



**CAMBRIDGESHIRE
& PETERBOROUGH**
COMBINED AUTHORITY

CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY BOARD	AGENDA ITEM No: 2.8
28 MARCH 2018	PUBLIC REPORT

THE BUSINESS BOARD AND BUSINESS TRANSFER AGREEMENT (FROM THE GREATER CAMBRIDGE GREATER PETERBOROUGH LOCAL ENTERPRISE PARTNERSHIP)

1.0 PURPOSE

- 1.1 The Combined Authority Board, with the support of Government, have agreed to form a new model of strategic leadership through the creation of a Business Board. This report sets out an exciting vision of how it is proposed that the Business Board will operate. This includes its main areas of focus, and its relationship with the Combined Authority Board.
- 1.2 The paper also describes the arrangements for the formal transfer of business from the Greater Cambridge Greater Peterborough Local Enterprise Partnership (GCGP LEP) to the Combined Authority. This includes funding, staffing and programmes of investment. The details are set out in a Business Transfer Agreement. The transfer will take effect from 1st April 2018, and it is expected that the GCGP LEP company will be successfully wound up by 30th April 2018 through a process known as a members voluntary liquidation (MVL).
- 1.3 In order to ensure that the GCGP LEP company has sufficient funds in the bank at the exact date and time of its closure the Mayor has used his general power of competence of under Article 12 Cambridgeshire and Peterborough Combined Authority Order 2017 to take a decision on 20th March 2018 to make additional cash available to enable the GCGP LEP to pay several existing short-term liabilities. This amount of £400,000 is identified in the Business Transfer Agreement.
- 1.4 In addition, the Mayor has agreed to underwrite all other known and unknown liabilities of the LEP going forward in the MVL process. These have been identified in a side letter, which also assesses how any further liabilities that might arise during the finalisation of the voluntary liquidation process will be

covered. The Mayor's decision will enable the Chief Executive to progress the decisions of the GCGP LEP Board on 19 December 2017.

- 1.5 The Combined Authority is asked to agree, in conjunction with the Business Transfer Agreement, the attached Accountable Body Transitional Agreement which will facilitate the transfer of the rights and responsibilities of the accountable body from Cambridgeshire County Council to the Combined Authority with effect from 1st April 2018.
- 1.6 The Combined Authority Board is asked to note the work of the Shadow Business Board so far and the plans that are in place for the Business Board to launch formally on 1st April 2018.

<u>DECISION REQUIRED</u>	
Lead Member:	Councillor Charles Roberts, Deputy Mayor
Lead Officer:	Martin Whiteley, Chief Executive
Forward Plan Ref: None	Key Decision: Yes
<p>The Combined Authority Board is requested to:</p> <p>(a) Agree the vision of how the new Business Board will operate.</p> <p>(b) Agree in principle the Business Transfer Agreement between the Greater Cambridgeshire Greater Peterborough Local Enterprise Partnership to the Cambridgeshire and Peterborough Combined Authority.</p> <p>(c) Ratify the commitment of £400,000 in cash to the GCGP LEP which was made by the Mayor on the 20 March 2018 in order to ensure a successful winding up of the GCGP LEP company.</p> <p>(d) Agree the longer-term indemnity around the GCGP LEP liabilities as set out in the attached side letter.</p> <p>(e) Agree that Legal Counsel and the Section 151 Officer can make any required changes and sign-off on the final fund amount (Schedule 1) in the Accountable Body Transitional Agreement.</p> <p>(f) Agree that any final insubstantial amendments that are required prior to signing the Business Transfer Agreement, Deed of Indemnity and Authorised Body Transitional Agreement can be made by the Legal</p>	<p>Voting arrangements</p> <p>Simple majority of all Members</p>

<p>Counsel, in consultation with the Mayor as portfolio holder for governance.</p> <p>(g) Agree that the Legal Counsel be authorised to sign the Business Transfer Agreement, Deed of Indemnity and Authorised Body Transitional Agreement for and on behalf of the Combined Authority.</p>	
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2.0 VISION FOR THE NEW BUSINESS BOARD

