

Cabinet – 09 December 2020

Approving the Supplemental Deed of Variation to the Black Country Joint Committee Collaboration Agreement

Portfolio: Councillor Mike Bird, Leader of the Council and Portfolio Holder for Finance

Related portfolios: Councillor Adrian Andrew, Deputy Leader of the Council and Portfolio Holder for Regeneration and Development

Service: Resources and Transformation

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

To approve the Supplemental Deed of Variation Relating to the Collaboration Agreement in Relation to the Black Country Executive Joint Committee City Deal and Growth Deal dated the 7 May 2014 (the 'Supplemental Deed') which requires each party to observe, perform and act in accordance with the principles set out in the 'Governance Principles: Enterprise Zones' ('BCEZ Governance Principles') at **Appendix B**. This sets out the principles and framework for managing the Black Country Enterprise Zone ('BCEZ'), and so will allow Walsall Council to fulfil its role as the Single Accountable Body ('SAB') for the Black Country Local Enterprise Partnership ('BCLEP').

2. Summary

- 2.1 The four Black Country Councils (the 'BC Councils') were asked during 2013 to consider and approve the formation of the Black Country Executive Joint Committee ('BCJC'), subsequently granting it the functions and powers to administer the City Deal and Growth Deal programmes. Walsall Council's Cabinet approved these arrangements on the 11 September 2013.

- 2.2 These roles, functions and powers, together with how the BC Councils and the Black Country Consortium ('BCC'), together known as the 'five partners', will work together were captured in the City Deal and Growth Deal Collaboration Agreement, entered into on the 7 May 2014 (the 'Collaboration Agreement'). This included an acceptance of delegated authority from each of the BC Council's Cabinets for the BCJC to act as the decision making body for these identified programmes.
- 2.3 Further amendments to the Collaboration Agreement were approved by the BC Council's Cabinets and the BCJC as follows:
- (i) 7 September 2016 (BCJC): This widened the scope of the BCJC to include decisions in relation to funding applications into and funding received from the West Midlands Combined Authority ('WMCA'), for example the Land & Property Investment Fund ('LPIF'). This was approved by Walsall Council's Cabinet on 8 February 2017;
 - (ii) 12 February 2020 (BCJC): This widened the scope of the BCJC to include all funds secured by the BCLEP, including Growing Places and Enterprise Zone funding, together with any future funding or funding programmes approved, such as the Shared Prosperity Fund. These changes allow the BCJC to make decisions on all LEP funding secured, including future funds, meaning that Walsall Council can fulfil its role as the BCLEP's SAB for all funds. It also means that the BC Councils do not need to seek Cabinet approvals to widen the scope of the BCJC each time that new funding is awarded to the BCLEP. This was approved by Walsall Council's Cabinet on 18 December 2019.
- 2.4 The BCEZ comprises two separately submitted Enterprise Zones to the Communities and Local Government Unit (CLGU): Wolverhampton and Walsall Enterprise Zone ('WWEZ'), which commenced on 1 April 2013 and ends on 31 March 2038; and the Dudley ('DY5') Enterprise Zone which commenced on 1 April 2017 and ends on 31 March 2042. Collectively the two zones are the Black Country Enterprise Zone ("BCEZ").
- 2.5 Historically, Wolverhampton and Dudley Councils were the Accountable Bodies for WWEZ and DY5 respectively, and had separate governance and monitoring arrangements, as set out in their individual Memorandums of Understanding with CLGU, plus separate financial models with differing assumptions.
- 2.6 National Local Growth Assurance Framework guidance released in January 2019 included the requirement that all LEPs must have a single Accountable Body in place by the 28 February 2020. In response to these requirements,

the BCLEP (on 22 October 2018) and the BCJC (on 23 January 2019) both confirmed acceptance of Walsall Council as the Single Accountable Body for all funds secured by the BCLEP. The role was approved by Walsall Council's Cabinet on 24 April 2019.

- 2.7 Since the above approvals, Walsall Council acting in its role as the SAB, has worked up proposals to bring the governance of all BCLEP Funds, including BCEZ, into the Black Country Single Assurance Framework. In addition to this, the SAB created a single consolidated Financial Model for the BCEZ and a detailed paper setting out governance and operation arrangements specific to the BCEZ, which forms the BCEZ Governance Principles.
- 2.8 This is a key decision because the BCEZ and the BCEZ Governance Principles may impact on more than one ward within the borough and will provide revenue funds to the Council of more than £250,000.

