

## **Cabinet – 22 March 2023**

### **Approval of the Black Country Joint Committee Collaboration Agreement and Enterprise Zone Memorandum of Understanding**

**Portfolio:** Councillor Bird – Leader of the Council

**Related portfolios:** Councillor Andrew – Deputy Leader and Regeneration

**Service:** Programme Management, Resources and Transformation

**Wards:** All

**Key decision:** Yes

**Forward plan:** Yes

#### **1. Aim**

- 1.1 To set into place the arrangements agreed by the four Black Country Local Authorities (BCLA's), required to retain and continue the successful administration of legacy funding in the Black Country, following the abolition of the Black Country Local Enterprise Partnership ("BCLEP") with effect from the 31 March 2023.
- 1.2 To facilitate this, to set into place the required arrangements between the BCLAs, to ensure this funding is retained for use across the Black Country. This will be done by updating the existing legal agreement underpinning the Black Country ways of working: The Black Country Joint Committee Collaboration Agreement ("Collaboration Agreement").
- 1.3 To update the Memorandum of Understanding for Enterprise Zones (EZ MOU) between the BCLAs and the relevant Government department.

#### **2. Summary**

- 2.1 In 2013 the four BCLAs (Dudley, Sandwell, Walsall and Wolverhampton) approved the formation of the Black Country Executive Joint Committee (BCJC), granting it the functions and powers to administer the City Deal and Growth Deal programmes. Walsall's Cabinet approved these arrangements on 11 September 2013.
- 2.2 Since 2013, several amendments to the Collaboration Agreement have been made which have been approved and set out in previous Cabinet Reports, and

included the increasing of the BCJC's scope to administer all funds secured by the BC LEP.

- 2.3 The February 2022 Levelling Up White Paper signalled a shift in policy direction from Government, requiring the functions of Local Enterprise Partnerships to be transferred into Combined Authorities. Since this date, the BC LEP has been working with the WMCA to develop an integration plan, to transfer their functions by the end of this financial year.
- 2.4 The Collaboration Agreement has been updated to reflect the integration plan, and formalise arrangements for continued Black Country ways of working and the management of legacy funds, including the Enterprise Zone being the only significant uncommitted ongoing fund. BEIS have confirmed that management, reporting and decision making in relation to BC LEP Legacy Funds will remain the responsibility of the BCLAs, with these responsibilities not transferring to the WMCA.
- 2.5 From 1 April 2023 the continued management and monitoring of BC LEP legacy funds will be the responsibility of the BCLAs; it has been agreed that these will continue to be managed locally by Walsall Council, as the BC LEP's Single Accountable Body (SAB). Enterprise Zones are the only significant BC LEP Fund that is not fully committed, so government have specifically requested that a (non-legally binding) Memorandums of Understanding ("MOU") in relation to Enterprise Zones is agreed between them and the BCLAs. The relevant government department and signatory to this MOU, and timeframes for signing, are still to be confirmed as at the date of this report.
- 2.6 This is a Key Decision as the financial impact of some of the changes to the Collaboration Agreement, particularly in relation to Enterprise Zones, is in excess of £500,000.

### **3. Recommendations**

- 3.1 That Cabinet approve the revised Collaboration Agreement, attached as **Appendix A**, with significant changes set out in further detail in this report.
- 3.2 That Cabinet delegate authority to the Director of Finance, Corporate Landlord and Corporate Performance (s151) in consultation with the Leader, to make any final amendments and authorise the sealing by the Council of the Collaboration Agreement.
- 3.3 That Cabinet delegate authority to the Director of Finance, Corporate Landlord and Corporate Performance (s151) in consultation with the Leader, to negotiate, approve and sign the Memorandum of Understanding for Enterprise Zones.