- 2.1 The Shadow Business Board is chaired by Deputy Mayor Cllr Charles Roberts and draws input from key business advisors. It has been tasked with overseeing the development of the governance framework for the new Local Enterprise Partnership. A fundamental aspect of this role is defining and agreeing the key principles and objectives of the Business Board and its relationship with the Combined Authority Board.
- 2.2 The core purpose of the Business Board will be to ensure that the Combined Authority and all those with an interest in our region are working within a single strategic framework and plan for the future economic growth of the area. In line with Government policy this means that the Business Board will be the custodians of the Local Industrial Strategy, along with the key strategies and plans which directly support it.
- 2.3 To fulfil its purpose the Local Industrial Strategy must act as a centre of gravity for all major elements which contribute to economic growth. This can most effectively be achieved by using place as the anchor within our economic strategy – it is places where policies and plans becomes reality for people. It is in each of our cities, towns and villages that new homes, new transport links, new college courses, new job vacancies and every other facet of economic strategy have real life impact.
- 2.4 By taking lead responsibility for place-based growth plans within the context of our Local Industrial Strategy, the Business Board will have a clear and effective role in working alongside and bringing proposals forward to the Combined Authority to shape programmes that achieve our five big ambitions for the area:
- (a) The UK's capital of innovation and productivity
 - (b) Access to a good job within easy reach of home
 - (c) Healthy, thriving and prosperous communities
 - (d) A workforce for the modern world founded on investment in skills and education
 - (e) A high quality sustainable environment

2.5 This will include the Business Board bringing clarity to the key metrics that will be most important to judge the impact and success of the Local Industrial Strategy – suggested at this time to include boosting the productivity of jobs and increasing the levels of export from our area.

Main areas of focus for the Business Board

2.6 It is proposed that as the custodians of the Local Industrial Strategy the Business Board will be clear about what it presents as the main areas of focus in having a direct and main impact on economic growth, building upon the strengths of established LEP services to create a stronger new model. This will include:

- **Local Industrial Strategy** – strategy development, implementation oversight, and monitoring of key objectives
- **Place-based growth plans** – including master plan development for our market towns, oversight of implementation, making investment recommendations, strategically managing business growth zones (including Enterprise Zones)
- **Key sectors** – determining our priority sectors, agreeing plans for their growth, overseeing the products and services that directly stimulate sector growth
- **International trade and exports** – import and export strategies, fostering key places in the world for trade accords, with particular focus on post-Brexit trade and export planning
- **Skills** – strategy and delivery plans to achieve a pipeline of people with skills required by business
- **Major investment opportunities** – maintaining an overview and management of the pipeline of the single most direct investment opportunities facing the area
- **Devolution** – employment improvement and increased exporting impacting on GVA

Business Board relationship with the Combined Authority Board

2.7 The Business Board will lead the development of these areas and will provide strategic advice and recommendations to the Combined Authority Board for decision-making and investment:



2.8 To fulfil this purpose the Business Board should be treated by the Combined Authority as a primary consultee on the development of key strategies and plans, to ensure that these are brought forward in line with the guidance of the Local Industrial Strategy and with place as the fundamental anchor.

2.9 The Business Board will also therefore adopt a key relationship with the Independent Economic Commission which is currently producing the Cambridgeshire and Peterborough Independent Economic Review (CPIER). The Business Board will have an immediate priority to translate the findings of the CPIER into the Local Industrial Strategy, and an ongoing relationship with the Commission to commission any future independent expert input.

2.10 The Combined Authority becoming the Accountable Body for all business growth funding streams and the transfer of LEP business from GCGP LEP to the Business Board from 1 April 2018 will support this new direction and programme of work.

3.0 FINANCIAL POSITION ON BUSINESS TRANSFER

3.1 This section of the report deals with the financial aspects of the transfer of business from GCGP LEP to the Combined Authority.