3. Recommendations

- 3.1 That Cabinet authorises Walsall Council's entry into the Supplemental Deed of Variation Relating to the Collaboration Agreement in Relation to the Black Country Executive Joint Committee City Deal and Growth Deal dated the 7 May 2014, at **Appendix A** to this report and in doing so, that Cabinet approves the Governance Principles: Enterprise Zones (at **Appendix B**).
- 3.2 That Cabinet delegates authority to the Chief Executive in consultation with the Leader of the Council to conduct any negotiations and to make any minor amendments and to subsequently authorise the sealing of the Supplemental Deed of Variation Relating to the Collaboration Agreement in Relation to the Black Country Executive Joint Committee City Deal and Growth Deal dated the 7 May 2014 and the sealing or signing of any related documents

4. Report detail

Context

- 4.1 Walsall Council's Cabinet approved entering into a Joint Executive Committee with the other BC Councils for the purposes of the City Deal and Growth Deal in September 2013, this approval included entering into a Collaboration Agreement between the BC Councils and the BCC (acting as secretariat to the Local Enterprise Partnership).
- 4.2 The original remit of the BCJC was limited to City Deal and Growth Deal programmes of funding from the Government. As part of the terms of that

agreement, Walsall Council was appointed the Accountable Body for the purposes of managing the funding allocation given under City Deal and Growth Deal.

- 4.3 The Collaboration Agreement was approved by the Joint Committee on 7 May 2014 and set out the governance and operational arrangements for the City Deal and Growth Deal programmes, including the collaboration, governance, project approval, management and audit, and claw back arrangements.
- 4.4 Further amendments to the Collaboration Agreement were approved by the BC Council Cabinets and the BCJC as follows:
- (i) 7 September 2016 (BCJC): This widened the scope of the BCJC to include decisions in relation to funding applications into and funding received from the West Midlands Combined Authority (WMCA), for example the Land & Property Investment Fund (LPIF). This was approved by Walsall Council's Cabinet on 8 February 2017.
 - (ii) 12 February 2020 (BCJC): This widened the scope of the BCJC to include all funds secured by the BCLEP, including Growing Places and Enterprise Zone funding, together with any future funding or funding programmes approved, such as the Shared Prosperity Fund. These changes allow the BCJC to make decisions on all LEP funding secured, including future funds, meaning that Walsall Council can fulfil its role as the BCLEP's SAB for all funds. It also means that the BC Councils do not need to each seek Cabinet approvals to widen the scope of the BCJC each time that new funding is awarded to the BCLEP. This was approved by Walsall Council's Cabinet on 18 December 2019.
- 4.5 National Local Growth Assurance Framework guidance released in January 2019 included the requirement that all LEPs must have a single Accountable Body in place by the 28 February 2020. In response to these requirements, the BCLEP (on 22 October 2018) and the BCJC (on 23 January 2019) both confirmed acceptance of Walsall Council as the SAB for all funds secured by the BCLEP. The role was accepted by Walsall Cabinet on 24 April 2019.
- 4.6 Therefore, since its appointment as the BCLEP's SAB, Walsall Council has worked up proposals to bring the governance of all BCLEP Funds, including BCEZ, in line with the Black Country's Single Assurance Framework. This means that any funding awards within the BCEZ must follow the same process for all other LEP funds, including approvals at the BCLEP and its Funding Sub Group, and the BCJC.

- 4.7 The BCEZ programme is unique due to the nature of the funding mechanism (i.e. borrowing to fund capital works which is recovered from future business rates) so further consideration was required for the claims, monitoring and borrowing policies. A paper (BCEZ Governance Principles– **Appendix B**) setting out the BCEZ specific policies and principles has been prepared in consultation with all parties to the Collaboration Agreement. This sets out the principles and framework for managing and monitoring the BCEZ programme, including:
- the process for the collection, distribution and monitoring of the business rates and business rates surpluses;
 - Collaborative working between the BC Councils, including joint working on the Financial Model and roles and responsibilities;
 - Prioritisation of costs to be funded from business rates;
 - Principles of borrowing and payback.
- 4.8 The prioritisation of costs to be funded from business includes borrowing costs associated with capital schemes, and revenue costs. Revenue costs include programme management costs, BC Councils historic and future revenue costs for developing the BCEZ and Black Country Transport Director costs. Detail of these costs and the recovery of costs specific to Walsall Council are set out in the financial implications section of this report.
- 4.9 The SAB also created a single consolidated Financial Model for the BCEZ. This brought together two separate models from WWEZ and DY5 and consolidated them into a single model, with consistent principles and assumptions. Details of this are also set out in the financial implications section of this report.
- 4.10 To enable the SAB to carry out its roles and responsibilities, the BCEZ Governance Principles' as agreed by all BC Councils and the BCC, need formalising to ensure they are legally binding as a variation to the Collaboration Agreement. This will be more efficient than creating individual funding agreements for each BCEZ scheme between BC Councils.

