



<b>CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY BOARD</b>	<b>AGENDA ITEM No: 3.2</b>
<b>5 AUGUST 2020</b>	<b>PUBLIC REPORT</b>

**PROPOSAL FOR A CORPORATE VEHICLE TO BRING FORWARD  
CAMBRIDGESHIRE AUTONOMOUS METRO ("CAM" or the "Programme")**

**1.0 PURPOSE**

- 1.1. This report sets out the proposal and recommendation for a corporate special purpose vehicle (the "SPV") which will act as lead entity in the further development of the CAM programme, and describes how the SPV will be formed, and how it will operate for the first phase of its work.
- 1.2. This report sets out why an SPV is needed for the CAM programme, why it is needed now, how it will be led, staffed, funded, and resourced, and how the CPCA will oversee its work as shareholder.
- 1.3. In particular, this report sets out:
  - (a) why a separate legal entity is required;
  - (b) the powers for the establishment and incorporation of the SPV;
  - (c) the proposed governance structure and high level organisational design of the SPV;
  - (d) the role, functions, and decision-making powers of the SPV in delivering CAM;
  - (e) the oversight of the SPV by the CPCA;
  - (f) how the SPV will be funded.
- 1.4. The magnitude and complexity of the CAM programme is such that unless dedicated resource, funding routes and private sector involvement is not established early within the programme lifecycle, it could potentially miss achieving its objectives and delivery. This is therefore a key step towards being an "intelligent client", which will be beneficial for internal governance and organisation, but should also serve to build (and maintain) market confidence.
- 1.5. This report outlines the CPCA's current assessment of how the SPV may take shape and evolve to deliver the CAM: the focus of the SPV will evolve over

time, as the programme progresses, and as a result of private sector involvement and third party investment

<b><u>DECISION REQUIRED</u></b>	
<b>Lead Member:</b>	<b>Mayor James Palmer</b>
<b>Lead Officer:</b>	<b>Kim Sawyer</b>
<b>Forward Plan Ref: KD2020/022</b>	<b>Key Decision: Yes</b>
<p>The Combined Authority Board is recommended to:</p> <p>(a) Approve the incorporation of the CAM SPV.</p> <p>(b) Appoint the following interim directors until the confirmed appointment of the members of the Board, following an external recruitment process:</p> <p style="padding-left: 40px;">Kim Sawyer, Chief Executive John Hill, Chief Executive Jon Alsop, Chief Finance Officer</p> <p>(c) Approve the company Articles.</p> <p>(d) Approve the proposed process for recruitment of the Board members, at Appendix 7, and note the expected levels of remuneration as set out in paragraph 6.9.</p> <p>(e) Note the corporate support to be provided by the CPCA to the SPV.</p> <p>(f) Approve the Mayor as representative of the CPCA as non-voting shareholder director to attend the interim and substantive Board.</p> <p>(g) Note and approve the proposed governance structures and committees of the CAM SPV at Appendix 4.</p> <p>(h) Approve the draft initial Business Plan in the confidential Appendix 6, and request that a further report be brought back to the</p>	<p><b>Voting arrangements</b></p> <p>Simple majority of all Members</p>

<p>September meeting of the Combined Authority Board seeking approval for:</p> <ul style="list-style-type: none"> <li>a. The initial Business Plan</li> <li>b. The initial equity investment</li> <li>c. The proposed board members and chair</li> <li>d. The Shareholder and SPV Agreement</li> </ul> <p>(i) Note and approve the mobilisation expenditure and approve the drawdown of £1,400,000 from the Medium-Term Revenue Financial Plan to progress the consultancy work set out in section 5.</p> <p>(j) To approve the £1m Equity Investment in the CAM SPV from Capital Gainshare as set out in the MTFP.</p> <p>(k) Subject to the approval of the LGF application for £1m, to approve the use this to take an equity subscription of shares in the CAM SPV.</p>	
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## 2.0 BACKGROUND: THE NATIONAL SIGNIFICANCE OF THE CAM