Capital funding

3.2 Discussions have taken place on the existing capital funding for the LEP programmes of work. These funds are currently held by Cambridgeshire County Council as the Accountable Body. Based on the profiled spend to the end of 2017/18, £8,603,514 is to be transferred on Growth Deal and £7,697,602 on Growing Places with both programmes running to 2021/22. An additional £12,346,916 was transferred by the Department for Business, Energy and Industrial Strategy (BEIS) in March 2018. This provides a total of £28,648,032 which will be transferred from Cambridge County Council to the Combined Authority on 1 April 2018

3.3 The rights and responsibilities connected with the arrangements for the transfer of accountable body status from Cambridgeshire County Council to the Combined Authority are set out in a separate draft Accountable Body Transitional Agreement (attached at Appendix C).

3.4 The Combined Authority is also working with the current Accountable Body to ensure that there is a smooth handover and clear understanding of the current working arrangements to get the new arrangements up and running.

Short and Long-Term Liabilities

3.5 The Combined Authority and the GCGP LEP have also been working closely with the Government over the past three months to reduce the level of liabilities. Assistance has been provided by BEIS in reducing the level of debtors and therefore simplifying the GCGP LEP financial arrangements. The net financial liabilities of the GCGP LEP have been quantified by Grant Thornton. Whilst the GCGP LEP has a positive position in terms of cash at the Bank of £767,434 (as at 15 March 2018), in order to enable Member Voluntary Liquidation to proceed there must be sufficient cash to cover all known financial liabilities. Currently when all the figures are considered there is a £322,235 shortfall. The decision by the Mayor on the 20 March to commit £400,000 has therefore addressed this short term financial liability and will enable most of the creditors to be paid.

The assets, liabilities and equity have been identified as on and off-balance sheet. There are detailed accounting definitions for how these items are split between those appearing as on balance sheet and off-balance sheet items.

Off balance sheet items are typically those which were not recorded on the balance sheet at 31 December 2017. There is £309,701 in on-balance sheet liabilities and £2,099,225 in off-balance sheet liabilities associated with the Business Transfer Agreement. Most of the off-balance sheet liabilities represent five schemes that have been funded from the Growing Places Fund with repayments to be made from future Enterprise Zone receipts. These five schemes in total add up to £1,907,000 of which £1,067,159 will have been spent by 31 March 2018.

- 3.6 There is £928,845 in on-balance sheet assets and £1,137,436 in off balance sheet assets associated with the Business Transfer Agreement. However, the off-balance sheet assets do not include the receipts for Alconbury Weald Enterprise Zone which are still under discussion for the current financial year.

Unidentified Liabilities

- 3.7 In addition to the financial amounts above there is the question of unidentified liabilities. Whilst significant work has been undertaken within the GCGP LEP and by Grant Thornton to clarify the finances and commitments there is a risk that something additional could materialise during the MVL process.
- 3.8 It is anticipated that there will be a contingency of £110,767 in the account at transfer and additional outstanding debtors of £374,948 to be followed up by the Combined Authority. Therefore, a separate indemnity in the form of a side letter to cover any other long-term liabilities (particularly unknown liabilities) has also been produced and is attached at Appendix B for agreement.

Governance Changes

- 3.9 The GCGP LEP Articles of Association will be revised to ensure that any cash left at the end of the MVL process is ultimately paid to the Combined Authority.
- 3.10 A letter has also been sent to BEIS to make future payments of revenue and capital to the Combined Authority as the new Accountable Body from the 1 April 2018.

