

## **Cabinet – 23 January 2013**

### **Black Country Business Property Investment Programme**

- Portfolio:** Councillor Adrian Andrew, Deputy Leader, Regeneration
- Related portfolios:** Councillor Chris Towe, Finance and Personnel
- Service:** Regeneration – Development and Delivery
- Wards:** Wards within the SUD boundary (see **Appendix A**)
- Key decision:** Yes
- Forward plan:** No – the report is urgently required in order to provide Cabinet with an update on the risks associated with the Programme.

#### **1. Summary**

- 1.1 The Council, with its local authority partners, has a priority agenda to promote economic growth and job creation throughout the borough and Black Country. The Black Country Business Property Investment Programme (BCBPIP), along with a number of other initiatives and programmes, supports this wider comprehensive approach to business and enterprise growth.
- 1.2 Details of the Programme were reported to Cabinet in September 2011 and February 2012; resulting in a bid to the Department for Communities and Local Government (DCLG) in March 2012 for approximately £6.7m of European Funding from the European Regional Development Fund (ERDF). In addition, Full Council on 16 April 2012 agreed for Walsall Council to act as the 'Accountable Body' for the Programme on behalf of the Black Country authorities.
- 1.3 The Application to DCLG was approved in May 2012 and the legally binding funding agreement between DCLG and Walsall Council was issued in draft version in July 2012. The funding agreement sets out the framework for the delivery of the approved project including events that could result in clawback of monies from Walsall Council by DCLG and the financial consequences.
- 1.4 Following the reports mentioned above, this report provides further detail regarding the content of the funding agreement issued by DCLG and importantly the impact this has on the collaboration agreement between the four Black Country local authorities with regard to the management and delivery of the Programme, in particular the arrangements for any potential clawback associated with BCBPIP. It is suggested that the previous draft collaboration agreement is amended to reflect DCLG's requirements on Walsall Council as the accountable body for the BCBPIP and in particular our response to managing the risk of

clawback by DCLG. The proposed amendments to the collaboration agreement lessen the financial obligations on Walsall Council and share these equally with the other Black Country authority partners.

## **2. Recommendations**

- 2.1 That Cabinet agree to enter into the Black Country Business Property Investment Programme (BCBPIP) Collaboration Agreement with its Black Country local authority partners which provides for any potential clawback of the European Regional Development Fund being shared equally.
- 2.2 That Cabinet agree to delegate authority to the Executive Director – Regeneration to sign or authorise the sealing of the proposed Collaboration Agreement, to be entered into by the four Black Country Local Authority partners, in relation to BCBPIP and other related documents.

## **3. Report detail**

- 3.1 At its meeting in February 2012, Cabinet endorsed the submission of a full European Regional Development Fund (ERDF) application to Department for Communities and Local Government (DCLG) for circa £6.7m Black Country Business Property Investment Programme (the Programme).
- 3.2 The report in February 2012 provided details of the framework for the successful delivery and governance of the Programme.
- 3.3 Furthermore, Full Council on 16 April 2012 agreed for Walsall Council to act as the 'Accountable Body' for this high profile Black Country wide programme, leading its development and administration. Nevertheless, the other three Black Country authorities have been continually involved with the details of the Programme ensuring agreement to all key elements. As previously detailed, a 'Collaboration Agreement' has been prepared by Walsall Councils' Legal team. This legally binding agreement sets out the framework for joint working between the parties during the lifetime of the Programme.
- 3.4 The draft collaboration agreement presented to Cabinet in February 2012 ensures commitment to the process and the responsibilities of each Black Country authority partner, thereby, assisting Walsall as the accountable body to mitigate the risks associated with the Programme. The draft agreement set out that there would be an equal financial contribution towards Programme running costs that are not met by the ERDF Grant monies and provided that in the unlikely event of a project defaulting and DCLG clawing back money from Walsall Council, that the local authority where the project beneficiary was located would pay to Walsall an amount equivalent to the monies that Walsall Council were required to pay back to DCLG. However, the details of the funding agreement subsequently issued by DCLG to Walsall Council have necessitated a change to the draft collaboration agreement between the Black Country partners.
- 3.5 Walsall Council, on behalf of the Black Country partners, has been in negotiations with DCLG since July 2012 regarding the wording of the legally binding funding agreement for the BCBPIP. These negotiations have led to the

successful amendment of elements of the funding agreement to safeguard Walsall Council (as the accountable body) and the Black Country partners against a number of clawback liabilities. However, despite these negotiations Walsall has not been able to successfully seek all amendments to minimise the risk of clawback to its satisfaction. DCLG have not been prepared to amend the funding agreement to reflect the ways in which it will be prepared to 'act reasonably', and reflect suitable clawback arrangements for a Programme that will consist of a number of projects. This therefore places Walsall Council at risk of clawback for up to £6.7m should any element of the Programme or an individual project be in breach of the funding agreement and in a clawback situation.

- 3.6 The previous wording of the draft collaboration agreement places certain requirements on the Black Country partners to help manage the risk of clawback and may seek any partner to be liable for any part of the £6.7m Programme should a project in their local authority area be in breach of the funding agreement; thus also placing considerable risk on each of the local authority partners.
- 3.7 The Black Country partners have recently raised further questions and concerns for all the partners in relation to clawback. Walsall Council is in receipt of the final draft of the funding agreement to be entered into between Walsall Council and DCLG and is unable to mitigate further against the risk of clawback that this presents - as the previous collaboration agreement was drafted the risk of clawback lies heavily with Walsall Council.
- 3.8 The previous wording of the draft collaboration agreement (in relation to potential clawback) and alternative options for redrafting have now been discussed by the four Black Country Heads of Regeneration. The group has concluded the best way forward for the Programme and are recommending to their respective Cabinets that the Programme is taken forward whereby Walsall Council and its three Black Country partners are jointly and equally responsible for any clawback made against the Programme by DCLG. All clawback regardless of whether this is as a result of a Programme irregularity, a business closure, or ineligible spend not the fault of the Technical Advisor is split equally (25% share). An amended version of the collaboration agreement is included in **Appendix B**, and should Cabinet agree to the alternative arrangement for clawback, this will be circulated to the other Black Country partners for signature.
- 3.9 As this alternative option presents a change to the financial risk associated with the BCBPIP for all parties, it is expected that each of the other three local authorities will also need to obtain the necessary approvals for the option to be endorsed. The spirit of the Programme will require all parties to be in agreement for it to be delivered across the Black Country.