### Rationale for the establishment of the SPV

- 2.1. The report attached at Appendix 1, *The National Significance of the CAM* sets out the case for the CAM, and why the time for delivery being is now.
- 2.2. The Local Transport Plan identifies CAM as a key priority for the CPCA and which seeks to meet many of the objectives of the Cambridgeshire and Peterborough Independent Economic Review (**the CPIER Report**), including:
- (a) the **opportunity for housing growth and affordable private homes** within the administrative areas of the CPCA;
  - (b) supporting the **growth of employment**, specifically helping to combat geographical "brain-drain" in knowledge-intensive industries (e.g. pharma and tech markets (which are key to the success of the region)); and
  - (c) longer term, **CAM will potentially increase social mobility** to Peterborough and the Fens, therefore 'levelling up' the region.

- 2.3. The CAM Partnership Board's Delivery Sub-Group was formed in mid-2019 to review the delivery options available to the CPCA. Its remit was to determine "the how" and "by whom" CAM should best be effectively delivered. In assessing these options, the CAM Delivery Sub-Group made the following observations, that CAM:
- (a) **is not simply a transport programme.** It is the tool by which the outcomes of the CPIER Report can be delivered, unlocking growth and ensuring the future success of the region can be retained. Those outcomes are the objectives of the CPCA;
  - (b) **is as important to the national economy as it is to the regional economy** as it offers the means to address the threat to loss of key global sectors within the UK and potentially a key lever for helping to "re-boot" the regional economy and housing sector in the light of the Covid-19 Pandemic and post-Brexit;
  - (c) offers significant opportunities to **provide a smart transport system in one of the most technologically advanced areas in the world;**
  - (d) can make a **significant contribution towards the UK's 2050 Net-Zero Carbon** agenda, setting the standard for garden villages and improve wellbeing;
  - (e) can offer commercial opportunities to implement the Mayor's approach to **land value capture;** and
  - (f) There is the potential to create a new standard for delivery of mobility in urban transport and the **creation of world class leading solutions and know-how** of smart, low carbon mass transport systems.
- 2.4. The CAM Delivery Sub-Group recommended that the SPV be established to deliver CAM concluding that the expertise required to deliver a programme of this complexity and scope, and the dedicated resource required, could not be realised within the CPCA and existing structures.
- 2.5. The CAM Delivery Sub-Group recognised that there are many examples in the UK and internationally of separate bodies being established and built specifically for the delivery of large infrastructure programmes, for example, in the UK, East West Rail Company, which is the most comparable example to the size and scope of CAM. A common thread running through similar programmes is that each has established a separate body in the early stages to ensure they have the expertise, focus and dedicated resources to effectively drive the programme forward and maximise value.

### **Why is an SPV needed?**

- 2.6. Appendix 2 explores delivery options and sets out why an SPV is the best form of delivering the CAM. These are more fully described in appendix 2, but include that an SPV:

- (a) Is an accepted and understood delivery model: utilised in large infrastructure programmes such as HS2, Crossrail, East West Rail Co. They promote Government and investor/market confidence.
- (b) Allows the right balance of leadership, expertise, and dedicated resource: they provide leadership to guide the programme and manage relationships with key stakeholders
- (c) Build in necessary oversight and assurance: the clear separation of the SPV from the CPCA as shareholder, and the internal, dedicated, assurance framework provide critical guidance and programme assurance.
- (d) Provides the commercial environment in which investment may be attracted and the programme promoted to Government.
- (e) Allows the CPCA to invest capital funding which, for the SPV, may be treated as crucial revenue support during its development phase.
- (f) Ensures CPCA control while allowing investment to come forward: the CPCA will be sole shareholder through an agreed governance structure, retaining control over certain strategic and operational decisions, but allowing appropriate freedom to deliver at pace.
- (g) Provides the agility to evolve alongside the CAM programme lifecycle: the SPV allows for change and development as the project develops and programme delivers through its future stages, and differing investment and participation profiles.

