



**CAMBRIDGESHIRE
& PETERBOROUGH**
COMBINED AUTHORITY

Agenda Item No: 2.1

Peterborough University – Phase 3 Business Case

To: Skills Committee

Meeting Date: 17 January 2022

Public report: Yes

Lead Member: Councillor Lucy Nethsingha

From: Mahmood Foroughi, Senior Responsible Officer – Higher Education

Key decision: Yes (for Combined Authority Board on 26 January 2022)

Forward Plan ref: 2021/064

Recommendations: The Skills Committee is invited to recommend to the Combined Authority Board that it:

1. Approve the University of Peterborough *Phase 3 Business Case*
2. Approve the use of option a) in section 4.2, to use the existing special purpose vehicle Peterborough HE Property Company Ltd (Prop Co 1), for the delivery of Phase 3 of the University Programme, as the owner and developer of the second teaching building.
3. Consent, as shareholder, to modification of the Shareholders Agreement relating to Peterborough HE Property Company Ltd (Prop Co 1), on such terms as the Chief Executive of the CPCA in consultation with the Chief Legal Officer (Monitoring Officer), and the Chief Finance Officer (s73 Officer) may agree, to include at a minimum the maintenance by the CPCA of the *drag along* rights, described at paragraph 4.2 of this report and in order to reflect the share allotments as noted in paragraph 3 below.
4. Consent, as shareholder, to Peterborough HE Property Company Ltd (Prop Co 1):
 - a) issuing the following shares:
 - i. To Peterborough City Council, shares to the value of £20m (in consideration of it investing £20m of Levelling Up Fund (LUF) funding)

- ii. To CPCA, shares to the value of £2m (in consideration of it investing £2m of Local Growth Fund funding)
- iii. To Anglia Ruskin University, shares to the value of £4m in consideration of it investing £4m)

and note that the share issue should be completed by 31 March 2022

- b) Agreeing revisions to the Development Management Agreement to extend the delivery specification in relation to the project management and delivery services and associated support services to relate also to phase 3.
 - c) Entering into a land transfer with PCC to acquire the Phase 3 land and then enter into an agreement for lease, and lease with ARU Peterborough in respect of the Phase 3 Building, and such consequential and other ancillary agreements on such terms as the Chief Executive of the CPCA in consultation with the Chief Legal Officer (Monitoring Officer), and the Chief Finance Officer (s73 Officer) may agree.
 - d) Adopting a revised Business Plan, including such changes as are necessary to reflect the construction works and agreement for lease, and lease to ARU-Peterborough of the Phase 3 building in addition to the Phase 1 building.
5. Delegate authority to the Chief Executive of the CPCA in consultation with the Chief Legal Officer (Monitoring Officer), and the Chief Finance Officer (s73 Officer) to agree:
- a) such changes to the Collaboration Agreement providing that changes to the delivery obligations (and respective timings) are made as described in 5.2 of this report.
 - b) In respect of the Collaboration Agreement, such changes in respect of increased target for student numbers, the curriculum model, and the site and building plan as described in paragraph 5.2 of this report.
 - c) The Development Management Agreement, such changes in respect of the provision of programme management services to Propco1, related to the Phase 3 construction project, are made as described in 5.2 of this report.
 - d) and to create or modify any such other documents as the Chief Legal Officer (Monitoring Officer) advises are necessary to give effect to the recommendations.

Voting arrangements: A simple majority of all Members present and voting

1. Purpose

- 1.1 The purpose of this paper is to present to the Skills Committee a Business Case for Phase 3 of the University of Peterborough project, and to request that it recommends to the CA Board the approval of a range of actions necessary to achieve the objectives and outputs of that case.
- 1.2 These include the development and agreement of several project documents which the Cambridgeshire and Peterborough Combined Authority (CPCA) is or will be a direct party to, and also giving shareholder consent to Peterborough HE Property Company Ltd (Prop Co 1) (the special purpose vehicle established to deliver and own the university teaching buildings) in respect of various Shareholder Protection Matters (matters which, for Prop Co 1, requires prior shareholder consent) - in particular the issue of shares in respect of further financial contributions from the CPCA, Peterborough City Council (PCC) and Anglia Ruskin University (ARU), to fund the construction of Phase 3 of the university project – a second teaching building.