#### **4. Council priorities**

- 4.1 The Programme will have positive implications for the Black Country's economy. The Programme seeks to increase the quality and supply of employment land promoting the re-use of existing sites and premises. Ultimately, the Programme will promote investment and support employment growth in the Black Country.

This will support the delivery of the Black Country Core Strategy and development plans to allocate sites for investment, as well as the Council's corporate priorities.

4.2 The Programme meets the Council's economic priority, as set out in the corporate Plan. Specifically, the Programme will support existing businesses to thrive through difficult economic times and attract new businesses to the borough through the development and promotion of our major land assets.

4.3 The BCBPIP will help support opportunities across the Black County, supporting new business close to existing communities and in locations which have been the focus for employment for many years. The project will increase the number of local employment opportunities, especially within deprived wards included in the SUD area; it therefore aligns closely to the objectives set out in the Marmot Review:

- Give every child the best start in life
- Enable all children, young people and adults to maximise their capabilities and have control over their lives
- Create fair employment and good work for all
- Ensure a healthy standard of living for all
- Create and develop healthy and sustainable communities

## **5. Risk management**

5.1 Inevitably, the very nature of 'accountable body' status for such a grants Programme presents risks for the Council. However, in order to understand and mitigate all risk for the Council, the formation of a comprehensive risk strategy and ongoing risk management has been an intrinsic part of the development of the Programme. This has previously been reported to Cabinet.

5.2 As Cabinet was informed in February 2012, a copy of ERDF's standard grant funding agreement had been made available to officers, this indicated the likely conditions of grant offer and consequently risk to the Council. Whilst most risks were understood and measures to minimise put in place, the full extent of risk would only be fully ascertained once DCLG approved the full application and the Council received the ERDF grant funding agreement specifically for the Programme.

5.3 A further risk log has been prepared by officers in consultation with both Legal and Finance to reflect the details of the funding agreement for the Programme. However, as detailed in section 3.5, despite negotiations taking place between Walsall Council and DCLG, Walsall Council has not been able to successfully seek all amendments to minimise the risk of clawback to its satisfaction.

5.4 The option as recommended by the Heads of Regeneration, detailed in 3.8, does however provide an alternative approach to clawback which is acceptable to all the Black Country partners. In view of these amendments the risk management action plan for the Programme has been amended. The amendment of the current collaboration agreement to reflect this option for clawback would enable Walsall Council to enter into a funding agreement with DCLG.

## **6. Financial implications**

- 6.1 In the previous drafting of the collaboration agreement, Walsall Council was at risk of having to pay back £6.7m should clawback be evoked as a result of any element of the Programme management or an individual Walsall based project defaulting or being in breach of the funding agreement. Our Black Country partners were also liable for up to £6.7m clawback should this result from a project within their area also defaulting or being in breach. The previous drafting does not place any responsibility on them for paying any clawback associated with Programme management irregularities – this would all fall to Walsall Council.
- 6.2 The proposal detailed in section 3.8 will share any clawback associated with the Programme irregularities and this will be split four ways between partners, regardless of whether this is associated with an individual project or a Programme management irregularity. This would limit any clawback liability to 25% of the overall Programme value. Should the current value of the overall Programme remain at approximately £6.7m this liability would be in the region of £1.675m for each partner. This proposed option equally shares the risk of any clawback associated with Programme management irregularities.
- 6.3 If the new proposal for the sharing of any potential clawback associated with the Programme is approved, there could be a situation whereby a local authority, depending on the number and value of projects implemented within their administrative area, may need to pay back a greater sum of clawback than the total value of grant funding in their area. For example, Walsall may have limited or no demand for eligible projects but should DCLG seek to exercise its right to clawback monies, Walsall Council will be required to pay an equal share; this could be up to the value of £1.675m (on the current value of the overall Programme.) As previously reported, the Programme will select successful projects based on the outcome of a 'competition' across the eligible wards in the Black Country. Projects will be selected on the basis of deliverability, value for money and outputs to be delivered. This may not result in an equitable share of funding across the four local authority areas.

## **7. Legal implications**

- 7.1 Legal Services have been working closely with officers to ensure that all necessary legal processes are in place to minimise the risk to the Council of being the accountable body under the Programme, including but not limited to the drafting of the collaboration agreement. Any further amendments required to the agreement will be drafted by Walsall's Legal team.
- 7.2 Legal Services will continue to play an important part of the Walsall working group established for the lifetime of the Programme. Further details of Legal Services role in the development and delivery of the Programme are provided in the 8 February 2012 Cabinet report.

## **8. Property implications**

- 8.1 The Programme will not have an impact on the Councils' portfolio of property assets as the funding is intended for private sector organisations.

## **9. Staffing implications**

- 9.1 Details of staffing implications associated with the Programme are provided in the 8 February 2012 report to Cabinet and this report does not make any changes to those implications.

## **10. Equality implications**

- 10.1 There are no specific equality implications associated with this report; however, an Equality Impact Assessment is on-going for the Programme as a whole.

## **11. Consultation**

- 11.1 The Programme has been developed in consultation with the other Black Country authorities (Dudley, Wolverhampton and Sandwell). Officers within Walsall Council's Regeneration Directorate and Resources Directorate (Legal and Finance) have also been closely involved as part of the working group established for the Programme. The content of the funding agreement has been shared with all partners and there has been close dialogue with DCLG including senior management.
- 11.2 The details contained within the previous collaboration agreement have been developed in consultation with local authority Legal teams in Dudley, Sandwell and Wolverhampton. The alternative arrangement for the sharing of any clawback associated with the Programme, proposed in this report, has been discussed and endorsed by the Heads of Regeneration in all four Black Country local authorities.