### **4. Report detail - know**

## **Context**

- 4.1 In 2013, the four BCLAs (Dudley, Sandwell, Walsall and Wolverhampton) approved the formation of the BCJC, granting it the functions and powers to administer the City Deal and Growth Deal programmes. Walsall's Cabinet approved these arrangements on 11 September 2013.
- 4.2 These roles, functions and powers, together with how the BCLAs and the Black Country Consortium Ltd (BCC Ltd) being the five partners, will work together were recorded in the Collaboration Agreement. This included an acceptance of delegated authority from each council's Cabinet for the BCJC to act as the decision making body for the identified programmes.
- 4.3 Since 2013, several amendments to the Collaboration Agreement have been made which were approved and set out in previous Cabinet Reports, the latest one being the October 2021 report "Approving amendments to the Black Country Executive Joint Committee Collaboration Agreement". The scope of the last updated Collaboration Agreement included all current and future funding opportunities secured or operated by or through the BC LEP.
- 4.4 The February 2022 Levelling Up White Paper signalled a shift in policy direction from Government, requiring the functions of Local Enterprise Partnerships to be transferred into Combined Authorities. Since this date, the BC LEP has been working with the WMCA to develop an integration plan, to transfer their functions by the end of this financial year, and on 14 December 2022 a report to Cabinet titled "Update On Streamlining Black Country Ways Of Working – Black Country Consortium Ltd" set out some detail in relation to this, including the voluntary winding down of BCC Ltd.
- 4.5 The Collaboration Agreement has been updated to reflect the integration plan, and formalise arrangements for continued Black Country ways of working. The Collaboration Agreement sets out how BC LEP legacy funds will be managed (paragraphs 4.7 to 4.13), including Enterprise Zones (paragraphs 4.14 to 4.20) being the only significant uncommitted fund remaining, and sets out revised governance arrangements (paragraphs 4.21 to 4.23). BEIS have confirmed that management, reporting and decision making in relation to BC LEP Legacy Funds will remain the responsibility of the BCLAs, with these responsibilities not transferring to the WMCA.
- 4.6 BCC Ltd was an original signatory to the Collaboration Agreement and will continue trading until the 31 March 2023, fulfilling its contractual obligations in its current financial year but seek to cease trading post that date, effectively closing its accounts by c30 June 2023. Therefore, BCC Ltd will no longer be a signatory to the Collaboration Agreement.

## **BC LEP Legacy funds**

- 4.7 BC LEP Legacy Funds ("Legacy Funds") are as follows: the Local Growth Deal; the Growing Places Fund; the Land and Property Investment Fund ("LPIF"); the

Black Country Enterprise Zone (“BCEZ”); the Getting Building Fund; and the BCLEP Reinvestment Fund. Walsall Council are the Single Accountable Body (SAB) for the BC LEP.

4.8 The majority of BCLEP legacy funds are fully spent or committed to projects:

- The Local Growth Deal Fund (cumulative grant award of £211m) was fully spent by March 2021 on 116 projects. The programme is now in the output monitoring stage of its lifecycle. The Growing Places Fund was used to over-programme Local Growth Fund and is also fully spent.
- The £53m LPIF was awarded by the WMCA as part of its first Devolution Deal. Final indicative allocations to commit the remaining balance of the LPIF have been approved by the BCLEP and BCJC. This programme will then be fully committed with investment in 10 projects. The fund must be fully spend by March 2025, with a further year allocated for output monitoring, to March 2026.
- The Getting Building Fund (£27.7m), awarded via the WMCA, was fully spent by March 2022, and is now in the output monitoring stage of its lifecycle.

4.9 The LEP Reinvestment Fund was established by the BCLEP to capture recycled investments from other LEP grants, such as from overage and the BDUK Broadband project gainshare returns. The Collaboration Agreement sets out that any overage and returns to this fund will be shared equally by the four BCLAs.

4.10 The only uncommitted LEP Legacy Funds relate to the following:

**Table 1: Uncommitted BCLEP funds**

<b>Fund</b>	<b>Unallocated value</b>	<b>Additional details</b>
Growing Places Fund	£0 although further loan repayments from projects are expected in future years	Used to over-programme the Local Growth Fund. Future loan repayments to be shared equally between the 4 BCLAs
LEP Reinvestment Fund	c£0.149m overage collected with a further £0.778m invoiced as at the date of this report	Any unallocated remaining funds to be shared equally between the 4 BCLAs
Building Digital UK Gainshare (part of the LEP Reinvestment Fund)	£0.994m net accrued to date	Gainshare receipts are received annually including payments due in 2023 with a final report in summer 2024. Gainshares received

		will be shared equally amongst the 4 BCLAs
Enterprise Zones	See paragraphs 4.14 to 4.20	