2. Background

The University Project & Progress So Far

- 2.1 Project partners CPCA, PCC, and ARU are collaborating to establish a new University for Peterborough to increase the skill levels of local people by completing the establishment of a range of teaching facilities, and to increase highly skilled employment opportunities by developing an innovation ecosystem around the university, focused on opportunities in the global net zero transformation.
- 2.2 The ambition to transform jobs and skills in Peterborough is central to the forthcoming CPCA's 2022 Employment and Skills Strategy, which recognises establishing a new higher education provider in Peterborough as an essential step to implement the strategy. The two objectives of the university programme, in order to support the city, its surrounding area and the people living there, are to simultaneously improve access to better quality skills and improve access to better quality employment. This will support local people to access opportunities for quality long-term employment and support local businesses to grow by making it easier to hire skilled employees and invest in innovation. A central feature of the programme's approach is that intervening to raise local skills levels at the same time as raising demand for skilled workers is more likely to succeed than trying to raise one at a time and helps ensure that more of the programme's benefits accrue locally. Intervening strategically to concurrently raise local skill levels and local demand for skilled workers will enable Peterborough to enact a step-change to a new equilibrium as a highly skilled and hi-tech economy, with local demand for skilled workers met by local residents. The establishment of a University for Peterborough is a 10-year programme to catalyse the region's transformation. It will provide improved access to better quality skills and improved access to better quality employment. The resulting increase in wellbeing, health and healthy life expectancy means people living happier, healthier lives.
- 2.3 The programme is already underway, with action happening at pace and scale. Three phases of the university campus creation have secured funding in just over two years, and two are already under construction, with the first teaching building due to open to 2,000 students in September 2022. With multiple phases running in parallel and to tight schedules, this is a complex programme of work which requires careful sequencing and coordination in order to meet the objectives. These phases of the programme are:

- 2.3.1 Phase 1: First Teaching Building, currently under construction - Establish the ARU Peterborough campus in the city via the first teaching building, providing space for 2,000 students from September 2022 and 3,000 in total, studying Health, Social Care, Education, Management, Finance and Law.
- 2.3.2 Phase 2: Peterborough Research and Innovation Incubator, currently under construction - Build a base of innovative and collaborative start-ups to support bottom-up development of the innovation ecosystem: 20 hi-tech start-ups and scale-ups building an indigenous innovation ecosystem specialising in net zero technologies in an innovation incubator on the University campus with Photocentric as anchor tenant, generating jobs for graduates to enter in the local innovation ecosystem.
- 2.3.3 Phase 3: Second Teaching Building and Living Lab, for which funding has been secured - Grow the University campus via a second teaching building supporting 1,000 more students from 2024/25 and 1,750 more students in total, expanding its curriculum into STEM fields and embedding the University in Peterborough through the Living Lab and Cultural Quarter. The Living Lab will be a public-facing, high-quality interactive science centre for Peterborough with public space for exhibitions and events, designed to stimulate and inspire more young people into STEM sectors, particularly in net zero opportunities.

Phase 3

- 2.4 Peterborough City Council has secured £20m funding from the Levelling Up Fund for Phase 3 of the University campus, a second teaching building and Living Lab. Almost £8M of investment (see paragraph 3.1 for a full breakdown) has been secured from the other PropCo1 shareholder partners, the CPCA and ARU. This phase is due to be delivered in 2024 and will provide outstanding facilities for students and the local community, as well as the capacity needed to grow in line with the institution's growth plans and ambitions to achieve university status.
- 2.5 The Business Board in consultation with the Combined Authority Board, approved on 9th June 2021, £2m of unallocated recycled Local Growth Funds for the University of Peterborough Phase 3 project.
- 2.6 Following the approval of the Levelling Up fund in October 2021, work on developing a Full Business Case (FBC) started by the Combined Authority in collaboration with PCC, reflecting input from ARU as the procured Academic Delivery Partner, to demonstrate the economic impact and educational need for the expansion of the University Project and campus in Peterborough. The Full Business Case comprises the Strategic, Economic, Commercial, Financial and Management cases modelling the Green Book in line with the HM Treasury Central Government guidance on appraisal and evaluation
- 2.7 Approval of the Business Case for Phase 3 of the University Project is necessary to expand the campus via a second teaching building and Living Lab, with space for 4,761 students by 2026, extending the curriculum to STEM fields and establishing a 'University Quarter'.
- 2.8 The level of success of the bid for the LUF was dependant on PCC (as the lead authority to bid) demonstrating a certain level of readiness and assurance of delivery of Phase 3. Therefore, it was proposed, as part of the LUF funding application, that delivery be enabled