## **Background papers**

Black Country Business Property Investment Programme Full Council Report: 16 April 2012

Black Country Business Property Investment Programme Cabinet Report: 8 February 2012

Black Country Business Property Investment Programme Cabinet Report: 14 September 2011

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23 January 2013



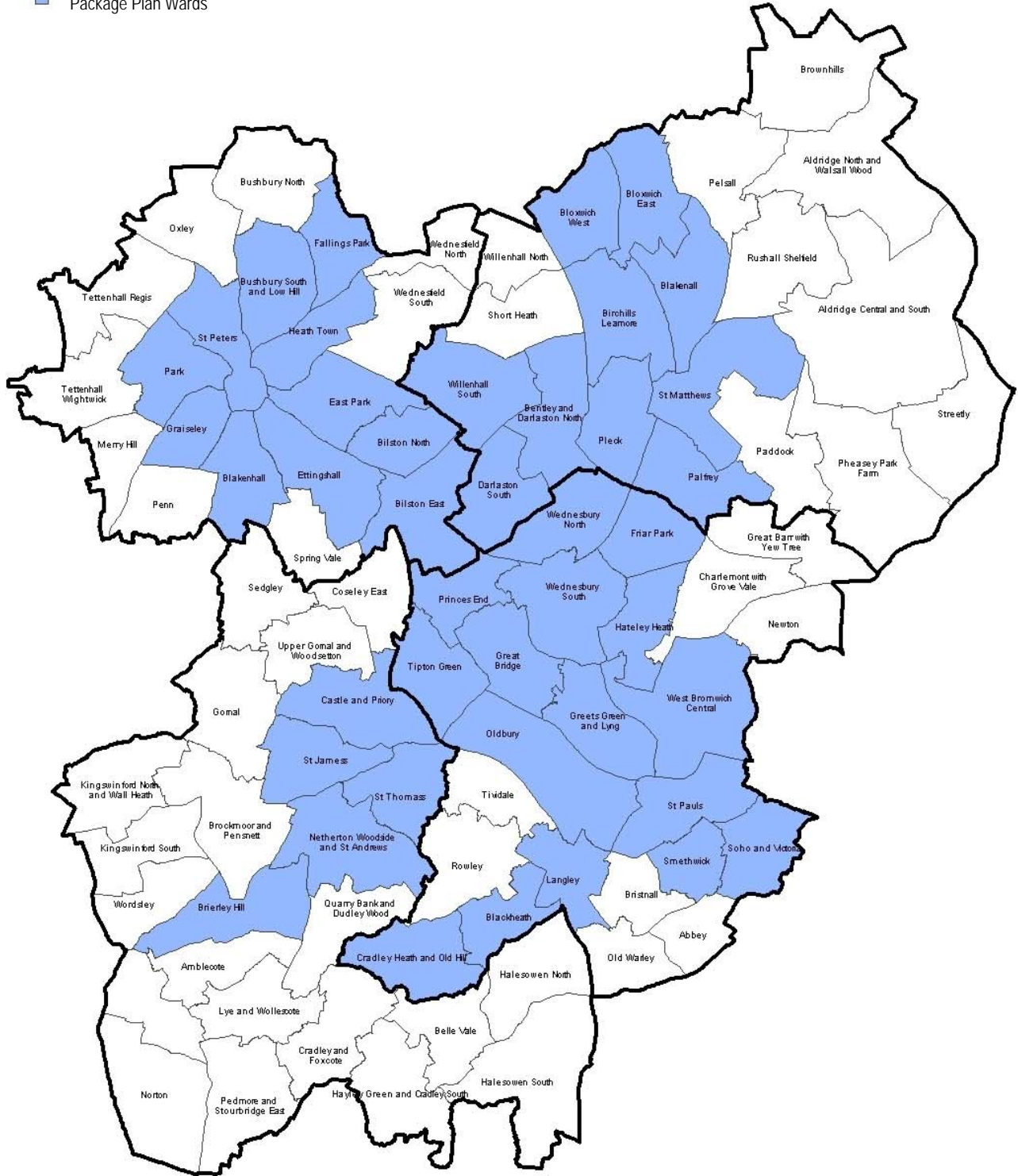
Councillor Adrian Andrew  
Deputy Leader  
Portfolio holder Regeneration

23 January 2013

# APPENDIX A

## SUDS Boundary

- Black Country Borough Boundaries
- Package Plan Wards





**Appendix B**

**DATE:** \_\_\_\_\_ **2013**



**Walsall Council**



- (1) WALSALL METROPOLITAN BOROUGH COUNCIL**
- (2) DUDLEY METROPOLITAN BOROUGH COUNCIL**
- (3) SANDWELL METROPOLITAN BOROUGH COUNCIL**
- and-**
- (4) WOLVERHAMPTON CITY COUNCIL**

**COLLABORATION AGREEMENT**  
**in relation to**  
**the Black Country Business Property Investment Programme**

**Walsall Council**  
**Civic Centre**  
**Darwall Street**  
**Walsall, WS1 1TP**

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### SCHEDULE 1

### SCHEDULE 2

### SCHEDULE 3

### SCHEDULE 4

### SCHEDULE 5

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2013

**BETWEEN:**

- (1) Walsall Metropolitan Borough Council of Civic Centre, Darwall Street, Walsall, WS1 1TP (“**WMBC**”);
- (2) **DUDLEY METROPOLITAN BOROUGH COUNCIL** of The Council House, Priory Road, Dudley, West Midlands, DY1 1HF;
- (3) **SANDWELL METROPOLITAN BOROUGH COUNCIL** of Freeth Street PO Box 2374 Oldbury B69 3DE; and
- (4) **WOLVERHAMPTON CITY COUNCIL** of Civic Centre St Peter’s Square Wolverhampton WV1 1RG; (together being “**the Parties**”)

**WHEREAS:**

- (A) The Parties have agreed to collaborate to apply to the European Regional Development Fund (ERDF) for funding anticipated to be £6.7 million to be administered as the ‘Black Country Business Property Investment Programme’ (“BCBPIP”) (“the Programme”). It is intended that the BCBPIP will assist Small Medium Enterprise (SME) property owners and developers across the Black Country region, make available new and refurbished accommodation to support employment growth across the sub-region. Support will be targeted at SMEs and developers within the Sustainable Urban Development (SUD) boundary.
- (B) The Parties are empowered under s.1 of the Localism Act 2011 to “do anything that individuals generally may do” and the Project fits within the Sustainable Communities strategy adopted under s.4 of the Local Government Act 2000.
- (C) WMBC have agreed to act as Lead Partner and Accountable Body for the Programme and the other Parties to this Agreement will contribute resources and services as set out in this Agreement.
- (D) The purpose of this Collaboration Agreement is to set out a framework for joint working between the Parties to enable delivery of the Programme.