4.0 BUSINESS TRANSFER AGREEMENT

- 4.1 The Agreement will transfer all assets and liabilities apart from the money in the GCGP LEP bank account to the Combined Authority effective from the 1 April 2018, subject to third party consents required to transfer the relevant contracts. Points to highlight in the Agreement attached at Appendix A are:

- Clause 4 covers the Price payable by the Buyer for the Business and Assets at Completion which is currently £400,000 and reflects the upfront cash that the Mayor has made available.
- Clause 9 covers TUPE. The agreement provides for wide ranging indemnities in respect of the transfer of employees and the TUPE process. The GCGP LEP currently employs 25 FTE and it is proposed that these staff will transfer on their existing terms and conditions on 1 April 2018.
- Clause 13 covers the business and supplier contracts. A review of the contracts has taken place and copies of the contracts made available to the legal advisors. The various types of contract and agreement have been reviewed externally to highlight the transferability of such contracts, the consents required for a transfer and the risks and liabilities for the Combined Authority once the business is transferred to the Combined Authority.

Currently the GCGP LEP has 74 live contracts or agreements in place and 99 arrangements that have concluded since the GCGP LEP was established in 2012. In addition, there are 11 monthly recurring contracts.

The external legal advice has been to progress the novation of contracts once the business transfer has taken place as this will take time to conclude. From the 1 April 2018, the Combined Authority will assume all obligations to perform under all contracts that were previously with the LEP, pending agreement with the relevant counterparties to a formal novation of these contracts. The performance of such obligations is underpinned by a wide-ranging indemnity from the Combined Authority in the Business Transfer Agreement.

As highlighted previously, a separate agreement has also been produced on the wide-ranging indemnities in respect of the Combined Authority meeting the known and unknown liabilities of the GCGP LEP in the MVL process.

- Schedule 1 covers the leasehold arrangements. The GCGP LEP currently rents property from Urban and Civic, a new lease has been agreed with the Combined Authority from 1 April 2018. As a result, there will be no need to transfer the existing leases of the GCGP LEP to the Combined Authority at completion of the Business Transfer Agreement.

4.2 The attached Business Transfer Agreement will need to be approved by the Combined Authority on 28 March 2018 in order to enable the Chief Executive,

acting in his capacity as a Board member of the GCGP LEP to agree the terms of transfer at the subsequent GCGP LEP Meeting and enter into the Business Transfer Agreement on behalf of the GCGP LEP on 29 March 2018. The Business Transfer Agreement will then become effective from 1 April 2018.

- 4.3 Given that the Chief Executive is a Director of the GCGP LEP Legal Counsel will sign the Business Transfer Agreement on behalf of the Combined Authority to prevent any conflict of interest. Legal Counsel can, by delegated powers, make any minor amendments in discussion with the Mayor, as portfolio holder for governance, prior to signing. (see proposed resolutions on page 2 above).
- 4.4 For completeness, the GCGP also invested in the Medtech Accelerator in 2016/17 which will transfer to the Combined Authority. This has a value of £500,000 and is covered in a separate share transfer agreement. Please note this should be regarded as an illiquid asset and therefore is not be available as cash to help meet the funding requirement for the other liabilities.

5.0 ACCOUNTABLE BODY TRANSITIONAL ARRANGEMENT

- 5.1 The Accountable Body Transitional Agreement (Appendix C) transfers Accountable Body Status together with the associated rights and responsibilities from Cambridgeshire County Council to the Combined Authority with effect from 1st April 2018.
- 5.2 Specific points to highlight are as follows:
- Clause 5 confirms that the funds held by Cambridgeshire County Council as accountable body on behalf of GCGP will be transferred to the Combined Authority with effect from the planned completion date (currently 1st April 2018).
 - Clause 6 confirms that once the transfer has taken place, the Combined Authority will indemnify CCC against any financial liability arising as a result of it having acted as the accountable body and provided that it is notified to them within 9 months of the date of the ABT Agreement and other prescribed criteria.
 - Clause 7 requires CCC to permit the Combined Authority access to any records held in connection with it having acted as the accountable body for a period of 12 months following the transfer.
 - Clause 8 requires CCC to provide such assistance as the Combined Authority may require in fulfilling its role as accountable body for a period of 12 months following the transfer.
 - Schedule 1 contains a list of the funds held by CCC on behalf of GCGP and which will transfer to the Combined Authority in accordance with clause 5. Given the ongoing payments to schemes a delegation has

been sought to the Section 151 Officer and Legal Counsel to finalise the fund amounts prior to transfer.