through the currently established jointly owned higher education property vehicle (PropCo1). Governance and project delivery arrangements for the development and delivery are set out at Appendix 3.

- 2.9 The programme to deliver the Phase 3 project has been drawn up. The terms set out in the funding offer from the Dept for Levelling Up, Housing & Communities stipulated that **work and spend of the LUF funding should start by 31 March 2022** and complete by March 2024. To achieve this the Combined Authority, on behalf of PropCo1, have initiated the mobilisation works. These include the production of this Business Case and tendering process for the appointment of a multi-disciplinary design team. The appointment of the design team by 15th February to start the design work is on the critical path to meet the project start terms of the LUF funding offer. It is envisaged that the approval of the Business Case by the Combined Authority Board will allow for the Combined Authority to make the appointment of the multi-disciplinary design team on behalf of the PropCo1.
- 2.10 The total available funding will cover all components of cost required to deliver the Phase 3 project including construction works, support services from professional consultants and the design team, legal support, surveys, and investigations. Consideration of wider client related project costs including internal project management, project financial accounting and statutory contributions such as section 106 contributions and land purchase have also been factored in.

3. Funding for Phase 3

- 3.1 The financial arrangements to meet the £27.87m costs for Phase 3 of the University project are as follows:
- a) LUF £20m – (PCC contribution as the lead authority for the LUF)
 - b) ARU £4m
 - c) CPCA £2m – Approved recycled local growth funds
 - d) PCC Transfer of land valued at approximately £1.87m (land valuation yet to be completed)
- £27.87m total**
- 3.2 Following the above investments to be made by each of the existing shareholders and the corresponding allocation of the new shares, the company's shareholdings will be as shown in the table 1 below.

Table 1; Joint shareholding following PCC land transfer, PCC contribution of LUF funding, CPCA contribution of Local Growth Funding and ARU contribution to Phase 3 costs.

Shareholding in The Peterborough Higher Education Property Company					
		PCC	CPCA	ARU	total
Phase 1	First teaching building	1.87	24.8	5.50	32.17
		5.8%	77.1%	17.1%	100.0%
Phase 3	Second Teaching building	21.87*	2	4	27.87
		78.5%	7.2%	14.3%	100.0%
	Total Shareholding in Propco1	23.74	26.8	9.5	60.04
		39.6%	44.6%	15.8%	100.0%

*land value of £1.87m may change subject to independent valuation

- 3.3 A requirement in the terms of the LUF funding offer from the Dept for Levelling Up Communities & Housing, is that work and spend must start by 31 March 2022. To enable this a number of project milestones need to be met:
- a) For work and spend to start in March 22, a formal contract must be signed by PropCo1 in February 2022, with the procured multi-disciplinary consultant team so that the initial work packages of RIBA Stage 2 design to inform planning applications can commence.
 - b) For Propco1 to place the contract above, it must be in receipt of the Phase 3 funding of £26m. In consideration of the transfer from PCC, ARU and the CPCA of that funding there shall be a corresponding allotment of shares. There will be a consequential change to the original Shareholders Agreement between the parties to provide continuing shareholder protections to the CPCA as it moves from being a majority shareholder to a minority shareholder. Related to this, an Agreement for Lease and Lease for the second building to ARU-Peterborough from PropCo1, is required along with amendments to the Collaboration Agreement to accommodate the revisions to student numbers, curriculum model, and site and buildings plan.

