

Public Report

Birmingham City Council

Report to Cabinet

14 May 2019



Subject: Transfer of the Greater Birmingham & Solihull Local Enterprise Partnership (GBSLEP) to GBSLEP Limited (as a private limited company limited by guarantee) including existing staff and revenue assets.

Report of: Chief Finance Officer

Relevant Cabinet Member: Councillor Chatfield – Finance and Resources

Relevant O & S Chair(s): Councillor Sir Albert Bore, Resources

Report author: Chief Finance Officer

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: Ref:005336/1818		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 Following a Ministerial review of LEPs that took place in 2018, Government published “Strengthened Local Enterprise Partnerships” on 24th July 2018. One of the key conclusions of the review was that all LEPs should have an individual “legal personality”; and be established as discrete and independent corporate entities such as companies limited by guarantee and that their secretariats should be independent of Local Government.
- 1.2 On the 27th March 2019 GBSLEP Board agreed to becoming a fully independent, operating company and to ask BCC Cabinet to agree to undertake formal consultation on the TUPE transfer of staff.

- 1.3 At the present time GBSLEP is preparing for the transition from BCC to a Private Limited Company.
- 1.4 It is recommended that staff currently working for GBSLEP be transferred to GBSLEP Ltd under TUPE regulations, that the LEP's revenue funding is transferred to the company and that Birmingham City Council continues to be the Accountable Body (AB) for the LEP's capital funding.
- 1.5 The anticipated transfer date is 1st July 2019.

2 Recommendations

That Cabinet :-

- 2.1 Agree to the transfer of the **Greater Birmingham & Solihull Local Enterprise Partnership** (GBSLEP) staff to the existing company GBSLEP Limited
- 2.2 Note that as originating host employer, BCC will be required to act as guarantor for GBSLEP Ltd should they be granted admission body status to the West Midlands Local Government Pension Scheme and that the pension position at the point of transfer for the 18 employees transferring to the company is required to be fully funded by the council. This will be effected by a transfer of assets from the Council share of the pension fund and will be equal to liabilities on transfer.
- 2.3 Note that GBSLEP Ltd will be required to enter into a pension bond to cover potential future liabilities arising from default.
- 2.4 Note that transfers of revenue funds not exceeding £100,000 in total have taken place under Chief Finance Officer delegations to the company to enable the purchase of supplies and services in preparation for the staff transfer.
- 2.5 Approve the retention of accountable body status in respect of all existing capital funds currently deposited with the council by government departments.
- 2.6 Approve the transfer of revenue funds held by the council that are designated by the originating funding bodies for the management and administration of the GBSLEP, including interest on capital funds held by BCC, or for the delivery of the Strategic Economic Plan to the company, GBSLEP Ltd.
- 2.7 Authorise the Chief Finance Officer to finalise and approve any facilitating actions for the transfer of the GBSLEP Executive and assets held by the council on behalf of the GBSLEP to GBSLEP Ltd
- 2.8 Authorise the City Solicitor (or their delegate) to execute and complete all necessary legal documents to give effect to above.

3 Background

- 3.1 The GBSLEP was constituted as a company limited by guarantee in May 2011. Its Board, however, has never considered it to be an 'active' company as it has

not had a bank account nor employed any staff. Instead, GBSLEP's staff are employed by Birmingham City Council (BCC) on BCC contracts, BCC is GBSLEP's AB, holding all of its funding (both capital and revenue) and its funding is expended in accordance with BCC standing orders.

3.2 This arrangement has worked well over a number of years but as the LEP's roles, responsibilities and funding allocations have changed, the LEP Board has reviewed the operating model with a view to ensuring that it can meet the following objectives:

- Be a strategy-led organisation with structures and processes that support agile delivery
- Be seen as a separate entity with a clear identity, its own culture and its own risk appetite
- Be able to determine job roles, pay and reward commensurate with the market rate, and to be able to attract and retain employees
- Have the freedom and agility to respond to customer demand and opportunity

3.3 On the 27th March 2019 the GBSLEP Board agreed that in order to meet the above local and national objectives and to address operational challenges within the current model concerning speed and agility to respond to the market and customers, the LEP should become a fully independent, operating company. It also agreed to ask BCC Cabinet to agree to undertake formal consultation on the TUPE transfer of staff.