Council Corporate Plan priorities

- 4.11 The Corporate plan 2018 – 2021 seeks to reduce inequalities and maximise the potential for all, by delivering against the strategic priorities of:
- Economic growth for all people, communities and businesses;
 - People having increased independence, improved health and can positively contribute to their communities;

- Internal focus – ensuring that all council services are efficient and effective;
- Children have the best start and are safe from harm, happy and learning well;
- Communities are prospering and resilient with housing needs met in safe and healthy places that build a strong sense of belonging and cohesion.

4.12 The Marmot Review ('Fair Society, Healthy Lives') presented a national strategic review of health inequalities post 2010. It concluded that reducing inequalities will require action on six policy objectives, being:

1. Give every child the best start in life.
2. Enable all children, young people and adults to maximise their capabilities and have control over their lives.
3. Create fair employment and good work for all.
4. Ensure a healthy standard of living for all.
5. Create and develop healthy and sustainable communities.
6. Strengthen the role and impact of ill-health prevention.

4.13 The BCEZ will support economic growth, which is its key strategic aim, and support employment. By completing the role of SAB for the BCLEP, the Walsall borough will continue to benefit by accessing external funding in support of these strategic priorities, notable examples of which include Phoenix 10 Land Reclamation programme and the major improvements to the M6 motorway junction 10. Specifically, the BCEZ funding mechanism is supporting a grant to invest in the development of the Box Pool site.

Risk management

Programme Management risk

4.14 Risks associated with the management of funds received will be mitigated by building on and adapting the existing and successful SAB arrangements established within Walsall Council as part of the Programme Management Service Area within the Resources & Transformation Directorate, who have successfully passed all audits of the administration of the Growth Deal programme through our internal audit process for the last 4 years and have received good ratings from the Department for Business, Energy & Industrial Strategy (BEIS) as part of the annual review process.

4.15 Tools to support this include the BCLEP's Assurance Framework and the Government's National Assurance Framework that clearly set out how the

funds are to be administered and the roles of officers in doing so; including the responsibilities of the Section 151 Officer and the BCLEP.

Risks relating to BCEZ Funding principles as set out in Governance Paper

- 4.16 The BCEZ funding model is based on the premise that local authorities will borrow to fund project costs, and borrowing costs will be recovered from future business rates generated from the sites. The financial model is the tool that assesses whether those costs can be fully recovered. There is a risk that BCEZ funding decisions are made based on outputs from the model, then the forecast from the model does not materialise.
- 4.17 Actual Business Rate Surpluses may differ to modelled surpluses meaning that BC Councils may not recover their borrowing costs in line with the model forecast at the time of the funding decision. Therefore, borrowing costs being recovered over a longer period than forecast and potentially not completely is a risk that will sit with each BC Council borrowing for investment in their geographical area. There is also a risk that revenue costs as set out in the Financial Implications section of this report and the BCEZ Governance Principles may not be recovered. BC Councils and the BCC will also be required to cash-flow these revenue costs until there are sufficient business rates collected to pay for them.
- 4.18 The risk of non-recovery of borrowing costs and revenue costs should be considered in the context of the current Covid-19 and economic environment, although as the model is a live model it has been updated recently by all BC Councils which takes into account current economic conditions. Also, the risk of Jaguar Land Rover choosing to relocate, partially shut down factories or even cease trading given that they contribute a significant proportion of business rates should also be considered by each BC Council and/or the BCC when deciding whether to utilise the BCEZ future revenue cost allocation or borrow for capital schemes.
- 4.19 This risk is mitigated by each BC Council borrowing (and taking these risks) for projects in their own geographical area. The SAB will not undertake any borrowing on behalf of other BC Council. In addition: (i), the financial model is robust, with prudent assumptions for borrowing and inflation, plus provisions included for bad debts, business rate relief and appeals, with project cost contingencies where considered appropriate; and (ii) sensitivity analysis can easily be completed to assess risk and support decision making on future projects.