6.0 NEW BUSINESS BOARD

- 6.1 A Shadow Business Board has been established under the leadership of Cllr Charles Roberts as previously agreed by the Combined Authority Board. The Shadow Business Board also has representatives from business, education and the public sector (Richard Tuncliffe CBI, Professor Andy Neely Cambridge University, Cllr Wayne Fitzgerald Peterborough City Council, Cllr Lance Stanbury, Forest Heath District Council).
- 6.2 The Shadow Board have to date developed the vision and areas of focus for the Board, as set out earlier in this paper. It is also considering draft terms of reference, membership of the full Board and the process for engaging appropriate members. Details on these later items will be brought back to the Combined Authority Board for approval in the near future.

7.0 FINANCIAL IMPLICATIONS

- 7.1 The financial implications have been detailed in the previous sections and set out in the Business Transfer Agreement. In summary the position for the Combined Authority is as follows:-

For Member Voluntary Liquidation purposes, the Liquidation Statement proposes the transfer of £829k liabilities to Cambridgeshire and Peterborough Combined Authority (CPCA). This includes £1,907k of liabilities which represent commitments made by the LEP, funded initially through CCC held capital funds, but ultimately which were to be funded from future enterprise zone receipts by 2020/21 at the latest.

Therefore, the true result of the transfer of assets and liabilities from GCGP LEP, results in a net surplus position of £1,078k. After the contribution transfer CPCA to GCCP LEP of £400k, this leaves a residual surplus of £678k. Further details are set out in the table over the page.

Greater Cambridge and Greater Peterborough Enterprise Partnership Limited

	<u>Forecast as at</u>		
	<u>31 March</u>	<u>GCGP -</u>	<u>Transfer to</u>
	<u>2018/£k</u>	<u>MVL/£k</u>	<u>CA/£k</u>
Net Position per the MVL Statement	(851.510)	296.213	(1,147.723)
Corporation Tax Adjustment	(300.000)	(300.000)	0.000
Delayed Debtor receipts	0.000	(318.448)	318.448
Member Voluntary Liquidation Position	(1,151.510)	(322.235)	(829.275)
<u>CCC Capital Fund Liabilities to be repaid from Enterprise Zone receipts</u>			
2016/17 due 2017/18			39.671
2017/18 due 2018/19			915.511
2018/19 due 2019/20			801.743
2019/20 due 2020/21			150.075
Total liabilities covered by EZ receipts	1,907.000		1,907.000
Net Financial Position of CPCA			1,077.725
Contribution to GCGP - MVL		400.000	(400.000)
2018/19 CPCA position	755.490	77.765	677.725

8.0 LEGAL IMPLICATIONS

8.1 These are contained within the body of the report

9.0 SIGNIFICANT IMPLICATIONS

9.1 In agreeing the Business Transfer Agreement the Combined Authority will take on:-

- 25 FTE new members of staff who will TUPE from the GCGP LEP.
- 173 contracts and agreements for programmes of work across a wider economic area

- known and unknown liabilities and costs as set out in the attached paper and indemnify the GCGP LEP against these in the future. Significant funding will also be available locally through the enterprise zone receipts
- Assets totalling £918,899, excluding enterprise zone receipts for Alconbury Weald

10.0 APPENDICES

Appendix A - Draft Business Transfer Agreement

Appendix B - Deed of Indemnity

Appendix C - Accountable Body Transitional Agreement

Source Documents	Location
Minutes and papers from the previous Combined Authority Board Meeting.	Combined Authority website http://cambridgeshirepeterborough-ca.gov.uk
Minutes and papers from the GCGP LEP meetings	Local Enterprise Partnership website http://www.gcgp.co.uk/