3.4 At the present time GBSLEP is preparing for the transition from BCC to a Private Limited Company.

3.5 The transition and associated transfer of staff will take place when the company is fully operational. The anticipated date of transfer is the first day in July 2019

3.6 In accordance with the TUPE regulations, successful conclusion of the consultation will mean that GBSLEP accepts BCC terms and conditions (T&Cs) for current staff, including pay, pensions and leave entitlement.

3.7 GBSLEP Ltd has stated its intention to apply for admission body status to the West Midlands Local Government Pension Scheme. As existing host body the council is required to guarantee this admission should it be successful. In doing this the Council will require GBSLEP Ltd to take out a bond to cover any future liability for non-payment of contributions.

3.8 A team comprising of 18 officers are currently employed by BCC delivering support to the GBSLEP. BCC has been acting as the host employer for this programme since 2011. The GBSLEP Executive is responsible for developing and supporting the delivery of the LEP's Strategic Economic Plan, working to the LEP Board. The team is also responsible for the management and

coordination of the various investment and growth programmes and the LEP's governance arrangements.

- 3.9 A review of further information has determined that the Transfer of Undertaking Protection of Employment Regulations (TUPE) 2006, as amended, does apply to the LEP Executive and both BCC HR and Legal teams and GBSLEP have agreed this to be the case.
- 3.10 Council officers have been working with the LEP to ensure that the conditions in the new company are satisfactory in terms of meeting the Council's requirements as AB. At appendix 1 is a report to the GBSLEP Board outlining the financial administration and governance processes that will be put in place. GBSLEP Ltd is to purchase certain services from the Council, including treasury management services and payroll. The company will adopt the Council's employee policies at the date of transfer and is opening a bank account with Lloyds Bank. Appendix 1 provides details of governance processes put in place and the council has been consulted on each of these. As AB, the Council will require assurance that all financial decisions are in line with and under the control of these governance processes.
- 3.11 The Council will continue to play an active role in GBSLEP following the implementation of the new operating model. The Council will appoint a representative and an alternate to sit on the LEP Board (to date this has been the Leader and Deputy Leader respectively). The S151 Officer will also attend Board meetings and a representative of the AB will be a member of other key Boards, including the Programme Delivery Board. Council officers will also sit on various GBSLEP (sub) boards. GBSLEP and the Council will continue to have a strong relationship in the discharge of AB duties. Given the significance of Birmingham to the GBS economy, maintaining and building on the current levels of engagement is critical to the delivery of the LEP's Strategic Economic Plan.

4 Options considered and Recommended Proposal

- 4.1 The Executive is contracted by BCC but work directly to the GBSLEP, and are wholly funded through the GBSLEP programme. From the Council's perspective, as the team are dedicated 100% to the project, it has been recognised that TUPE applies and a transfer should take place.

5 Consultation

- 5.1 The staff have been advised that TUPE applies and BCC will be consulting with trade unions on the proposed measures (terms and conditions) document

produced by GBSLEP. Staff will continue to be updated with regards to the transfer.

- 5.2 GBSLEP Ltd is currently being consulted as the receiving transferee.
- 5.3 The transfer of the GBSLEP to GBSLEP Ltd as a private limited company has been agreed by the GBSLEP Board which includes both the Leader and the Deputy Leader.

6 Risk Management

- 6.1 A risk register has been maintained by the GBSLEP and council officer groups throughout the company set up and employee transfer process, a summary of the key employment risks is at appendix 2.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1. The transfer is in line with BCC's TUPE Protocol and the Transfer of Undertaking Protection of Employment Regulations (TUPE) 2006, as amended.
- 7.1.2 As a member of the GBSLEP, the council is integral to the shaping of the LEP's plans and priorities and supports such decisions through the Board structure. GBSLEP priorities under its Strategic Economic Plan align with and support the Council's Business Plan and Budget 2018+, specifically the priority for making Birmingham an entrepreneurial city to learn, work and invest in, a city that invests in its people so that everyone can have opportunities to realise their potential through lifelong learning, skills and good jobs.