**1 Definitions**

1.2 Interpretation

In this Agreement the following words and expressions have the following meanings:

**CLG** means the Department for Communities and Local Government

**Commencement Date** means 25 May 2012 (subject to contract)

**ERDF** means the European Regional Development Fund

**Force Majeure** means any circumstances beyond the reasonable control of either party (including, without limitation, any strike, lock-out or other form of industrial action)

**Funding Agreement** means any funding agreement and related documents to be entered into between WMBC and the Secretary of State for Communities and Local Government ("CLG"), an initial draft of which is annexed to this Agreement

**Intellectual Property Rights** means all patents, trade marks, copyright, moral rights, rights to prevent passing off, rights in designs, know how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world

**Longstop Date** means 31 March 2016 or such other date as all the Parties (acting reasonably) agree

**Monitoring Procedures** means the Programme monitoring procedures, Programme audits and any other reporting, monitoring or audit processes required by ERDF or a central Government department in relation to the Programme

**Objectives and Outputs** means the objectives and outputs set out in Clause 2 together with such other objectives and outputs as are adopted by the parties from time to time in accordance with this Agreement

**Programme Manager** means an officer appointed by WMBC to fulfil the roles and duties of the Lead Manager as detailed in Schedule 3

- 1.3 In this Agreement:
- 1.4 the clause headings do not affect its interpretation,
- 1.5 words in the singular shall include the plural and vice versa,
- 1.6 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to a paragraph of that Schedule,
- 1.7 references to any statute or statutory provision include references to:
- 1.8 all Acts of Parliament and all other legislation having legal effect in the United Kingdom,
- 1.9 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute,
- 1.10 a person includes a natural person, corporate or unincorporated body or organisation and their successors and permitted assigns,
- 1.11 including means including, without limitation,
- 1.12 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

## **2 Objectives/Outputs**

- 2.1 The Parties agree to work together using the collaboration processes in Clause 3 and agree that the Objectives and Outputs of this Programme will include the following together with such other outputs as the parties may from time to time adopt following the collaboration processes set out in Clause 3:
- 2.2 The agreed outputs / outcomes of the process will be:
- to facilitate the start up and expansion of 12 new businesses
  - to secure at least £19million of private sector investment
  - to reclaim and/or redevelop at least 4 hectares of brownfield land
  - to improve the built environmental quality of the Black Country
  - to facilitate the delivery of 12,000m<sup>2</sup> of new floor space built to BREEAM Very Good, Excellent or Outstanding level
  - to improve the economic performance of the Black Country by contributing £2,175,000 per annum additional value to the Black Country economy through the provision of floorspace to accommodate 145 jobs

## **3 Collaboration**

- 3.1 The parties agree to work in a spirit of mutual co-operation to fulfil their agreed roles and responsibilities to achieve the Objectives and Outputs, and to put in resources to the extent set out in this Agreement
- 3.2 Each party shall:
- 3.2.1 carry out the tasks and contribute the resources and facilities respectively allotted to or required of it as part of the Programme, including but not limited to the initial responsibilities set out in Schedule 3;
- 3.2.2 co-operate with each other and do such acts, matters and things as may be necessary or desirable to implement the decisions of the Parties and in order to complete the Programme,
- 3.2.3 keep the other Parties fully informed of the progress of and of any matters relevant to the Programme and make available to the other party all relevant information, data, reports and opinions in relation to the Programme,
- 3.2.4 immediately notify the other Parties in writing if there is an unexpected problem which is likely to cause a material delay to achievement of any of the objectives of the Programme or any particular stage of the Programme or any material increase in the costs of the Programme or if any party becomes aware of the action of any third party which threatens to affect adversely the progress of the Programme or the reasonable expectations of either party hereunder.
- 3.3 The direction of the Programme shall be vested in an Executive Board to be known as the Black Country Business Property Investment Programme Executive Board (the "Executive Board") which shall take overall responsibility for the Programme and in particular for delivering the Programme. The terms of reference, composition, roles and responsibilities and modus operandi of the Executive Board are set out in Schedule 1. The following

matters shall be the responsibility of the Executive Board:

- 3.3.1 Oversee and manage the continued development and operational delivery of the BCBPIP.
- 3.3.2 To be the key decision making body for applications to the programme.
- 3.3.3 Support the Working Group (as defined below) in delivery of their duties; and
- 3.3.4 Ensure alignment with local and sub regional and regional strategies.
- 3.4 The planning, and overall management of the Programme shall be vested in a Programme team, established in accordance with clause 6.4 below, to be known as the BCBPIP Working Group (the "Working Group"). The terms of reference, composition, roles and responsibilities and modus operandi of the Working Group are set out in Schedule 3. Without prejudice to the generality of the foregoing, the matters set out in Schedule 3 shall only be agreed by the Working Group.

#### **4 Obligations**

- 4.1 The Parties will read and take advice (where necessary) on the terms of the Funding Agreement.
- 4.2 The Parties agree that they will be bound by the terms of the Funding Agreement as if they were the "Grant Recipient" as referred to in the Funding Agreement.
- 4.3 The Parties agree that they may be required to comply directly with the Funding Agreement.
- 4.4 The Parties agree to assist, co-operate and comply with the Monitoring Procedures and will work together to resolve or rectify any errors or irregularities identified during the Monitoring Procedures or otherwise.
- 4.5 Each Party shall be liable for any cost implications or irregularities or errors attributable primarily to it and identified during any Monitoring Procedures
- 4.6 Each Party indemnifies the others against all claims, liabilities, costs, expenses, damages or losses suffered by the others arising out of the negligence, default or breach by such Party of this Agreement or the Funding Agreement and each Party shall be responsible for maintaining sufficient insurance where available in respect of such liabilities under this Agreement.
- 4.7 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against another pursuant to this Agreement.
- 4.8 Subject to Clause 4.9, the Parties agree that in the event that any monies are clawed back from WMBC by CLG as the accountable body pursuant to the Funding Agreement, then all of the Parties will:
  - 4.8.1 take all reasonable steps to mitigate the amount of monies clawed back from WMBC; and

4.8.2 pay to WMBC an equal share of the monies that WMBC is obliged to pay back to CLG.

