

**CHILTERN DISTRICT COUNCIL
CABINET 17 DECEMBER 2013**

Background Papers, if any, are specified at the end of the Report

BUCKS-WIDE DELIVERY VEHICLE FOR BTVLEP

*Contact Officer: Joanna Swift, Head of Legal and Democratic Services
01494 732761*

RECOMMENDATIONS

- 1 That the Council becomes a member of Buckinghamshire Advantage Limited subject to satisfactory completion of the necessary constitutional, governance and legal documentation.**
- 2 That the Cabinet Leader represents the Council at meetings of Buckinghamshire Advantage Limited and on any Shadow Board.**
- 3 That the Chief Executive be nominated as the Council representative on the Board of Directors and be authorised to appoint a senior officer as an alternate Director if necessary.**
- 4 That pursuant to the Local Authority (Indemnities for Members and Officers) Order 2004, the Council agrees to indemnify members and officers representing the Council on Buckinghamshire Advantage Limited against any personal liability incurred when carrying out their duties except in the case of fraud or criminal acts.**
- 5 That the Chief Executive in consultation with Cabinet Leader and Head of Legal and Democratic Services be authorised to approve and enter into the Members Agreement for Buckinghamshire Advantage Limited and agree the Company's Memorandum and Articles of Association and any other interparty agreements or legal documents required for the formation of the company.**

Relationship to Council Objectives

This matter contributes to the Council's aims and objectives of Efficient and effective customer focused services' and to 'Conserve the environment and promote sustainability'.

Implications

- (i) *Not a key decision*
- (ii) *Within the Policy and Budgetary Framework*

Financial Implications

As set out in the body the report

Risk Implications

As set out in the body of the report

Equalities Implications

The objectives of the Company will be delivery of economic outputs which could assist in supporting young people, long term unemployed etc access employment opportunities that they might otherwise not be able to access

Sustainability Implications

Although the creation of the Company itself does not have sustainability implications the objectives behind the Company and its expected outputs will assist in the delivery of economic development and job creation. Supporting and the local economy and creation of jobs will in part meet sustainability objectives of the Council

Purpose of the report

- 1 To seek approval for the Council to participate in a new Bucks-wide organisation to support the Board of Buckinghamshire and Thames Valley Local Enterprise Partnership (BTVLEP) in the delivery of its objectives.

Background

- 2 BTVLEP is an informal organisation and contracts through its members rather than as a separate legal entity. The BTVLEP Board has identified the need for the support of an incorporated body to deliver its objectives by receiving and applying funding and contracting with third parties. It is therefore proposing that Buckinghamshire Advantage (BA), a company limited by guarantee, is established as a County-wide delivery vehicle owned and directed by the partner organisations of BTVLEP.

- 3 It is proposed to create BA through a restructuring of Aylesbury Vale Advantage Limited (AVA). This is a company limited by guarantee currently owned by Bucks County Council and Aylesbury Vale District Council and created in 2005 with the object of promoting development and regeneration in the Aylesbury Vale area. It has a track record of successful delivery of projects in support of local authorities.
- 4 Buckinghamshire Advantage can be created by changing the name, governance structure and membership of AVA, while AVA's existing assets, revenues and funds can be ring fenced for Aylesbury Vale area projects. Further details of the proposal are discussed below.

Membership

- 5 The members of BA would be the County Council, the four District Councils and Buckinghamshire Business First (BBF). Each member, effectively the "shareholders" in the company, would nominate a representative to vote at meetings of the company. It is envisaged the local authority nominees would be the Cabinet Leaders of each council, as they already sit on the Board of BTVLEP.

Governance

- 6 It is proposed there will be between 6 and 12 directors of the Company. Each member will be entitled to appoint and remove 1 director. Appointees are expected to have the requisite knowledge, understanding and experience of the matters to be dealt with by the Board. It is envisaged that the Chief Executives of the member authorities would be the directors as they are already closely involved with the BTVLEP Board. However, it has been agreed that Chiltern and South Bucks can appoint a separate representative. Cabinet at South Bucks has decided to nominate the Director of Services as their representative and it is proposed that the Chief Executive represents Chiltern.
- 7 The members will also be jointly entitled to appoint up to 5 directors drawn from the business and private sector community. Private sector directors will be appointed for an initial period of 3 years extendable for a further 3 years with approval of all members. Each member will also be entitled to appoint a representative to attend meetings as an observer in a non-voting capacity. The Chairman would be elected by the Board.
- 8 Members acting by their nominees (envisaged to be the respective Cabinet Leaders) would jointly approve:-
 - BA's Strategic Delivery Plan, annual Business Plan and budget
 - Statutory accounts
 - Other material matters outside the scope of the Strategic Delivery Plan and Business Plans

- 9 Detailed implementation of BA's business plan will be delegated to the Board of Directors. The Managing Director will be responsible for BA's day to day operations and for providing the administrative support to the Board of Directors, and for meetings of the nominees.
- 10 The new constitutional and governance documents for BA have been prepared by external lawyers for approval by the members and provide for:-
- The new objects of BA
 - The right of members of the company to appoint and remove representative directors
 - The approval and management mechanisms for the structure as referred to above
 - Appropriate protocols for dealing with conflicts of interest
 - The ring fencing of the legacy AVA assets mentioned above
- 11 A legal report prepared by the external solicitors summarising the proposed arrangements is attached as **Appendix 1** for members' information.

Timescales

- 12 It is proposed that a Shadow Board comprises local authority and BBF nominated representatives, along with the current Chief Executive of BTVLEP, in order to co-operate to advance the objectives of BA before its formal launch. It is hoped this can take place in December 2013 once member authorities have completed their respective approval processes.
- 13 In order to meet the above timescales it will be necessary to delegate the final approval of the Company's Memorandum and Articles of Association, together with any necessary interparty agreements and the approval of a memorandum of understanding to officers. It is proposed this delegation is given to the Chief Executive in consultation with the Cabinet Leader and Head of Legal and Democratic Services

Potential Benefits to the Council

- 14 By being part of the proposed company the Council will have access to a delivery vehicle for either directly bringing forward or economic development and growth proposals or for taking an active enabling or partnership role. For example as part of the proposed Pre-Submission Delivery DPD there is a proposal to enable delivery of a business Innovation Centre in Chesham. BA could play a role in unblocking delivery if necessary, raising funding if required and potentially taking on responsibility for managing the Innovation Centre. Other examples could be for BA to assist in the delivery of development projects on Council land or working in partnership with developers to deliver planning proposals

which would otherwise not be delivered or delivered in ways to achieve wider objectives.

Risks and financial implications

- 15 The creation of a separate company to deliver BTVLEP projects reduces the risk to partner councils who would otherwise have to take lead responsibility. However it will be important to ensure the Council nominees are protected from any personal liability and for the Company to have appropriate directors' liability insurance.
- 16 The proposed documents do provide for the Company to indemnify each member against any liabilities incurred in the lawful performance of the members' duties. The Company will also purchase and maintain insurance cover for members and directors. However, to ensure that member and director nominees are fully protected against the risk of personal liability it is recommended that the Council grants an indemnity under the Local Authority (Indemnities for Members and Officers) Order 2004 in respect of carrying out their lawful duties for BA and that officer directorship to be recorded in their terms and conditions of employment.
- 17 As BA will have a majority local authority ownership its activities will need to be reflected in the relevant authority accounts in accordance with accounting requirements.
- 18 A similar report and recommendations have been presented to, and agreed by, Cabinet at South Bucks District Council.

Background Papers: Draft Memorandum and Articles of Association and Members Agreement
