

<b>Report to:</b>	<b>CABINET</b>	
<b>Report of:</b>	<b>Strategic Director Change and Support Services</b>	
<b>Date of Decision:</b>	<b>24<sup>th</sup> January 2017</b>	
<b>SUBJECT:</b>	<b>SUSTAINABLE URBAN DEVELOPMENT (SUD) FUND – ACCEPTANCE OF INTERMEDIATE BODY STATUS</b>	
<b>Key Decision: Yes</b>	<b>Relevant Forward Plan Ref: 002854/2017</b>	
<b>If not in the Forward Plan: (please "X" box)</b>	<b>Chief Executive approved</b>	<input type="checkbox"/>
	<b>O&amp;S Chairman approved</b>	<input type="checkbox"/>
<b>Relevant Cabinet Member(s):</b>	<b>Councillor Ian Ward, Deputy Leader of the Council</b>	
<b>Relevant O&amp;S Chairman:</b>	<b>Councillor Zafar Iqbal, Economy, Skills and Sustainability</b>	
<b>Wards affected:</b>	<b>All</b>	

<b>1. Purpose of report:</b>
<p>1.1 To accept an offer from the Department of Communities and Local Government (DCLG) for Birmingham City Council (BCC) to act as the Intermediate Body (IB) to carry out the function of allocating £10.13m (potentially extendable to £23.65m) of European Regional Development Funds (ERDF) grant to SUD eligible projects.</p> <p>1.2 To note that accepting the IB status will enable DCLG to discharge a national duty for the allocation of SUD funds and allow BCC decision making powers over the selection of projects that will support the economy and environment on the introduction of High Speed Rail (HS2).</p>

<b>2. Decision(s) recommended:</b>	
That Cabinet :	
2.1	Subject to the receipt of the final Memorandum of Understanding between DCLG and BCC that does not materially differ from the draft version received by the council and attached at appendix 2: approves the acceptance of Intermediate Body (IB) status by the City Council and the duties of allocating the SUD/ERDF grant of £10.13m (potentially extendable up to £23.65m) to eligible projects in support of HS2 priorities for the duration of the programme expenditure period to 2023.
2.2	Accepts SUD/ERDF revenue grant to fund 1.0 FTE post and overheads to provide the administration to carry out IB functions over a time period to complement the council's IB status.
2.3	Authorises the programme governance arrangements as set out within this report and delegates to the Strategic Director of Finance and Legal Services the authority to recommend projects to DCLG for funding approval on the direction of the SUD Sub-Committee.
2.4	Authorises the Acting City Solicitor to negotiate, execute, complete and seal the relevant documents necessary to give effect to these recommendations.
<b>Lead Contact Officer(s):</b>	Lloyd Broad, Head of European and International Affairs
<b>Telephone No:</b>	0121 303 2377
<b>E-mail address:</b>	Lloyd.broad@birmingham.gov.uk

<b>3. Consultation</b>
<p data-bbox="113 203 336 239">3.1 <u>Internal</u></p> <p data-bbox="225 277 1513 461">The Cabinet Members for Jobs and Skills, for Clean Streets, Recycling and Environment and for Transport and Roads have been consulted and support this report proceeding for Executive decision. City Finance and Legal and Democratic Services have been involved in advising on the development and management of the SUD IB Status. The HS2 project management team have also been consulted.</p> <p data-bbox="113 499 336 535">3.2 <u>External</u></p> <p data-bbox="225 573 1513 824">The development of SUD has been carried out in consultation with DCLG. The European Structural and Innovation Funds (ESIF) Committee for the GBSLEP area comprising of Local Authorities, Higher Education, Further Education, GBSLEP, private sector, Environment Agency, Trade Union sector representatives and others have been consulted regularly. All UK core cities have been involved in the formation of SUD at a national level. Solihull MBC has been consulted directly due the HS2 footprint also being within their boundary.</p> <p data-bbox="113 862 1513 936">3.3 This report has been adapted based on the comments of the consultees and is supported by them.</p>
<b>4. Compliance Issues:</b>
<p data-bbox="113 1084 1513 1158">4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p data-bbox="113 1196 1513 1447">4.1.1 The objectives of the programme are consistent with the long term outcomes of the Council Business Plan and Budget 2016+. The SUD IB status and allocating grant to priority projects will contribute towards the City Council's priority outcome one: A Strong Economy by secure investment in the themes of low carbon energy and infrastructure and environmental enhancements to support the introduction of the HS2 rail line. This will deliver on the sub-outcomes of an innovative green city; sustainable growth and employment; energy use optimised and enhanced transport links.</p> <p data-bbox="113 1485 1513 1599">4.1.2 SUD is also fully aligned to the GBS LEP "The Midlands HS2 Growth Strategy", which seeks to maximise the benefits of the largest infrastructure project in Europe and accelerate the UK's engine of growth.</p> <p data-bbox="113 1637 1513 1711">4.1.3 DCLG as the contracting body is not able to require grant recipients to sign up to the Birmingham Business Charter for Social Responsibility.</p>