4.9 In the event of any irregularity of any expenditure declared by any Party, that Party shall be liable in respect of such irregularity and shall be required to repay to WMBC any amounts unduly paid.

## **5 Financial**

5.1 Each Party will contribute equally to the costs incurred by WMBC in relation to the Programme which will include but not be limited to the costs referred to in Schedule 4.

5.2 The Parties acknowledge and agree that the costs to be incurred by WMBC in relation to the Programme are not known at this stage and each authority will contribute a 25% share to the total costs incurred by WMBC as Accountable Body for the Programme.

5.3 Each Party's contribution as referred to in clause 5.2 will initially be capped at a maximum of £60,000 although the Parties agree and acknowledge that in the event that the costs incurred by WMBC are likely to exceed the combined total of such contributions then each Party will act reasonably in agreeing to pay further contributions to WMBC.

5.4 WMBC will invoice the other Parties in respect of their share of such costs and the Parties will pay any such invoices within 7 days of receipt.

5.5 If applicable, WMBC may require any other Party to verify any expenditure presented by that Party as being incurred by that Party and corresponds to any portion of the Project Activities (as defined in the Funding Agreement) being delivered by that Party.

## **6 Staffing**

6.1 The appointed Programme Manager and Programme Support Officer will be based at WMBC and will have specific responsibilities in relation to the delivery of the Programme.

6.2 The Executive Board will oversee the delivery of the programme. The Board will consist of the Parties respective Executive Directors of Regeneration.

6.3 A Programme Steering Group, established in accordance with Schedule 2, will be chaired by the Programme Manager and consist of senior staff from all the Parties.

6.4 Officers from the regeneration, legal, procurement and financial service areas at WMBC will form the Programme's Working Group.

6.5 Technical Advisor services will be procured in adherence to WMBC's constitution to support the technical property and construction aspects of the Programme. The Technical Advisor will be appointed by WMBC.

6.6 The Parties roles and responsibilities in relation to the Programme's Executive Board, Steering Group or Working Group shall be carried out by personnel of the Parties and no charge shall be made to the Programme in respect of staffing time costs.

## **7 Documentation**

- 7.1 The Working Group will produce the initial drafts of the standard documentation for the Programme for approval by the Steering Group.
- 7.2 The Parties have approved the draft ERDF application documentation and the Invitation to Tender for the appointment of the Technical Advisor services.
- 7.3 The Working Group with assistance from the Technical Advisor will draft the grant application criteria for approval by the Steering Group.

## **8 Confidentiality**

- 8.1 Each party shall use all reasonable endeavours to keep in strict confidence, and shall bind all its employees and agents to keep in strict confidence, all commercial and technical information in whatever form acquired by it (whether directly or indirectly) concerning the other party in consequence of this Agreement (hereinafter called **Confidential Information**). No party shall, save as hereinafter provided, use or disclose any such Confidential Information other than for the purposes of the Programme or as expressly permitted by this Agreement. The foregoing restriction shall not apply to:
  - 8.1.1 information which at the time of disclosure is generally available to the public,
  - 8.1.2 information which the Parties obliged to release under the provisions of the Freedom of Information Act 2000,
  - 8.1.3 information which after disclosure becomes generally available to the public through no fault of the receiving party,
  - 8.1.4 information which the receiving party can show was in its possession prior to the disclosure and which was not acquired directly or indirectly from the other party, and
  - 8.1.5 information which the receiving party can show was received by it after the time of disclosure from any party without any obligation of confidentiality and which was not acquired directly or indirectly from the other party.
- 8.2 The confidentiality obligations set out in this clause shall survive for a period of five (5) years after the termination of the Programme.
- 8.3 Each Party shall impose the same confidentiality obligations set out in this clause 8 upon its affiliates, consultants and other third parties who are in association with it and may have access to any Confidential Information during the term of this Agreement.

## **9 Intellectual Property**

- 9.1 The Parties agree that all Intellectual Property Rights relating to the Programme shall unless otherwise agreed in writing belong to WMBC, and that the parties will use all reasonable endeavours to ensure that WMBC receive appropriate rights to any Intellectual Property Rights created during and relating to the Programme.



## **10 Warranties**

- 10.1 Each party warrants to the other that:
- 10.2 it has the necessary right and authority to enter into this Agreement,
- 10.3 the signatories hereto for and on behalf of that party are authorised and fully empowered to execute this Agreement on that party's behalf.

## **11 Force majeure**

- 11.1 If any Party is affected by Force Majeure it shall forthwith notify the other Parties of the nature and extent thereof.
- 11.2 No Party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations hereunder, to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.
- 11.3 If the Force Majeure in question prevails for a continuous period in excess of three months, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

## **12 Duration and termination**

- 12.1 The provisions of this Agreement shall come into force on the Commencement Date and, subject to the provisions of clause 12.2 shall continue in force until the earlier of 31 December 2022 or completion of the Programme.
- 12.2 A Party other than WMBC may only withdraw from this Agreement by written notice to WMBC and the Programme Executive Board if ERDF Funding is not granted or the Programme is terminated.
- 12.3 WMBC may terminate this Agreement if ERDF Funding is not granted or the Programme is terminated or any other Party does not make the contributions to WMBC as set out in clause 5. WMBC will give written notice to the Executive Board following WMBC's termination of this Agreement.
- 12.4 No relaxation, forbearance, delay or indulgence by any Party in enforcing any of the terms of this Agreement or the granting of time by any Party to any other shall prejudice, affect or restrict the rights and powers of that Party in relation to the other, nor shall any waiver by any Party of a breach of this Agreement be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5 The rights to terminate or withdraw from this Agreement given by this clause 12 shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

### **13 Publicity and Public Relations**

- 13.1 The Parties will co-operate and consult with each other in respect of any matter involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved. The Parties acting through Steering Group and the Executive Board may agree protocols for the handling of public relations from time to time.
- 13.2 The Parties will adhere to the obligations in the Funding Agreement in relation to publicity and use of the ERDF logo.