7.2 Legal Implications

- 7.2.1 The employment risk will TUPE transfer to GBSLEP Ltd. The risk of challenge would be low in relation to the protection afforded under TUPE transfer, for failure to consult for TUPE and unfair dismissal. The service will seek to minimise these risks by ensuring that requirements of TUPE are adhered to fully.
- 7.2.2 In line with the TUPE Regulations BCC is required to enter into meaningful consultation with the recognised trade unions of those staff members that will transfer to the service including the measures put forward by the GBSLEP.
- 7.2.3 GBSLEP will be seeking admitted member status to the West Midlands Local Government Pension Scheme

- 7.2.4 BCC will retain the past service liabilities of these staff members following transfer with regards to Pension. It is usual for outsourcing provision to be fully funded on transfer, which means BCC retain the deficit.
- 7.2.5 There will be indemnities involving employment issues which will be required by GBSLEP as part of this transfer which are normal practice in TUPE's.
- 7.2.6 GBSLEP Ltd will operate under an Assurance Framework that has been developed in consultation with the council and will be periodically updated to ensure that there are robust and transparent local systems in place to make sure that resources are spent with regularity, propriety and value for money. The Assurance Framework and company policies and procedures will also provide assurance to the position of the City Council in its Accountable Body role by requiring stringent risk management requirements, transparency of decision making and independent evaluation of the allocation of resources. The arrangements set out in this report are in compliance with the powers of general competence as set out in Section 1 of the Localism Act 2011.

7.3 Financial Implications

- 7.3.1 As TUPE is applicable BCC will be required to act as guarantor for the purposes of the transfer of the pension liability under Admission Body Status. At the point of transfer the pension fund for GBSLEP Ltd will be fully funded. The council will receive an actuarial report from the pension fund and this will provide impact of transferring the pension liability associated with the transferring 18 employees for the Council to settle. It is not known what this figure will be at this stage as it is an actuarial calculation based on the individuals. This guarantee may give rise to future liabilities for the council but it is not possible to know at this stage whether these will arise or at what level as all calculations will be based on actuarial assumptions.
- 7.3.2 The Council is AB to the funds that are allocated for the use of the GBSLEP. These are:

Capital Fund	Balance at 31 March 2019
Growing Places including Revolving Investment Fund (RIF)	£50.0m
Local Growth Fund	£15.6m
Total	£65.6m

- 7.3.3 Revenue interest on balances held, loans made or funds invested are allocated to the GBSLEP for management and administration purposes. In addition specific revenue support grants are provided both by government and currently by the business rate pool allocated by the GBSLEP local authority partners. GBSLEP also recharges eligible capital programme management costs to the capital funds held by the council.
- 7.3.4 These revenue funds will be transferred to GBSLEP Ltd bank account. With regard to the capital balances, and/or any funds allocated to the council to hold under its AB obligations, the Council will account for these and retain the funds in its own bank account. This will continue to be the case until or unless specific instruction is received by the originating funder.
- 7.3.5 The Council will retain and discharge its AB obligations with regard to these funds by continuation or enhancement of the existing governance processes. All payments made by the Council on behalf of the LEP are subject to evidenced approval from the GBSLEP in accordance with the assurance framework in place. The council's Chief Finance Officer (CFO) or their representative will undertake the s151 role with regard to the funds held for GBSLEP Ltd.
- 7.3.6 GBSLEP Ltd will appoint a Company Secretary whose role it will be to ensure the efficient administration of the company, particularly with regard to ensuring compliance with statutory and regulatory requirements and for ensuring that decisions of the board of directors are implemented. The s151 and Company Secretary roles are currently held by the same individual. This will not be the case once GBSLEP Ltd is fully operational and once an appropriate Company Secretary can be appointed.

7.4 Procurement Implications (if required)

- 7.4.1 There are no procurement implications associated with this decision. GBSLEP Ltd will continue to be obliged to operate under EU procurement regulations with regard to public funds.

7.5 Human Resources Implications (if required)

- 7.5.1 The GBSLEP Executive currently consists of 18 members of staff, the majority of whom are employed on fixed-term contracts.
- 7.5.2 The GBSLEP were advised by BCC that if employees have been on a fixed term contract for 4 years they will accrue permanent employment rights. In relation to employees who have been on fixed-term contracts for 2 years, they will have the right to bring claims for unfair dismissal and redundancy rights.

7.6 Public Sector Equality Duty

- 7.6.1 As noted in section 4.1, GBSLEP has 18 staff and they will all be transferring to GBSLEP Ltd. At the present time no potential equality issues have been identified.
- 7.6.2 The Public Sector Equality Duty will be monitored throughout the TUPE process.

8 Appendices

- 8.1 Appendix 1 – GBSLEP FOM Financial Governance Policies and Procedures
- 8.2 Appendix 2 – summary key risks of employment transfer