset any revenue costs incurred in the negotiation, sale, or maintenance of the building so these would have to be funded from other sources.

3.4 If the options agreement is entered into there would be potential cost implications, but these are dependent on the details of the agreement which are still being negotiated. The paragraphs below discuss potential financial implications but it is currently not possible to set out the detailed implications as the contracts are still being negotiated.

3.5 In the model where a third party is found to take on the existing lease the potential costs to the Combined Authority are: costs charged by U&C for change of lease charges, any marketing costs not met by U&C, and legal support costs in negotiation of deals (both the Combined Authority's and some, or all of U&Cs).

3.6 In the model where the Combined Authority take on the lease from U&C, and then assign the lease to a third party there are the costs identified in 3.3. as well as potential costs from a lag between the Combined Authority being assigned the lease and the third party taking it on such as business rates, insurance, maintenance, etc.

3.7 The risk of costs of operating and maintaining the building in a lag would be minimised as the Officer with delegated authority would only exercise the option to take over the lease when the organisation the Combined Authority would be assigning the lease on to is identified and ready to take on the responsibilities – i.e. the Combined Authority would only hold the lease for a nominal period of time e.g. a day.

3.8 In the model where a buyer is found, and U&C consent to release CRC from their lease and allow the purchase, then there are minimal cost implications to the Combined Authority as the legal arrangements would be between CRC: U&C and U&C:buyer respectively.

4. Legal Implications

4.1 The transaction as currently envisaged will require the continued cooperation and agreement of the three parties (CPCA, CRC and U&C).

4.2 If the parties continue to collaborate all three will achieve their stated outcome of ensuring the iMET Building is occupied and fully functional, the legacy equipment is best used for training and educational purposes and CPCA recoups as much of the original LEP grant funding as is reasonably possible.

4.3 If we cannot achieve this agreement the outcomes for educational use will not be achieved and the iMET Building will probably remain in a mothballed condition, with no clawback of the original LEP grant funding being recycled into new projects.

4.4 If the Combined Authority do not settle the outstanding legacy issues surrounding the iMET in the collaborative manner envisaged and negotiated, CPCA would desire to settle issues surrounding the IMET building which may include litigation or otherwise not pursue any action at all but this may have reputational issues from not attempting to recover any of the LGF awarded to this project.

4.5 CPCA is not acquiring any asset but rather obtaining contractual control of the asset so the legal and costs implications are therefore limited.

5. Other Significant Implications

5.1 There are no other significant implications.

6. Appendices

6.1 Appendix A (Confidential) – Options for Reuse or Liquidation of the iMET Asset

6.2 Appendix B (Confidential) – Risks & Implications of Legal Recovery of Funds

6.3 Appendix C (Confidential) – Legal Advice to Combined Authority Regarding iMET Lease

6.4 Appendix D (Confidential) – Process Flowchart Mapping Agreements Proposed

6.5 Appendix E (Confidential) – Heads of Terms Assignment Option Agreement with CRC

6.6 Appendix F (Confidential) – Valuation by Strutt and Parker (8th July 2020)

7. Background Papers

7.1 'iMET Investment Update and Options Recommendations' (Agenda Item No: 2.3) - Business Board meeting on 26th May 2020.