### **14 Disputes**

- 14.1 If any dispute arises between the Parties arising out of the provisions of this Agreement the Parties shall endeavour to resolve the dispute by agreement as quickly as possible but if the dispute has not been resolved within ten (10) Working Days then either Party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it. The Parties shall then liaise in good faith to arrange and implement the meeting within ten (10) Working Days and shall exchange statements at least three (3) clear Working Days prior to the date of the meeting, setting out their respective views of the disputed issues.
- 14.2 If notwithstanding any steps taken by the Parties pursuant to clause 14.1, the dispute between them remains unresolved then at the request of either Party it shall be referred (in the absence of any express provision to the contrary) to an Independent Person appointed jointly by the Parties.
- 14.3 The Independent Person is to have at least 10 years relevant post qualification experience and his/her identity shall be agreed between the Parties.
- 14.4 If the Parties cannot agree on the Independent Person's identity the Independent Person is to be appointed at the request of any of the Parties by the president or chairman for the time being of whichever of the following bodies is most appropriate having regard to the nature of the dispute:
- 14.4.1 The Royal Institution of Chartered Surveyors;
- 14.4.2 The Institute of Chartered Accountants in England & Wales; or
- 14.4.3 The Law Society of England and Wales.
- 14.5 The Independent Person is to act as arbitrator in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the Parties in the proportions determined by the Independent Person.
- 14.6 Where costs of the Independent Person remain unpaid by the Party liable to pay them pursuant to this clause, the other Parties or any of them may discharge those costs and recover the sum so paid from the defaulting Party as a debt on written demand.

## **15 Local authority powers**

15.1 Nothing in this Agreement shall prejudice or affect any of the statutory rights powers obligations and duties for the time being vested in the Parties.

## **16 Notices and service**

16.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other shall be given by:

16.1.1 delivering the same by hand,

16.1.2 sending the same by pre-paid registered post, or

16.1.3 sending the same by facsimile transmission,

to the other party at the address given at the beginning of this Agreement or such other address as has been notified to the parties in writing.

16.2 Any notice or information sent by post in the manner provided by clause 16.1 which is not returned to the sender as undelivered shall be deemed to have been given on the second day after the envelope containing it was so posted, and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

16.3 Any notice or information sent by facsimile transmission shall be deemed to have been duly given on the date of transmission, provided that a confirming copy is sent to the other party at the appropriate address within

## **17 Freedom of Information**

17.1 The Parties acknowledges that they are subject to the requirements of the code of practice on access to government information, the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations ("EIR") and shall assist and cooperate with each other to enable the Parties to comply with their information disclosure obligations.

17.2 The Parties shall provide all necessary assistance as reasonably requested by the other Parties to enable the other Parties to respond to any requests for information that falls under the FOIA or EIR and is related to the Project ("Request for Information") within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

17.3 The Party who received the initial Request for Information shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information is exempt from disclosure in accordance with the provisions of the code of practice on access to government information, FOIA or the EIR.

17.4 The Parties shall ensure that all information produced in the course of this Agreement is

retained for disclosure and shall permit the other Parties to inspect such records as requested from time to time.

## **18 Data Protection Act 1998 (the “DPA”)**

18.1 With respect to the parties' rights and obligations under this Agreement, the Parties agree to each comply with the obligations imposed on them by the DPA as a Data Controller and to ensure that Personal Data (as defined in the DPA) is processed only in accordance with their own policies on data protection, information security and retention of personal data to comply with their obligations under the DPA.

## **19 Equality Act 2010**

19.1 The Parties agree to each comply with the obligations imposed on them by the Equality Act 2010.

## **20 General**

20.1 This Agreement is personal to each of the Parties and no party may assign, mortgage, charge or (except as otherwise provided in this Agreement) license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of all the other Parties.

20.2 Nothing in this Agreement shall create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Parties.

20.3 The Parties will act in good faith towards each other in relation to the Programme and in achieving the Objectives and Outputs of the Programme and in complying with this Agreement and the Funding Agreement.

20.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

20.5 This Agreement, the Funding Agreement and the documents referred to in it, constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

20.6 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

20.7 All payments by any Party pursuant to this Agreement are exclusive of any applicable value added tax except where expressed to the contrary, and if any such value added tax is payable, the Party in question shall be additionally liable for such tax, which shall accordingly be shown on the relevant VAT invoice.

20.8 No variation to this Agreement or of any of the documents referred to in it shall be valid

unless it is in writing and signed by and on behalf of each of the Parties.

20.9 Each Party shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.

20.10 The Parties shall bear their own costs of and incidental to the preparation, execution and implementation of this Agreement.

20.11 The Parties do not intend that any of this Agreement should be enforceable pursuant to the Contracts (rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

20.12 This Agreement shall be governed by and construed in accordance with the laws of England and Wales

SIGNED by or on behalf of the parties on the date which first appears in this Agreement

## SCHEDULE 1

### BCBPIP Executive Board

The Executive Board will oversee the Programmes continued development, operational delivery, effective co-ordination and joint working between authorities and be the key decision making body for applications to the Programme.

#### Terms of Reference

Oversee and manage the continued development and operational delivery of the BCBPIP

To oversee the promotion of the Programme

To be the key decision making body for applications to the Programme in accordance with the agreed criteria subject to an Executive Director for Regeneration at any of the Parties reverting to the internal approval process for each party in relation to any project within that Party's administrative boundaries Provided That any internal approval process by any Party shall not delay the decision making process for the BCBPIP Executive Board by longer than [ ] weeks

Comment [S1]: Time period to be agreed here please

To receive advice from the Steering Group

Support the Steering Group, Working Group and Programme Manager in delivery of their duties

Ensure alignment with local and sub regional and regional strategies.

The Programme will be a standing item on Heads of Regeneration monthly meetings.

#### Membership:

Executive Directors of Regeneration at four Black Country Authorities

#### Modus Operandi

1. The Parties may each substitute representatives where necessary who may vote on their behalf at meetings of the BCBPIP Executive Board.
2. **Chairperson**
  - 2.1 Te Head of Regeneration for WMBC will be appointed as the Chairperson of the BCBPIP Executive Board at the first meeting.
3. **Quorum**
  - 3.1 A meeting of the BCBPIP Executive Board shall not be quorate unless representatives or their substitute from each Party who has not withdraw from this Agreement are present.
4. **Attendance at Meetings**
  - 4.1 Meetings of the BCBPIP Executive Board should normally include the attendance (in person or by substitute) of all representatives.
  - 4.2 Meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

**5. Procedure**

5.1 In the event that the Chairperson is absent from any meeting of the BCBPIP Executive Board another representative shall be co-opted to the Chair for that meeting by a majority of the representatives present (the "Acting Chairperson").