### **Where will the SPV sit in the existing corporate structure operated by CPCA?**

2.7. The SPV will, upon incorporation, be a wholly owned direct subsidiary of the CPCA.

### **Why should the SPV be established so early in the process?**

2.8. The significance of the CAM project is explored in the report at Appendix 1. Establishing the SPV now allows for the appointment of a Board and an executive leadership team to direct the further development of the CAM, and begin the critical process of promoting the scheme consents, attracting funding and ensuring value for money. As is shown through the proposed governance structure at Appendix 3, the CPCA will retain the strategic decision-making role over the Programme and so maintain an important strategic role in the development of the CAM.

### **Where have company structures been previously used by public sector for delivery of major and complex projects?**

2.9. Appendix 2 sets out the reason for an SPV, and major programmes and projects are typically delivered through delivery bodies/organisations, which are arms-length from the sponsoring public sector bodies. Whilst this could be through executive agencies or public corporations, a delivery company is

preferred for the reasons set out in that appendix. The focus of the SPV will be the delivery of the programme, through dedicated expertise and resources.

2.10. Crossrail Limited (wholly owned by Transport for London) and High Speed Two (HS2) Limited (wholly owned by the Secretary of State for Transport) are examples of delivery bodies that are wholly owned by the public sector. There are examples of other corporate arrangements between the public and private sectors, which typically are formed at a later stage in the delivery programme. For example:

- (a) **PPP project companies where the authority takes an equity stake** – this type of model is being promoted by the Welsh Government in its Mutual Investment Model (MIM) programme, and builds on similar set-ups in e.g. the Scottish non-profit distributing (NPD) model. The public sector participation in these models could be through a significant shareholding in the project SPV (MIM) or through a “golden share” (NPD) which gives the authority certain controls in the governance structure.
- (b) **Government-owned Contractor-operated**, where the government controls the assets, but operated on a for-profit basis by a private company. This model was adopted in the defence sector, but has become less used in recent years.
- (c) **Local Education Partnerships**, which are joint vehicles between the public and private sector formed for the purposes of delivering the Building Schools for the Future programme, and includes in the governance structure a Strategic Partnering Board which serves as a mechanism for consulting on future strategy for delivery as well as performance management and monitoring.
- (d) **Incorporated Joint Ventures between the public and private sector** to exploit value in publicly owned assets, e.g. the Earls Court development.

2.11. It is important to distinguish between the function of the proposed SPV, which is to progress the project to deliver the CAM, and future arrangements (such as those described above and including between the public and private sector but also public sector entities) where the function is an implementation/operational one.

### **3.0 THE DRAFT INITIAL BUSINESS PLAN**

The draft initial Business Plan at Appendix 6 represents the first draft Business Plan of the CAM SPV. This draft will be further revised for approval at the September meeting of the Combined Authority.

## **4.0 THE ROLE OF THE CPCA IN OVERSEEING AND SUPPORTING THE CAM SPV**

### **INTERIM DIRECTORS**

- 4.1. It is proposed that upon incorporation the Chief Executives and Chief Financial Officer will be appointed to the board of the CAM SPV as directors, on an interim basis and up until the appointment of a chair, and board.
- 4.2. The purpose of the interim appointments will be to:
  - (a) oversee the recruitment process for the Board membership;
  - (b) carry out all necessary administrative processes to establish the CAM SPV so that it will be fully operational following the CPCA Board meeting in September;
  - (c) develop the draft business plan for approval at the September Board;
  - (d) begin the recruitment process for the Chief Executive, Strategy Director and the Technical Director to the organisational structure. The recruitment processes will follow the constitutional rules of the CPCA and any interview and appointment processes will involve the CPCA members. Further detail on the recruitment of the Chief Executive and the Director of Strategy will be set out in the report to the Board in September;
  - (e) develop the shareholder agreement for approval by the CPCA Board in September.

### **SHAREHOLDER REPRESENTATIVE DIRECTOR**

- 4.3. It is further proposed that the Mayor be appointed as the shareholder representative director, on the board of the CAM SPV. The shareholder director will not have a vote, and will attend meetings solely on behalf of the CPCA to represent the interests of the shareholder in the development of the company.

