

NORTH LINCOLNSHIRE COUNCIL

**REGENERATION
CABINET MEMBER**

**GREATER LINCOLNSHIRE LEP
INCORPORATION AS A COMPANY LIMITED BY GUARANTEE**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To seek approval for the council to become partner in the incorporated company "The Greater Lincolnshire Local Enterprise Partnership".
- 1.2 The key points in this report are as follows.
- Consider North Lincolnshire Council becoming a corporate member of the Greater Lincolnshire Local Enterprise Partnership
 - Seeks approval for a NLC councillor to be nominated as a director of the GLEPCo Board of Directors and a NLC councillor or officer to be authorised to represent the Council as member of the company including at general meetings.

2. BACKGROUND INFORMATION

- 2.1 The Government has made economic growth its highest priority. In support of this work, government has through the issuing of guidance rather than through statute encouraged upper tier and unitary councils to come together with other public bodies and private sector representatives to form Local Enterprise Partnerships. There are 39 LEP's throughout the country. They have an increasingly important role in delivering local economic growth with powers and responsibilities devolved to them, along with the creation of a Single Local Growth Fund (SLGF) focussed on housing, transport and skills.
- 2.2 The Greater Lincolnshire LEP is the vehicle for business and civic leaders to work together across Greater Lincolnshire to drive sustainable economic growth. It covers the administrative areas of, North Lincolnshire Council (NLC), North East Lincolnshire Council (NELC) and the area of Lincolnshire County Council (LCC). Each of these councils are constituent members of the LEP.
- 2.3 Currently the Greater Lincolnshire LEP is an informal partnership of various bodies and individuals governed by a Memorandum of Understanding.

Its main roles are

- to articulate a clear long-term and realistic economic strategy for the area
- Gain buy-in to objectives and outcomes from local partners
- Sell the area by influencing and lobbying for central government funds and influencing local funds
- identify existing barriers to growth
- focus on improving the local business environment.

Its priorities are

- to drive the growth of agri-food, manufacturing and visitor economy sectors
- to grow specific opportunities in the health and care, low carbon, and ports and logistics sectors
- to drive growth in enterprises by expansion into new markets, modern telecommunications, infrastructure improvements, and business skills.
- to promote Greater Lincolnshire as a place for sustainable growth, through improved transport infrastructure to connect to national and international markets, enable wider enjoyment of our heritage assets, culture and strong communities
- to recognise the need for new housing for the existing local population and to support balanced housing and economic growth.

The Leader of North Lincolnshire Council is currently a board member of the LEP.

- 2.4 As the LEP is currently unincorporated it cannot hold monies or enter into contracts. LCC do this on their behalf. They then receive funding as grant and use it in accordance with the priorities set by the LEP. LCC also enters into contracts to give effect to LEP decisions. LCC fulfils the role as Accountable Body for the LEP.

3. OPTIONS FOR CONSIDERATION

3.1 Option1

The current arrangements are increasingly seen as too informal to support the role of the LEP in circumstances where they are not only becoming increasingly responsible for the strategic direction of economic regeneration activity but also directly involved in decision-making around the expenditure of significant amounts of public money through the allocation of government and other grant funding.

The council will need to nominate a member to act as a Company Director on the GLLEP and a nominated individual to act as member representative.

It is therefore considered that the development of the partnership has now advanced to a stage where incorporation must be considered in order to fulfil the goals and objectives of the LEP and to create a separate legal personality, and limit the liability of the board and members.

Fifteen other LEPS have incorporated. Five others have used existing corporate structures.

3.2 Option 2

The Greater Lincolnshire LEP remains as an informal partnership governed by a memorandum of understanding.

4. ANALYSIS OF OPTIONS

4.1 Option 1

4.1.1 Establishment of the LEP as an independent company limited by guarantee formalises the legal status of the LEP. This helps to clarify the relationship of the members of the partnership and the board as the executive decision-makers defining their respective rights and spheres of operation.

4.1.2 It provides a transparent and accountable framework for decision-making. It further formalises the relationship between the LEP and the Accountable Body. This will provide for greater transparency as to the respective accountabilities of the various parties for financial and other governance issues.

4.1.3 The incorporation of the LEP opens up the prospects of it holding funding directly.

4.1.4 The incorporation of the LEP protects LEP board members from personal liability for the decisions of the LEP made in the name of the company which will have limited liability. Directors personally will have much better defined legal duties as directors of a company than as participants in an informal partnership. They can further be protected by the company through the purchase of appropriate insurance.