## 4.2 Financial Implications

- 4.2.1 The City Council will use the IB status powers to make decisions on which projects to fund from the SUD budget based on the strategic fit of the projects to the ESIF and SUD strategies in alignment and conjunction with the region's HS2 Environmental and Landscape Prospectus. DCLG will retain Managing Authority functions and as such will be responsible for the appraisal, due diligence and contracting with successful grant applicants. Final approval of grant will be a joint decision of both the IB and DCLG. BCC has no role in the contracting arrangements and will not hold the funds. The council will be liable for any financial correction imposed by DCLG or the EU that arises as a direct result of an irregularity or systemic irregularity arising from any act or omission of BCC acting as IB relating to its delegated tasks. Governance and support arrangements have been designed to minimise the risk of such an eventuality occurring.
- 4.2.2 Total SUD project expenditure is expected to be £20.2m comprising grant of £10.1m (eligible for both capital and revenue expenditure) and an equivalent amount of public and private sector match funding put forward by the applicants for grant funding. This may rise to £47.3m spend (£23.65m grant) depending on the outcome of a request that has been submitted to DCLG to align other, unallocated relevant ESIF funds from the relevant priority axis to SUD. The timescale for a decision on this matter is not known at this point. The funds will be made available on signature of the IB Status Agreement with DCLG and the programme is part of the ERDF 2014-2020 Programme. The IB arrangement will continue for the duration of the programme expenditure period to 2023.
- 4.2.3 BCC will be able to claim SUD/ERDF grant from DCLG towards the administration costs and to fund one full time post as part of this process.. Grant is provided at 50% rate and the match funding required will be provided by 1 FTE of existing European and International Affairs (EIA) staff. EIA therefore will fill a vacant post that will be fully funded and recruited to on a fixed term basis. Overheads are funded by a 7.5% additional grant against the staff cost. There will be no ongoing revenue implications for the City Council as a consequence of this project.
- 4.2.4 Governance of the BCC process will take place via the creation of a new sub-committee of the main ESIF Committee. This SUD Sub Committee will consist of the same spread of organisations as the members of the ESIF Committee and will discuss the applications submitted via DCLG and its portal website. The Committee includes representation from Local Authorities (members and officers), Higher Education, Further Education, business, GBSLEP, voluntary sector, Environment Agency, Trade Unions and government departments DCLG, DWP and DEFRA. The SUD Sub-committee will give views and advice on the project applications to BCC. It is then BCC's role as IB to come to a formal decision on which projects to recommend for approval by DCLG who remain the Managing Authority for these funds. The final BCC approval will be made in consultation with the Strategic Director Finance and Legal. These governance arrangements satisfy the relevant EU rules with regards to the Member State 'Partnership Agreement' and 'Code of Conduct'. Implementation of the Sub-Committee governance process will enable potential conflicts of interest arising from applications from participating members to be dealt with by exclusion of that party from the decision making process and all final approvals will be at the direction of the sub-committee. Any BCC applications will be subject to the standard internal gateway process prior to or in parallel with the application for grant funding as appropriate.

#### 4.3 Legal Implications

The SUD IB programme is being delivered under the Council's general power of competence under section 1 Localism Act 2011.

#### 4.4 Public Sector Equality Duty (see separate guidance note)

The SUD programme will be open to all applicants. There are no conditions placed on who can apply for funding as long as the project is delivered within the required geography. An initial Equalities Analysis has been carried out in line with statutory protocol which is attached at Appendix 1 (Reference EA001594). This has not identified any issues of concern in relation to the Equality Act 2010.