### **CPCA INTERNAL GOVERNANCE ARRANGEMENTS**

- 4.4. The CPCA has established an internal governance framework to manage the development of the SPV and the scale of the CAM programme. The internal governance framework will operate during the mobilisation phase to provide support and oversight to the interim Board of the CAM SPV, and in particular to assist:
  - (a) in the detailed development of the company governance structures and documentation;
  - (b) recruitment to the board and organisational structure;

- (c) programme management review;
  - (d) recruitment to the CAM SPV;
  - (e) resource and support arrangements for the CAM SPV;
  - (f) The team, roles, and responsibilities are set out below:
    - a. The Chief Executives will be responsible for ensuring that the transition to CAM SPV. is successful, that the Mayor and CPCA members are updated on the work being undertaken and identify appropriate governance arrangements leading to timely decision making.
    - b. The Chief Executives are leading in the following areas:
      - i) Kim Sawyer: company governance, Board recruitment, delivery strategy and programme management review
      - ii) John Hill: recruitment to the CAM SPV, senior officer structure
- 4.5. The Chief Executives will hold a regular weekly team meeting for officers of the CPCA assigned to manage the transition to the CAM SPV. These officers are identified as follows:
- (a) Budget (Jon Alsop (Chief Finance Officer)/Jilur Hussain (Finance Officer))
  - (b) Governance (Robert Parkin (Chief Legal Officer and Monitoring Officer))
  - (c) Procurement (Heidi Parker (Procurement Manager))
  - (d) HR (Martin Jaynes (HR Manager))
  - (e) Communications (Luke Page)
- 4.6. Further weekly meetings will be held by the lead Chief Executive to manage the external contracts of the CAM project as follows:
- (a) Kim Sawyer – management of the Deloitte LLP contract and the legal services support from Pinsent Masons LLP
  - (b) John Hill – management of the recruitment consultants



## 5.0 THE PROJECT CONSULTANCY TEAM

### TECHNICAL, FINANCIAL AND LEGAL SUPPORT

5.1. The table below sets out the additional allocation from the May CPCA Board meeting for the CAM. It also shows the Officer Decision Notices that have been taken by the Chief Executives under their delegated powers. The CPCA has been supported in its work to date by Deloitte and Pinsent Masons LLP, each of which were appointed through a Crown and Commercial Service framework agreement. This work will continue to support the establishment and early work of CAM SPV and the necessary work to reassess and produce an Outline Business Case.

Additional CAM Budget as at May 2020 Board (Subject to Approval)				2020/21		
				Revenue	Revenue	Capital
CAM - innovation co (Consultancy / Delivery and Strategy Writing)				4,415,214		
CAM SPV - to include Procurement / Procurement Competition					2,500,000	
CAM innovation company - Operational costs						1,000,000
<b>Officer Decision Notices (ODN)</b>						
	<b>ODN Number</b>	<b>Contract Value</b>	<b>Actual costs 2020/21</b>			
<b>Workstreams 1-4</b>						
CAMco Governance Framework Organisational Design Shadow Board Selection				ODN182-2020	495,000	356,000
LGF Application				ODN183-2020	90,000	90,000
<b>Workstreams 7 &amp; 8</b>						
Communications and Engagement Strategy / National significance of the CAM				ODN 189-2020	183,200	183,200
<b>Workstream 5</b> Innovation Procurement				ODN 180-2020	286,000	286,000
Programme Management Review				ODN 188-2020	115,450	115,450
<b>Workstream 6</b> Delivery Strategy Scoping				ODN 194-2020	195,800	195,800
Legal Advice				ODN 193-2020	65,036	65,036
<b>Total ODN's</b>					<b>1,291,486</b>	
<b>Approval to spend required;</b>						
Delivery Strategy Writing					1,200,000	
Procurement Competition						200,000
CAM SPV Operational Costs						1,000,000

5.2. The Board is therefore asked to approve a drawdown of the following to cover anticipated expenditure commitments to the end of September and a further paper will be presented to the Board in September providing an updated financial position;

5.3. Delivery and Strategy Writing £1,200,000 to further development of the following stands of work:

- Development of the funding and financing strategy, coordination with the CAM Finance Advisory Committee, and preparation of applications for immediate funding opportunities.