4.1.5 This is an important consideration in attracting the best individuals to become involved in the work of the LEP.

4.1.6 The nominated director (3 year term) although appointed by the council, will owe their primary duty to the company. There are seven main duties of a company director:

- to act within the company's powers
- to promote the success of the company
- to exercise independent judgment
- to exercise reasonable care, skill and diligence
- to avoid conflicts of interest
- not to accept benefits from third parties and

- to declare any interest in proposed transactions or arrangements with the company

4.1.7 The member's agreement will regulate a number of issues that may arise between the three unitary authorities and the company as follows:

- the involvement of each of the upper tier authorities, the basis on which any of the upper tier authorities might cease to be members and what this means for the company as a Local Enterprise Partnership
- the relationship between the LCC and the company in the LCC capacity as accountable body
- the way in which the company organises itself internally to manage certain of its activities.

4.1.8 Local Enterprise Partnership

It is the upper tier authorities that are tasked with coming together with the private sector and other interested parties to form Local Enterprise Partnerships. The members' agreement records that this is what the upper tier authorities are seeking to do in becoming members of the company. The other side of this is that if an upper tier council leaves, it is doubtful whether the company is still able to fulfil the functions of the Local Enterprise Partnership or at least not as the Local Enterprise Partnership for the Greater Lincolnshire area.

The members' agreement therefore provides for termination in respect of an individual upper tier council if it ceases to be a member of the company and if that happens the company ceases to be the Local Enterprise Partnership for the Greater Lincolnshire area. However the remaining upper tier councils can continue the company for their own economic regeneration purposes. The company could also continue as a Local Enterprise Partnership for a different geographical area following discussion with the Secretary of State.

4.1.9 Accountable Body

As an unincorporated informal partnership the current LEP cannot hold funds or contract for their distribution or expenditure. Government funding is therefore channelled through LCC as general grant under section 31 of the Local Government Act 2003.

Guidance and other directions from the Secretary of State then say how the council must deal with that funding – ie essentially at the direction of the LEP. LCC therefore acts as Accountable Body for the funding, accounting for it and undertaking any contractual role required to ensure it is spent in accordance with the priorities and strategies set by the LEP.

The members' agreement deals with two issues that arise out of this funding structure.

LCC has agreed to manage the funding in this way – ie to make it available for administration by the LEP Company in accordance with the strategies, priorities and decisions of the LEP.

Secondly, it deals with what happens if a conflict arises between the LEP Company and LCC as Accountable Body – e.g. over whether to use funds to grant fund or loan to a particular initiative.

Essentially the company informs the Accountable Body of any such decisions and cannot implement them without the consent of the Accountable Body which undertakes not to withhold consent unless the decision would be unlawful, inconsistent with its obligations as Accountable Body or would give rise to a risk that LCC considers to be unacceptable.

Any dispute over whether the LCC is entitled to withhold consent can be referred to binding expert determination.

However the company and the upper tier councils accept that in forming and operating the company as a Local Enterprise Partnership in the interests of the people and economy of Greater Lincolnshire they are not to have any liability to each other for the way they fulfil their respective roles.

4.1.10 Internal organisation

The members agreement requires the company to manage three elements of its operations through sub-committees of the Directors as follows:

- the appointment and approval of directors is to be managed through an Appointments Committee;
- administration of funding and in particular the Single Local Growth Fund and Invest and Grow Fund, including decisions for approval by the Accountable Body is to be managed through a Local Approvals Board; and
- fulfilment of its role in relation to skills will be managed through a Skills Board which will draw membership by co-option from the Lincolnshire and Rutland Skills Board

The members' agreement also requires the company to comply with any requirements arising out of the company being a local authority regulated company as set out below.

A copy of the proposed Memorandum and Articles of Association can be found at Appendix A. A copy of the members agreement can be found at Appendix B.

4.2 Option 2

4.2.1 The main advantage of remaining as a partnership, it that it negates the need for statutory reporting requirements, liability for an element of VAT, and the financial provision for the delivery of statutory documents, accountancy and indemnity insurance.

4.2 Option 1 is suggested as the preferred option.

5. **RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

5.1 There are no resource implications to consider.

6. **OUTCOMES OF INTEGRATED IMPACTASSESSMENT (IF APPLICABLE)**

6.1 Officers have completed an Integrated Impact Assessment covering the issues of the project. No significant issues of concern were highlighted.

7. **OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED**

7.1 A wide range of partners have participated in GLLEP debate.

7.2 There are no known conflicts of interest for Cabinet to consider.

8. **RECOMMENDATIONS**

8.1 That the Cabinet Member supports the incorporation of the Greater Lincolnshire Local Enterprise Partnership as a Company Limited by Guarantee.

8.2 That the Cabinet Member approves North Lincolnshire Council to become a member of the Greater Lincolnshire Local Enterprise Company.

8.3 That the leader of North Lincolnshire Council is appointed Director of the Greater Lincolnshire Local Enterprise Partnership Company.

8.4 That the Cabinet Member appoints a member to the Greater Lincolnshire Local Enterprise Partnership.

DIRECTOR PLACES

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Background Papers used in the preparation of this report.

Lincolnshire County Council Paper