**6. Voting**

6.1 Each representative shall have one vote.

6.2 Decisions will be made by a simple majority of the representatives present at the BCBPIP Executive Board Meeting, and in the event of any deadlock the representative of WMBC shall have a casting vote to make the decision.

**7. Minutes**

7.1 Minutes of all decisions meetings of the BCBPIP Executive Board (including those made by telephone and other form of telecommunication) shall be kept by WMBC who shall circulate copies promptly to the Parties and in any event within fifteen (15) Working Days of the meeting.

**8. Dispute Avoidance or Resolution**

8.1 Any dispute between the representatives, which the BCBPIP Executive Board cannot resolve during a meeting of the BCBPIP Executive Board shall be dealt with in accordance with Clause 14 (Dispute Resolution) of this Agreement.

## **SCHEDULE 2**

### **BCBPIP Steering Group**

The Black Country wide Steering Group will oversee the delivery of the programme making key recommendations to the Executive Board.

### **Terms of Reference**

To oversee the delivery of the Programme.

To meet on a quarterly basis

To bring any issues of concern to the attention of members of the Executive Board that would have implications for the successful delivery of the programme.

To agree the criteria for funding and make recommendations to the Executive Board.

To receive advice from the Working Group.

To undertake the initial appraisal of Expressions of Interest to the Programme and provide recommendations to the Executive Board.

To consider the appraisals of full applications to the Programme, undertaken for by the Technical Advisor.

Lead the promotion of the Programme

Members should be available to answer programme specific queries as and when necessary

### **Membership:**

- Programme Manager – WMBC
- Officers at WMBC, Wolverhampton, Dudley and Sandwell with knowledge of the development sector

### **Modus Operandi**

1. The Parties may each substitute representatives where necessary who may vote on their behalf at meetings of the BCBPIP Steering Group.
2. **Chairperson**
  - 2.1 The Programme Manager will be the Chairperson of the BCBPIP Steering Group and shall be appointed at the first meeting.
3. **Convening of Meetings**
  - 3.1 The Chairperson shall, after consultation with each representative and taking the views of all representatives into account, have the power to cancel meetings when there is insufficient business for the BCBPIP Steering Group to consider.
  - 3.2 Without prejudice to paragraph 4.1 above, no meeting of the BCBPIP Steering Group shall be cancelled in the event that a majority of all of the representatives signify in writing (for the avoidance of doubt, such written signification may be by electronic means) that the meeting should proceed.



#### **4. Notices of Meetings**

- 4.1 The Chairperson shall provide not less than [ten (10) Working Days] notice of a meeting of the BCBPIP Steering Group provided that in the case of emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 4.2 Meetings of the BCBPIP Steering Group shall be held at a venue to be agreed by the BCBPIP Steering Group and on such date and such time as was agreed by the BCBPIP Steering Group at the previous meeting. Where such dates times and venues cannot be so agreed the Chairperson shall select the date, time and venue of the next meeting.
- 4.3 Notice of cancellation of a meeting of the BCBPIP Steering Group must be served on all representatives not less than twenty four (24) hours before the meeting was due to commence.

#### **5. Quorum**

- 5.1 A meeting of the BCBPIP Steering Group shall not be quorate unless representatives or their substitute from each Party who has not withdraw from this Agreement are present.

#### **6. Attendance at Meetings**

- 6.1 Meetings of the BCBPIP Steering Group should normally include the attendance (in person or by substitute) of all representatives.
- 6.2 Meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

#### **7. Procedure**

- 7.1 In the event that the Chairperson is absent from any meeting of the BCBPIP Steering Group another representative shall be co-opted to the Chair for that meeting by a majority of the representatives present (the "Acting Chairperson").
- 7.2 Each representative may consult with colleagues from their own authorities in relation to any aspect of the Programme or any grant application received in relation to any matters discussed at the Steering Group meetings.

#### **8. Voting**

- 8.1 Each Party represented at the meeting shall have one vote to be cast by one of the representatives from that Party.
- 8.2 Decisions will be made by a simple majority of the votes cast at the BCBPIP Steering Group Meeting, and in the event of any deadlock the representative of WMBC shall have a casting vote to make the decision.

#### **9. Minutes**

- 9.1 Minutes of all decisions meetings of the BCBPIP Steering Group (including those made by telephone and other form of telecommunication) shall be kept by WMBC who shall circulate copies promptly to the Parties and in any event within ten (10) Working Days of the meeting.

#### **10. Dispute Avoidance or Resolution**

- 10.1 Any dispute between the representatives, which the BCBPIP Steering Group cannot resolve during a meeting of the BCBPIP Steering Group shall be dealt with in accordance with Clause 14 (Dispute Resolution) of this Agreement.

### **SCHEDULE 3**

#### **Working Group - WMBC**

Manage the programme on a day to day basis.

To manage promotion of the programme.

To agree the timeline for delivery of the implementation of the Programme, monitor progress and ensure that the key milestones are achieved.

To establish a Programme Action Plan and the specific tasks that need to be delivered to ensure that the project progresses.

To devise, oversee, manage and monitor the Programme Action Plan implementation, including the review and evaluation of the potential for additional benefits that can be delivered from this project.

Ensure that as a part of the Programme Action Plan includes appropriate consultation.

To ensure financial management complies with the Financial Regulations of Walsall MBC and is audited through the WMBCs Financial Management Section.

To ensure all procurement arrangements are provided for through the Financial Regulations of Walsall MBC and compliance is monitored through Walsall MBC officers.

To ensure full compliance with ERDF procurement regulations.

To monitor compliance with ERDF grant conditions.

To manage the appointment of external consultancy services and to provide ongoing manage for consultancy contracts Provided That no more than 20 detailed appraisals shall be referred to the Technical Advisor consultants without the prior approval of the Steering Group.

To provide legal assistance for procurement, contracts for appointment of consultancy services and grant agreements.

The Programme Manager will provide written updates and recommendations to the Executive Board on the progress of the specific programme tasks.