- (b) Development of the land and growth strategies, to be coordinated with the Garden Villages programme. This strategy will set out the visions for the garden villages and how and when that development could come forward. The housing development is an important part of the land value capture proposals which will be identified and tested through the funding and financing strategy. It is expected that the initial assessment of the land and growth work will complete in August 2020 and work will be undertaken to develop the concept and vision with CPCA members. This initial assessment will provide a recommendation for the next steps that need to be undertaken to support the delivery of the Land and Growth Strategy.

5.4. Procurement Competition - £200,000 for the preparation of the tender documents and running the procurement process.

5.5. CAM SPV Operational Costs - £1,000,000 to cover the running costs of the SPV including Staff costs, Board costs as well as all overhead costs.

5.6. While Pinsent Masons LLP will be involved in supporting the incorporation of CAM SPV the limits of the scope of their appointment will then be reached. Accordingly, a procurement exercise for a fresh appointment of legal advisor has been commenced, in which Pinsent Masons LLP will be invited to participate. Any further spend in relation to additional legal fees will be reported to the September Board for approval.

5.7. The CPCA is expected to be successful in its application for £1m of Local Growth Fund to support the development of the SPV and will use the funding to create the jobs which deliver the work of the SPV, including work to recruit the Chief Executive, Director of Strategy, and Technical Director. A further report will be brought to the September meeting of the Combined Authority Board to seek match funding against the LGF provision, which will be used to support the work of the CAM SPV across its programme, and in seeking further funding.

## **6.0 CAM SPV – DELIVERY TEAM AND ORGANISATIONAL DESIGN**

### **What is the proposed Governance structure for the SPV?**

6.1 Deloitte LLP has developed a governance model for CPCA to regulate the activities and decision-making of the SPV. This is at Appendix 3.

### **Organisational design: board appointments, staffing and resourcing**

6.2 In addition to the proposed governance structure (which identifies key roles for the SPV personnel), an organisational design has been developed by Deloitte LLP and is set out at Appendix 4.

## **Staffing**

- 6.3 In the mobilisation phase, it is proposed that the CPCA provides corporate resource support to the CAM SPV, organised through the internal governance arrangements described above and recorded in the Shareholder and SPV Agreement.
- 6.4 In order to ensure efficiency and economy, the CPCA Board is not being asked to approve recruitment to the organisational design as set out at Appendix 4. The view of the internal governance team led by the Chief Executives is that initially only the roles of the Chief Executive, the Director of Strategy, and Technical Director are necessary to recruit to. These roles will be key to ensuring the next stages for delivery of the OBC and the development of a funding and financing strategy which will deliver the necessary Government investment to deliver this key project.
- 6.5 The CPCA will lead the recruitment of the CAM SPV Chief Executive, the Director of Strategy, and Technical Director to begin the work of the CAM SPV. The CAM SPV leadership, through its business plan approved by the CPCA Board will further determine the pace and recruitment of further support required as the programme continues through its development lifecycle to ensure a lean structure is maintained and appropriate use is made of public funds.

## **How will the SPV be funded?**

- 6.6 The CPCA made an application for LGF funding which to which is proposes to invest in the CAM SPV taking an equity subscription for shares
- 6.7 All funding will need to comply with the rules on State Aid and be in accordance with Operator Economy Investor Principles. Such State Aid analysis will need to be undertaken upon conclusion of the initial funding options. It is envisaged that ultimately funding will need to be considered via DfT and additional public sector pathways (such as CIL, TiF and Business Rates etc.) as well as private equity funding. The financing strategy will be a responsibility of the SPV to develop, and is expected to involve private sector equity and debt, and the development of detailed financial analysis and modelling and a more mature market understanding of requirements and the relevant revenue projections.