4.20 The BCEZ Governance Principles also sets out the principles of funding non-BCEZ sites. The principles for the prioritisation of BCLEP funding means that the reinvestment of EZ business rates may no longer being prioritised for EZ sites ahead of non-EZ sites. Thus an EZ site will be competing with other projects in the overall BC pipeline of development and capital investment projects. However, the BCEZ Governance Principles seeks to apply the following conditions to any projects funded from the BCEZ, and will seek to recover income for sites funded through the BCEZ funding mechanism but are outside BCEZ geographical areas and for which the BCLEP cannot ring-fence business rates:

- Projects must be in BC pipeline as a named key project, prior to seeking LEP approval;
- EZ should be funding of 'last resort'. It must be demonstrated that all reasonable efforts have been made to secure external funding prior to utilising EZ funding. This is to ensure the funding available to the BCLEP is maximised;
- Profits, income and overage on funded projects must be recycled back to the BCEZ or LEP funds.

4.21 The Collaboration Agreement and the BCEZ Governance Principles help manage the above risk as they set out the priority order in which costs are applied to business rates, together with the procedure and ordering in the event of a shortfall. In the event of a shortfall, the SAB, in consultation with the Project Management Office, will reassess the financial model to confirm if this is a temporary in-year issue that will correct the following financial year, or if the costs are becoming unaffordable or need re-phasing. If it is the latter, then this issue will be raised at the earliest opportunity through the key groups in the BC Assurance Framework, to consider collectively if cost allocations need to be re-assessed, either short term or long term. However, with regular (minimum quarterly) updates to the financial model by BC Councils and review on a consolidated basis by the SAB, forecast deficits should be flagged and early warnings triggered in advance.

4.22 In terms of private sector grants i.e. grantees that are not a party to the Collaboration Agreement, grant agreements will need to be put in place between the borrowing BC Council and applicant. For Walsall projects, security requirements will be assessed as part of our standard due diligence procedures carried out on applicants.

Financial implications

- 4.23 There are no direct financial implications as a result of the recommendation in this report, although the BCEZ has various financial implications for the Black Country and Walsall Council.
- 4.24 As a result of the BCEZ consolidated financial model, the SAB is able to forecast a prudent financial position of the BCEZ across the whole of the Black Country, with the ability to complete a range of sensitivity analysis such as changes to inflation rates (particularly important in the current economic environment), and separate forecasts by individual sites and collective sites. The consolidation of the model has allowed consistent assumptions to be applied, to provide more accurate, relevant and timely information to the BCLEP.
- 4.25 BCEZ surpluses under the live consolidated model at the date of this report are forecast to be between £47m and £58m by the end of the EZ in March 2042, depending on the inflation and borrowing assumptions applied. These surplus are only forecasting income from certain sites in the BCEZ, i.e. those projects that have been approved by the BCLEP, are in delivery or are delivered. Examples of these certain sites are i54, Phoenix 10 and Boxpool, and surpluses forecast are also net of the costs of borrowing for these projects. The surpluses are also net of forecast revenue costs set out in 4.29 to 4.33.
- 4.26 The BCLEP will make decisions on what the surplus will be used to fund in line with their strategic priorities, although forecast surpluses are modest in the next 5 years so it is highly probable that BC Councils will need to borrow against these surpluses for future projects. This could be to fund projects both within and outside of the BCEZ; as such the BCEZ is a flexible fund with a much longer end date (March 2042) than existing LEP funds, such as Growth Deal, which ends March 2021.
- 4.27 The BCEZ Governance Principles (at paragraph 6.4) sets out the priority order of costs to be funded from BCEZ business rates. This gives first priority to borrowing costs for capital schemes already approved by the BCLEP (such as Phoenix 10 and Boxpool for Walsall Council).
- 4.28 The financial model also assumes costs for the SAB and BCC programme management functions, meaning that there will be no net financial impact for Walsall Council in carrying out its SAB roles and responsibilities in relation to BCEZ functions.

- 4.29 Allocations are provided for the BC Transport Director. These costs are currently funded from Growth Deal, which ends March 2021 and there is no other confirmed funding for this post. Therefore, the cost would otherwise need to be shared by all BC Councils under existing arrangements. There is potential for costs to be charged to external transport grants, but an allocation has been made within the BCEZ model as a prudent measure so that a funding source is identified in a worst case scenario.
- 4.30 Historic revenue costs incurred since the start of the WWEZ up to March 2020 of £1,470,316 are recoverable for Walsall Council. This will be recovered over a 10 year period commencing 2020/21. Historic revenue costs have been audited up to March 2020 across all BC Councils.
- 4.31 Future revenue costs of £250,000 per annum for 5 years commencing 2020/21 are proposed for BC Councils to develop their BC Pipeline priority scheme. The budget is for development of named projects in the BC Pipeline and/or development of BCEZ sites, but must also cover BCEZ monitoring and compliance costs. After the 5 year period, BC Councils can claim up to £10,000 for BCEZ monitoring and compliance costs.
- 4.32 The BCLEP approved the recovery of historic and future revenue costs by BC Councils at its meeting on 24 August 2020.