To manage risk

#### **Membership:**

- Regeneration Manager - WMBC
- Programme Manager – WMBC
- Programme Support Officer - WMBC
- Finance Officers – WMBC
- Legal Team - WMBC

## **Responsibilities of the Parties**

The parties have agreed that their additional responsibilities will be as follows:

### **WMBC**

1. Submit ERDF Funding application
2. Act as accountable body
3. Programme Manager role – details:

Reporting to the Steering Group and the Executive Board. Take responsibility for the day to day management of the programme, financial contracting, monitoring and ensuring claims and returns are completed accurately in a timely manner, manage external consultancy services, liaise with legal / finance officers.

4. Provide legal assistance
5. Ensure management of the procurement processes

### **WMBC, Dudley, Wolverhampton and Sandwell Local Authorities**

1. Representation on the Programme Executive Board.
2. Make key decisions programme decisions.
3. To make financial contributions to the programme (as per clause 5)
4. Representation on the Programme Steering Group

## SCHEDULE 4

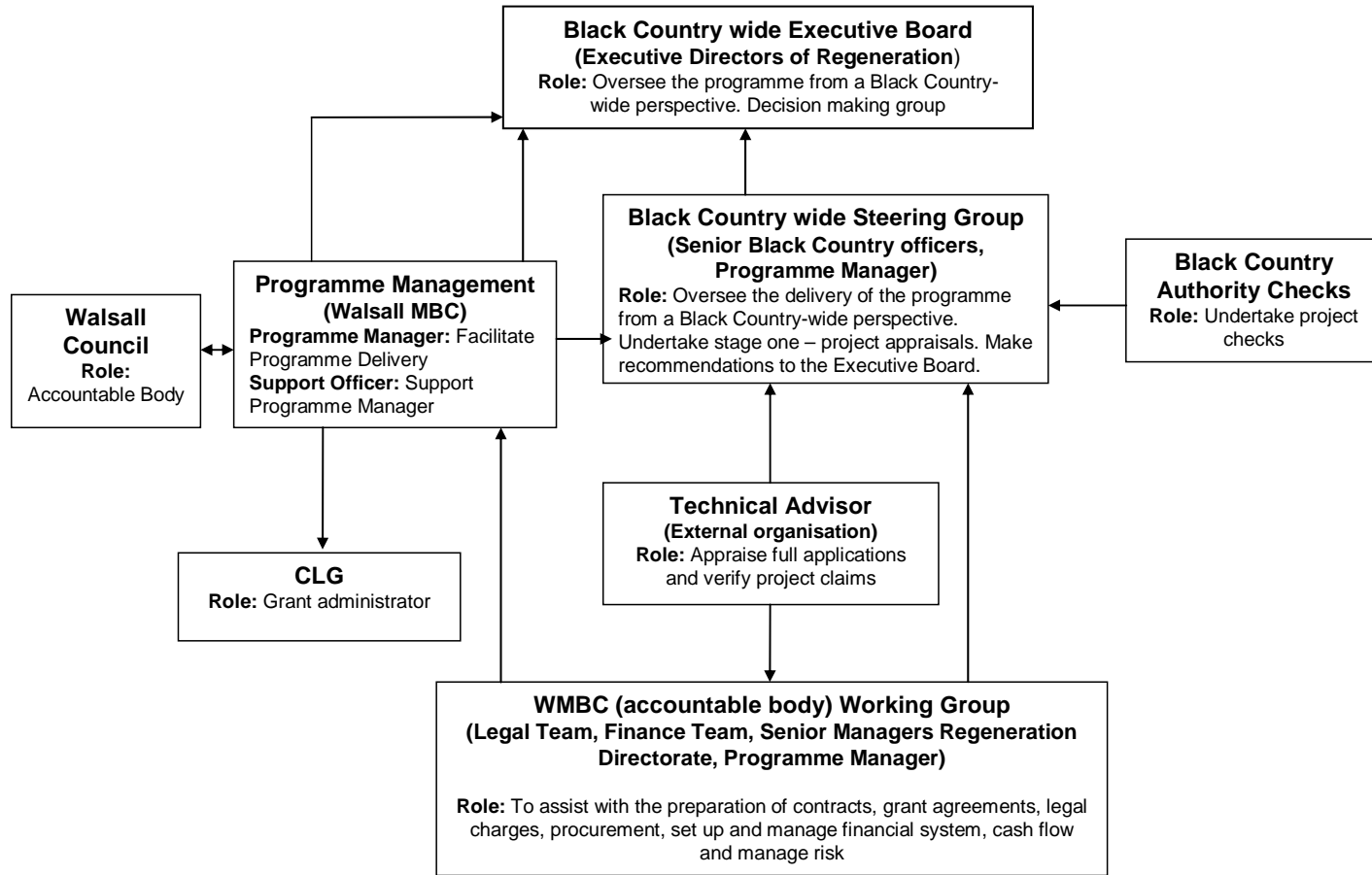
### Anticipated Programme Costs

#### Black Country Business Property Investment Programme

	Cost (£)
<b>Management and Administration costs</b>	
m and a salaries - Programme Manager	166,612
m and a salaries - finance assistant	57,358
professional fees for project audit and evaluation	40,000
M and A travel expenses	5,000
Recruitment	6,000
legal Charges	10,000
On-going publicity	10,000
<b>Delivery cost headings</b>	
external marketing	9,000
consultancy fees	247,000
<b>PLEASE NOTE: REDUNDANCY COVER NOT INCLUDED</b>	
<b>TOTAL Programme cost</b>	<b>550,970</b>
<b>FUNDING SOURCES</b>	
Private Sector	52,500
ERDF	272,485
LA cost	225,985
Total	550,970

Costs incurred in preparing, completing and registering Legal Charges in respect of any properties subject to a grant application

**SCHEDULE 5 – Governance Structure**



**SIGNED** by a duly authorised officer for and on behalf of  
**WALSALL METROPOLITAN BOROUGH COUNCIL**

Authorised Signatory

Print Name

**SIGNED** by a duly authorised officer for and on behalf of  
**DUDLEY METROPOLITAN BOROUGH COUNCIL**

Authorised Signatory

Print Name

**SIGNED** by a duly authorised officer for and on behalf of  
**SANDWELL METROPOLITAN BOROUGH COUNCIL**

Authorised Signatory

Print Name

**SIGNED** by a duly authorised officer for and on behalf of  
**WOLVERHAMPTON CITY COUNCIL**

Authorised Signatory

Print Name