## **How will the Chair and Board be appointed and remunerated?**

- 6.8 CPCA Chief Executives will lead the recruitment of the Chair and Board members. Given the unique national significance of this project, a high profile Chair will be sought, and Board members with demonstrable expertise in the sector. The recruitment process, (including details of the participants in the interview panel) is described at Appendix 7.
- 6.9 From a market survey, (and bench marked against Cross Rail), remuneration for the Chair is anticipated to be in the region of £35k per annum, and the board members £5k per annum. Remuneration is linked to the expertise and experience of those applying for the position and, in order to secure the

appropriate candidates, negotiation on an appropriate remuneration will form part of the recruitment process for the Board members.

- 6.10 The approval of the CPCA Board for the appointment and terms of their remuneration will feature in the content of the further report to the Combined Authority Board in September of this year.

## **7 CAM SPV – MANAGEMENT, AND CPCA SHAREHOLDER PARTICIPATION**

- 7.1 The key corporate document for regulation of the day-to-day activity of the CAM SPV will be provided through the Articles of Association which are at appendix 5. These are the standard Articles of Association and will be tailored to the needs of the CAM SPV upon appointment of the Board members.

### **Shareholder and SPV Agreement**

- 7.2 A Shareholder and SPV Agreement between the CPCA, and the SPV will define the contractual responsibilities and obligations for delivery of the CAM programme.
- 7.3 The Shareholder and SPV Agreement will describe what matters are reserved to the CPCA as shareholder, for approval. These will include the following:
- (a) Approval of the budget for the SPV.
  - (b) Approval of the Business Plan/PID (which will set out the full detail of the reserved matters).
  - (c) Approval of entry or amendment to material contracts.
  - (d) Approval of material funding.
  - (e) Corporate changes to the SPV.
  - (f) Changes to policies.

The Shareholder and SPV Agreement which will be brought to the next meeting of the Combined Authority Board will provide the full detail of those reserved matters.

- 7.4 Key issues to be explored and developed include:
- (a) **Procurement strategy** – process for purchase of goods and services for CAM (both during establishment and BAU).
  - (b) **Risk mitigation strategy** – determined in accordance with risk matrix and contracts strategy. Consideration of insurances etc.
- 7.5 At a future stage of the project, where other shareholders are included in the SPV, the CPCA will also need to consider:
- (a) **Deadlock strategy** – to deal with how the parties agree in a deadlock situation.

- (b) **Dis-enfranchisement of shareholder rights** - consider circumstances where participation of shareholder may be limited/suspended if in default/failure to provide funding etc.

### **Delivery of the component projects of CAM**

7.6 The SPV will have a role to play in delivering each of the various component projects of the CAM network. This includes:

- (a) **Promoting the project for consent** – the SPV will be responsible for formally obtaining consent for the project components of CAM. It will advance work to the consent application stage, (e.g. under the Transport and Works Act 1992 regime).
- (b) **Ownership of project powers and consents** – following a consenting process, the SPV may itself be invested with statutory powers and consents to permit its construction and operation. It may act in this way, or it may advance the project to a stage where the CPCA ultimately acts as beneficiary.
- (c) **Oversight of CAM component projects promoted by GCP** – the CAM SPV work with the GCP to promote a joined up approach to the CAM network, and seek to work with the GCP partners to develop an effective allocation of statutory powers and consents (for example, GCP only, the SPV only, or a combination of both).
- (d) **Procurement and contracting of CPCA's CAM projects** – the CAM SPV may act as the contracting authority for the procurement for an innovative solutions/design for the vehicle to deliver the CAM.
- (e) **The CAM SPV will as the delivery body for the CPCA co-ordinate the development of the wider CAM programme to include development of the OBC, the funding and financing strategy, the incorporation of the garden villages concept, the promotion of the CAM project into Government.**

### **Stakeholder engagement**

7.7 The CAM SPV will lead and coordinate engagement with key stakeholders to promote support and buy-in. This will encompass statutory bodies, local authorities, businesses and landowners, as well as the public.

7.8 The internal governance team led by the Chief Executives have developed a communications and engagement strategy for approval as part of the Business Plan. This will be reviewed by the CPCA Board in September.