Significant Implications

4. Financial Implications

- 4.1 As set out in the Business Case, the funding strategy to finance the Phase 3 Second Teaching Building, and in line with similar capital investments of Combined Authority devolved and delegated funding, into the Phase 1, the First Teaching Building, the Combined Authority will invest its £2m funding as an investment for shares into the PropCo1. As a result, the current Shareholder Agreement for the company, will be amended to reflect this additional investment for shares.
- 4.2 **Recovery of CPCA Funding from Phase 1:** The Combined Authority invested a total of £25.4m into the £30.5m Phase 1 project. Set out in the FBC for Phase 1, was the CPCA's strategy to allow rent-free provision of the Phase 1 building to ARU-Peterborough for a

period of 10 years, at which point it would seek to recover and recycle its investment into new projects in pursuance of the Combined Authority’s objectives. To enable this sale of shares at maximum market value, paragraph 17.1 of Shareholders Agreement states that:

“If a Shareholder or Shareholders who collectively hold Shares which, in aggregate, represent in excess of 75% of the votes which are capable of being cast at a general meeting of PropCo wish to transfer their shares at any time (the "Drag Seller(s)"), such Shareholders may (having first followed the procedure set out in Clause 15) give written notice (a "Drag Notice") to the continuing Shareholder or Shareholders (the "Continuing Shareholders") requiring it (or them) to sell all (but not some only) of its (or their) shares...”

This clause provides for the Combined Authority, which currently holds in excess of 75% of the total shares (votes), to drag PCC and/or ARU into the sale of a majority, controlling shareholding of a building, available to rent to a successfully operating university. Sale of a majority, controlling shareholding of a building, would generate maximum value on the market – investors being unlikely to wish to acquire only a share of a rental asset. In the event that PCC invest the £20m of LUF (and later upon conclusion of land transfer, the value of the land also) into PropCo1, the resulting dilution of the Combined Authority’s shares will take it below the 75% trigger for drag rights. This in turn, will generate a significant negative impact on the potential value at sale of the Combined Authority’s investment, as it will be able to sell only a minority share in the company. Hence, without modification to the Shareholders Agreement to protect and retain the Combined Authority’s drag rights, below 75%, the Combined Authority could not agree to PropCo1 making any further allotment of shares. Two options are available to protect the Combined Authority’s investment upon PCC transferring the LUF (and land) to PropCo1:

- a) For the Combined Authority Board to provide consent (as shareholder under protected matters in the Shareholders Agreement) for PropCo1 to undertake the further share allotment, only on condition that it will retain its drag rights in respect of all other shareholders, notwithstanding the diminution of its rights below the currently specified level of 75% of all shares (votes). This change will be drafted by the CPCA’s legal advisors.
- b) For all partners’ investment to be made into a third property company PropCo3

The table below summarises the advantage and disadvantages of the two options and the mitigation that can be applied to address the risks (disadvantages), as follows:

Option	Advantages	Disadvantages	Proposed mitigation
A	Potentially less resource requirement to administer and manage (one company vs two companies)	Diminished control of CPCA at board level due to a PCC proposed condition to their additional share subscription being the appointment of an extra director on the PropCo1 board, resulting in CPCA having 2 out of 5 directors (rather than 2 out of 4)	Ensuring CPCA rights to veto, within the Shareholders Agreement protected matters are maintained, therefore retaining control on significant and matters of importance to CPCA

	<p>Less complexity and set up time of legal arrangements and documents as most of existing legal documents for PropCo1 can be utilised with exception of few that will need some amendments, such as</p> <ul style="list-style-type: none"> (1) Development Management Agreement (2) Shareholders Agreement (SHA) Relating to Peterborough H.E. Company Limited (Propco1). (3) Collaboration Agreement to set out revised targets 	<p>The CPCA losing its “drag right” in the event that CPCA decide to transfer their shares at any time, and to be able to “Drag” PCC and ARU to transfer their shares at the same time.</p>	<p>For the Combined Authority Board to provide consent (under protected matters in the Shareholders Agreement) for PropCo1 to undertake the further shares allotment, only on condition that it will retain its drag rights in respect of all shareholders, notwithstanding a diminution of its shares below the currently specified level of 75% of all shares (votes).</p>
		<p>The delay (from 2032 to 2034) in CPCA and PCC realisation of the capital receipts, generated from their exit as shareholders from PropCo1, caused by investing in both buildings through the same, single special purpose vehicle (PropCo1).</p> <p>The proposal was made in the LUF bid to government to use PropCo1 as the Phase 3 delivery vehicle and offer ARU- Peterborough the same 10 year rent free period, as for the Phase 1 building. The proposal to use PropCo1 as the delivery vehicle was made in order to demonstrate to Government, the partners’ ability to meet the tight timescales for project start and completion, set out in the LUF call for proposals, through the use of an established and operational delivery vehicle. The commitment to offer ARU Peterborough a 10-year rent free period in the Phase 3 building, was based on the precedent set in Phase 1. However, it is not proposed to change the Shareholders Agreement to</p>	