Legal implications

- 4.33 Under the Local Government Act 1972 and Local Government Act 2000 as amended by the Localism Act 2012 and regulations issued by the Secretary of State, Walsall Council's Executive has the power to establish a Joint Executive Committee.
- 4.34 An Executive Joint Committee is effectively an extension of a local authority Cabinet, making decisions on behalf of Cabinet where it has delegated authority to do so. Delegation does not prevent Cabinet from choosing to exercise the powers instead of the Joint Committee nor withdrawing at any time the delegation for a specific matter or item or in its entirety.
- 4.35 By Cabinet and the other parties to the Collaboration Agreement approving the Supplemental Deed they will be confirming the intention to give the principles and procedures set out in the BCEZ Governance Principles (**Appendix B**) a legally binding status, which will support Walsall Council in carrying out its roles and responsibilities as the BCLEP's SAB. In order to bring these changes into effect, the original signatories to the Collaboration Agreement will need to enter into the Supplemental Deed.

- 4.36 The proposals in the BCEZ Governance Principles have been prepared by the SAB team, in consultation with finance and regeneration officers across the BC Councils, complemented by external legal advice to ensure that the contents are appropriate and enforceable. External legal advisors drafted the Supplemental Deed and reviewed the BCEZ Governance Principles – Walsall Council’s internal Legal Services were not involved in the review/drafting and therefore have not provided any comments on the contents of both the BCEZ Governance Principles and Supplemental Deed.

Procurement Implications/Social Value

- 4.37 Any further specialist functions or advice required moving forward that cannot be supplied internally by Walsall Council in its role as SAB or its existing appointed advisors will be secured through appropriate tendering in accordance with internal processes and procedures, and supported by the Procurement team.

Property implications

- 4.38 There are currently no property implications arising directly from this report.

Health and wellbeing implications

- 4.39 There are currently no direct health and wellbeing implications arising from this report.

Staffing implications

- 4.40 The appropriate existing staff contracts will be extended to deliver the SAB functions, Human Resources colleagues will advise and support this process. Where new staff are recruited these will be appointed on the appropriate fixed term or temporary contracts as required.

Reducing Inequalities

- 4.41 There are currently no direct equality implications arising from this report, therefore an EqIA assessment has not been necessary. Any supplementary

projects and/or proposals arising from the deed and its distribution of funds will be subject to EqlA consideration.

Consultation

- 4.42 Legal and finance officers from all signatory organisations of the original Collaboration Agreement have been consulted on the Governance Principles: Enterprise Zones. External consultation was not required as the recommendations in this report do not have a direct impact on individuals or organisations.

5. Decide

- 5.1 Cabinet is asked to approve the BCEZ Governance Principles and for the Council to enter into the Supplemental Deed at **Appendix A** in order to give the BCEZ Governance Principles a legally binding status, such approvals to include delegating authority to the Chief Executive in consultation with the Leader of the Council to take part in any negotiations and to make any minor amendments prior to sealing the Supplemental Deed.
- 5.2 This is the preferred route to ensure that BCEZ governance and operations comply with the BCLEP Assurance Framework and allow the SAB to carry out its functions specifically in relation to BCEZ funding in accordance with the National Local Growth Assurance Framework (as set out in part 4.5 of this report). Failure to formalise the BCEZ principles and governance will significantly affect the SAB's ability to carry out its roles and responsibilities, and may cause disputes between the BC Councils if allocation of business rates are decided on an ad hoc or first come first served basis. This preferred route is also more efficient than creating individual funding agreements for each BCEZ scheme between BC Councils.

6. Respond

- 6.1 Walsall Council, the other BC Councils and BCC will enter into the Supplemental Deed. Once agreed by the Local Authorities, the Black Country Joint Committee will approve the Supplemental Deed.

7. Review

- 7.1 The BCEZ Governance Principles may need to be reviewed and updated from

time to time, as local and national policies evolve, particularly in relation to business rates and Enterprise Zones. The Supplemental Deed permits the schedule to be revised by written agreement between the parties from time to time, once approved by the BCJC.

Background papers

Black Country Executive Joint Committee Collaboration Agreement and Terms of Reference (currently in force).

Attachments

Appendix A –Supplemental Deed of Variation Relating to the Collaboration Agreement in Relation to the Black Country Executive Joint Committee City Deal and Growth Deal dated the 7 May 2014

Appendix B –Governance Principles: Enterprise Zones

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09 December 2020



Cllr Mike Bird
Leader of the Council

09 December 2020