### **Legislation and policy development**

7.9 The CAM programme is innovative in nature, and therefore it is likely that changes in legislation and central government policy will be required to fully

realise the CAM vision. The CAM SPV, in its role of driving forward the programme, will have a key role in lobbying government on policy and legislative change as necessary. The SPV will also have a role in terms of any local policy development around the CAM. For example, feeding into local planning policy processes and CPCA local transport plan policies.

## **8 FINANCIAL IMPLICATIONS**

### **Capitalisation of the SPV**

- 8.1 The SPV will be capitalised through a mix of quasi equity (shareholder loans) and equity funding (share subscription), with those sums and the funding package being approved at the September meeting of the Combined Authority Board. The capital sums required will depend upon the finalisation of resourcing/employee requirements of the SPV, which will be developed within the Business Plan.

## **9 LEGAL IMPLICATIONS**

### **The general powers to establish a company**

- 9.1 The CPCA is constituted by the Cambridgeshire and Peterborough Combined Authority Order 2017 ("Order"). Article 11 of the Order states that the CPCA has a general power of competence in the same manner as local authorities and that Chapter 1 of Part 1 of the Localism Act 2011 (the "2011 Act") shall have effect in relation to the CPCA as it currently applies to local authorities. For the purposes of Section 4, the reference to "local authority" applies equally to the CPCA.
- 9.2 The General Power of Competence contained in Section 1 of the 2011 Act states that a Local Authority is permitted to do anything which an individual may do, therefore, the CPCA has the power to establish a company or subsidiary vehicle in order to carry on its ordinary functions as a combined authority.

### **The power to trade and undertake commercial activity using a company**

- 9.3 Section 95 of the Local Government Act 2003 confirms that where local authorities are seeking to utilise a company to undertake any of its statutory functions:
- (a) the local authority may utilise a corporate vehicle to undertake a commercial purpose, provided that it is for the purpose of carrying out its ordinary functions;
  - (b) it must have prepared a business case approved by the relevant authority; and

- (c) the cost of accommodation, goods, services, staff etc. must be recovered from the company in pursuance of any agreement and/or arrangement to facilitate the exercise of the power ("Trading Power").

9.4 The Trading Power is widely drawn to include all functions, whether express, implied or incidental. This would therefore cover any incidental functions carried out under Section 111 of the Local Government Act 1972. Section 111(3) of the Local Government Act 1972 does not inhibit the use of these powers, as the power to trade is Section 95 (and not Section 111).

### **The form of company which should be used when establishing a commercial entity**

9.5 Section 95 of the Local Government Act and HM Treasury Guidance confirms that the establishment of a trading arm should be done so for the encouragement of market engagement with the private sector and to encourage new players into the marketplace.

9.6 HM Treasury Guidance and Section 95 are clear that the use of the Trading Power should be conducted on a fully transparent basis and local authorities should not seek to distort markets through the provision of trading companies. It is therefore advised that where a local authority seeks to establish a vehicle for a commercial purpose, that such company:

- (a) should be established as a company limited by shares to prevent market distortion, compete on a "level playing field" with the private sector and provide transparency for tax purposes; and
- (b) should not have its liabilities underwritten and/or guaranteed by the local authority establishing the company.

### **OTHER KEY DOCUMENTS**

9.7 The Articles of Association will be the key primary incorporation document. Others include the Shareholder and SPV Agreement.

9.8 A Shareholder and SPV agreement will be developed, as described above, to set out what matters are to be reserved expressly to the CPCA. This document can also record the support arrangements in place for the CAM SPV from the CPCA.

### **10 APPENDICES**

10.1 Appendix 1 – The National Significance of the CAM (Report)

10.2 Appendix 2 – CAM SPV – Why is an SPV the best model for delivery?

10.3 Appendix 3 – (and attachments) – Governance Model

10.4 Appendix 4 – Governance Structures and Committees of the CAM SPV

10.5 Appendix 5 – Company Articles

10.6 Appendix 6 – Draft Initial Business Plan

10.7 Appendix 7a and 7b – Recruitment process for CAM SPV Board membership

<b><u>Background Papers</u></b>	<b><u>Location</u></b>
None	