		provide PCC and CPCA the option to sell their shares in PropCo1 after the 10 th anniversary of the completion of the Phase 1 building.	
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Option	Advantages	Disadvantages	Proposed mitigation
B	Clear and defined separation of the rights and controls for the two companies	Potentially more resource requirement to administer and manage (two companies vs one company)	To map out resource requirement and create efficiency within CPCA resourcing structure
	Insulates and protects CPCA rights in PropCo1	Potentially requires more time to set up and agree all the legal contracts and documents and potential to impact the critical timeline for approval of Board Paper and FBC in January 2022, consequent conclusion of a shareholder's agreement by mid-February is necessary to start work in March. Failure to do so will cause PCC to breach the terms of the LUF funding –	commitment from CPCA to ensure focussed and intense engagement of the project management, legal and financial teams to manage the timeline.
	Ability to sell shares in the two companies at different times, allowing CPCA to keep its anticipated exit date for PropCo 1 at 10 years from the completion of Phase 1 and move this to the completion of Phase 2		

4.3 For option a), since the delivery vehicle will be the existing PropCo1, we do not envisage any amendment to any of the existing property agreements, but we expect that PropCo1 will require legal advice in relation to the acquisition of the land from PCC including advice on the necessary documentation and upon PropCo1's agreement for lease and lease with ARU Peterborough. There will also be a later need for PropCo1 to receive advice in relation to the build contract

4.4 For option a), in the Shareholders Agreement of PropCo1 the decision-making process is defined in clause 6.1 which states that certain matters must be agreed by all shareholders as indicated in Schedule 3 to that agreement ('shareholder protection matters'). This clause is not dependant on the percentage of Shareholding by each party to the Agreement. Therefore, the change in shareholding will not affect the "shareholder protection matters". However, as part of the delegated authority approval sought by this paper, the amendment will review any decision making outside of these protection matters (i.e., for matters of less import), as each shareholder shall have voting rights in line with their percentage.

- 4.5 Both CPCA and PCC, as the majority investors in Phase 1 and Phase 3 respectively, consider their investments as helping to “pump prime” the university project, through the provision of two buildings (Phase 1 and 3) rent free for the first 10 years of each building’s occupancy by ARU-Peterborough. However, as it is planned that by the end of this 10 year period, ARU Peterborough will have grown to sufficient critical mass to address the HE skills shortage in the area, obtained university status, and reached a commercially sustainable position, sufficient to commence paying commercial rents for the building, both the CPCA and PCC jointly intend to exit Propco by selling their joint majority shareholding in PropCo1 which owns both buildings, on the market, to either a commercial property investor or ARU. The Shareholders Agreement will be modified to facilitate this intent, enabling either CPCA or PCC to trigger the sale of all of the shares in Propco1 after the Phase 3 Building’s 10th anniversary on occupancy by ARU Peterborough, using a mutual drag clause. Due to the increase in PCC’s shareholding, it will also be granted such drag along rights.
- 4.6 In order to support ARU-Peterborough in its start-up phase and the challenging student enrolment targets to 2030, PropCo1 will offer both the Phase 1 AND 3 buildings to ARU Peterborough on a rent-free basis for 10 years from the point that ARU-Peterborough takes occupancy of each building. The 10-year period for phase 1 will start from completion of the buildings and occupancy in September 2022 and for phase 3 it will be September 2024.
- 4.7 The current Business Plan for PropCo1, envisages investment of share capital, and the progressive expenditure of that capital on the construction of the Phase 1 building, with no income planned for a period of 10 years from the rental of the building. This will be modified in a new PropCo1 Business Plan to take into account the following:
- a) Investment of an additional £27.87m of share capital for the acquisition of land and construction of the Phase 3 building. The progressive expenditure of that capital on the construction of a building.
 - b) Income forecast is for rental income after the 10th anniversary of the Phase 1 building in 2032 and at the same points for the Phase 3 building in 2034.
- 4.8 Officers recommend option a) on the basis that the application for LUF funding to Government, proposed the partners would use PropCo1 and that on balance, it is the officers view that the advantages outweigh the disadvantages, and that it is the preference of the other parties.