### **5. Relevant background/chronology of key events:**

- 5.1 The UK Government, under article 7 of the ERDF EU Regulations is required to delegate certain responsibilities to Urban Authorities. To meet this requirement the UK Government has asked the seven core cities to submit Sustainable Urban Development (SUD) strategies. This confers Intermediate Body (IB) status to BCC which is the necessary form of delegation that satisfies the EU rules for devolution. For BCC this will be attributed to a ring fenced budget of at least £10.13m (potentially extendable up to £23.65m). If this arrangement is not accepted by the core cities as the key urban development regions then the UK will be in breach of EU regulations on devolution and the national programme of using EU funds would be put at risk.
- 5.2 City Finance and Legal Services have both been consulted during the evolution of the SUD proposal. This work has examined the risks to BCC of accepting the IB status contained in the DCLG document Memorandum of Understanding and have concluded that the risks are minimal and acceptable, these are outlined in para 4.2.1. The risk to BCC is limited to the process of evaluating the strategic fit of the applications by carrying this out in compliance with an approved governance process.
- 5.3 SUD and the acceptance of IB status was one of the areas requested under devolution of powers under the West Midlands Combined Authority. The granting of IB powers and the management of the SUD funds can inform future arrangements and potential delegation of powers/budgets from any successor to EU funding post leaving the EU.
- 5.4 The SUD strategy focuses on HS2 which is a key game changing priority in the GBSLEP's plans and provides resource for the areas of Low Carbon and Environmental sustainability issues. The strategy will seek to add value to the mainstream HS2 work and will seek to deliver against the HS2 Environmental and Landscape Prospectus (ELP) which champions innovative low carbon technologies and environmental biodiversity schemes. The strategy has been developed in consultation with a wide range of local partners including all of those represented on the ESIF Committee including the GBSLEP. The project's geography is limited to Birmingham and Solihull. Applications for eligible delivery and/or research projects are expected to be received from local partners within the public, health, education and private sectors.

<b>6. Evaluation of alternative option(s):</b>			
6.1	Do nothing – if BCC and/or other core cities do not accept the SUD and IB delegation, the UK would be in breach of Article 7 of ERDF EU Regulations and all EU funds in the UK programme would be at risk until or unless the UK Government could find an alternative method of devolving the SUD strategic decision making to the urban regions or negotiate devolution under a more acceptable agreement (depending upon the reason for non-acceptance of the current proposal). BCC could potentially therefore lose out on accessing the €255m allocated to GBSLEP.		
6.2	Alternative organisation to be the Intermediate Body. This role can only be delegated to an Urban Authority and a core city. In accepting this role BCC will have a guiding role in ensuring that the funds can be accessed and used for local benefit in terms of jobs and the environment.		
<b>7. Reasons for Decision(s):</b>			
7.1	To accept and enable access to the funds as soon as possible. The funds align very well with the strategic priorities for the city and make valuable resource available from the time limited EU funding programme. The project will be of benefit by enhancing the arrival of HS2 to the city through low carbon and environmental measures that are not otherwise funded.		
<b>Signatures</b>		<b><u>Date</u></b>	
Angela Probert, Strategic Director of Change & Support Services .....			
Councillor Ian Ward, Deputy Leader of the Council .....			
<b>List of Background Documents used to compile this Report:</b>			
Intermediate Body (IB) Memorandum of Understanding. SUD Strategy Birmingham September 2015			
<b>List of Appendices accompanying this Report (if any):</b>			
1. Equality Analysis 2. Draft Memorandum of Understanding between DCLG and BCC			
<b>Report Version</b>	<b><u>1</u></b>	<b>Dated</b>	<b><u>13 January 2017</u></b>

## **PROTOCOL PUBLIC SECTOR EQUALITY DUTY**

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
  - (a) whether there is adverse impact upon persons within the protected categories
  - (b) what is the nature of this adverse impact
  - (c) whether the adverse impact can be avoided and at what cost – and if not –
  - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
  - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
  - the full equality impact assessment (as an appendix)
  - the equality duty – see page 9 (as an appendix).

## Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"> <li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;</li> <li>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;</li> <li>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li> </ul>
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> <li>(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;</li> <li>(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;</li> <li>(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.</li> </ul>
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"> <li>(a) tackle prejudice, and</li> <li>(b) promote understanding.</li> </ul>
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"> <li>(a) Marriage &amp; civil partnership</li> <li>(b) Age</li> <li>(c) Disability</li> <li>(d) Gender reassignment</li> <li>(e) Pregnancy and maternity</li> <li>(f) Race</li> <li>(g) Religion or belief</li> <li>(h) Sex</li> <li>(i) Sexual orientation</li> </ul>