5. Legal Implications

- 5.1 The delivery vehicle for phase 3 of the University programme can be via the two options described above at 4.2. It is noted that officers recommend Option A, the utilisation of PropCo 1.
- 5.2 In order to deliver phase 3 via PropCo 1, the following legal documents will need to be amended:
- a) Development Management Agreement, between the CPCA and PropCo1, which sets out the provision of Programme Management Services by the CPCA to PropCo1, for the management of the construction of the Phase 1 building. Changes will include amendments and confirmations resulting from a review of the expanded Programme

Management Service, needed to deliver the new Phase 3 project in parallel with the current Phase 1 project. It should be noted that similar set of services are provided by the CPCA for the Phase 2 building, under a separate agreement with the Peterborough R&D Property Company Ltd (PropCo2). A resource plan will be put in place for the additional programme management activities and resources required for the Phase 3 project, feeding into a Draft Revised Development Management Agreement, which will include; the appointment of further resources including a Project Manager, the extension of the term of the agreement and related payments from PropCo1, to cover the phase 3 project, due for full building completion in September 2024. Costings for these services will be requested from the CPCA, and any other project partner wishing to provide the services. A review will take place to confirm, or otherwise, if the CPCA remains best placed to provide the services, resulting in a recommendation to the PropCo1 Board for signature of the Revised DMA.

- b) Shareholders Agreement (SHA) Relating to Peterborough H.E. Company Limited (PropCo1). Changes to include the provision of drag rights in respect of all shareholders to CPCA, notwithstanding a diminution of its shares below the currently specified level of 75% of all shares (votes) upon the sale of the shares in the company.
- c) Collaboration Agreement, between the CPCA, PCC, ARU and ARU-Peterborough, which sets out how the parties commit to work in partnership and co-operate with each other in order to deliver a successful University for Peterborough over the long term. Changes will include amendments to:
 - i. Schedule 2, ARU Responsibilities, to reflect the increased obligations for student numbers, which as a result of the Phase 3 building, will rise to 4,761 student headcount by 2026/27 and on to 5,357 by 30/31.
 - ii. Schedule 3, Curriculum Model, to reflect the extended range of courses that the Phase 3 building will enable.
 - iii. Annex 1, Site & Buildings Plan, to reflect the addition of a second teaching building, including its size, features and location.

6. Climate & Nature Implications

- 6.1 The LUF bid indicated support for the Governments net zero objectives through building design and technologies. At early design stage (RIBA 1), several sustainability frameworks (BREEAM, Passive Haus etc) were discussed for suitability particularly towards achieving NZCiO¹. Consideration to materials selection/choice, use of passive building fabric design principles and potential renewable energy solutions to support the sustainability requirements.

In regard to the Combined Authority's duties under the Natural Environment and Rural Communities Act 2006 to "conserve biodiversity" and the Cambridgeshire and Peterborough Vision for Nature, a full Natural Environment Analysis will be undertaken in parallel with the RIBA Stage 2 Design for phase 3. This will include opportunities for conserving biodiversity, restoring or enhancing species or habitats.

¹ Net Zero *Carbon* in Operation

7. Appendices

7.1 Appendix 1 – Full Business Case

7.2 Appendix 2 - Shareholders Agreement protection matters

7.3 Appendix 3 - Governance arrangements for the development and delivery