- 4.11 Reporting to the department for Business, Energy and Industrial Strategy\* (“BEIS”) and the BCJC will be the responsibility of the SAB with the last reporting date being to 31 March 2026, excluding the BCEZ. The SAB will continue to report to the BCJC and BCLAs on Contingent liabilities relating to BC LEP legacy funds (being the possible liabilities in relation to clawback risk) until such time as either the liabilities are realised, the possible liabilities are mitigated via output delivery, or it is deemed that the risk is remote. If any liabilities were to arise from BCLA projects, they would be settled in accordance with the Collaboration Agreement, according to respective geographical areas.  
*\*Note that the government department may change following government announcements on 7 February 2023.*
- 4.12 For some of the Legacy Funds received from the funding providers in advance (i.e. Local Growth Deal, Getting Building Fund), interest was accrued in the period between grant receipt and grants being distributed to applicants. The BC LEP approved that interest could be utilised to fund SAB and BCC Ltd programme management costs, where they could not be capitalised to projects. Any remaining interest, after accounting for costs incurred by the SAB in completing their roles and responsibilities to 31 March 2026 (or beyond should any programmes be extended), shall be shared equally between the four BCLAs.
- 4.13 Any re-investment of the Legacy Funds by the BCLAs must be spent in line with which the funds were originally intended when granted, or otherwise in order to promote economic growth and development in the respective administrative areas of each of the Parties.

### **Enterprise Zones**

- 4.14 The BCEZ had to date been managed on a consolidated Black Country basis, with a shared financial model and a pre-agreed order of priority for costs claimed against collected business rates.
- 4.15 A Schedule to the Collaboration Agreement setting out these matters, and the principles and framework for managing the BCEZ, was approved by the Council on 16 December 2020 in the Cabinet report titled “Approving the Supplemental Deed of Variation to the Black Country Joint Committee Collaboration Agreement”.
- 4.16 BCLA Chief Executives and Leaders, through their Association of Black Country Authorities (“ABCA”) meetings, were consulted on the future of BCEZs throughout 2022/23. Several options were explored as to how BCEZ, as a Legacy Fund, would be managed. The preferred and agreed option is that the SAB will continue to manage and administer BCEZs, collecting business rate

surpluses until 31 March 2025 and paying out existing commitments from these consolidated surpluses, with the significance of this date being the point at which the majority of the shared commitments cease.

- 4.17 From 1 April 2025 (subject to a handover and settlement period to 31 August 2025), Enterprise Zones will revert back to their Local Authority of geographical origin for decision making, management and administration. Walsall Council will therefore cease to be the Accountable Body for the BCEZs, and only manage business rates and investment related to the Walsall borough Enterprise Zone.
- 4.18 The North BCEZ (“North EZ”), comprising the Wolverhampton and Walsall geographical areas) was originally submitted to government as a joint bid. Since its approval, the North EZ priority site for investment was i54, which is now generating a business rate surplus (after accounting for borrowing costs). Whilst Phoenix 10 was identified as the next priority site, the later timing has meant that there is a shorter period to ring-fence business rates and spread borrowing costs by the end of the North EZ (being 31 March 2038). As a result of this, and differing viability gaps for Walsall and Wolverhampton projects, the surpluses of Wolverhampton are forecast to be significantly greater at c£46m, than Walsall’s £3m by March 2038. Therefore, a straight forward reversion of the North EZ to respective Local Authorities was not in line with the original spirit and intention of the North EZ submission, being that surpluses generated from investment should support other deficit EZ sites.
- 4.19 As a result, it was agreed that a key strategic Walsall site within the BCEZ, the Gasholders site, should be funded from the Wolverhampton generated business rate surpluses up to a capped value and subject to a green book compliant business case. After Phoenix 10, where remediation works are currently on site, the Gasholders site is the next delivery priority in the BCEZ for the Council as landowner. The site has the potential to deliver high-quality industrial uses and is strategically important to Walsall’s employment land supply and is capable of delivering significant floor-space and local jobs. As a brownfield site, delivery and development is complex with abnormal constraints impacting on viability, and exacerbated by external economic influences. In December 2022, Cabinet approved the direction of travel for the Council to continue to assess and progress pre-development work towards the objective of developing a high-quality employment scheme at the Gasholders site, including preparation of an outline business case for future consideration by the WMCA and Cabinet. It is estimated that the grant funding requirement for the Gasholders site will likely exceed the capped value from the business rate surpluses and therefore require a blended funding solution by public sector partners.
- 4.20 The BCEZ Schedule (Schedule 6) to the Collaboration Agreement titled “BCEZ Governance Principles” has been amended to reflect these new arrangements for BCEZs post BC LEP.

## **Governance Arrangements**

- 4.21 From 31 March 2022, the BC LEP, and its Funding Sub Group, will no longer exist. Therefore new arrangements will be required to approve new investments (such as the Gasholder investment as per paragraph 4.19 above), and to approve change requests (such as reductions on outputs). BEIS have confirmed that management, reporting and decision making in relation to BC LEP Legacy Funds will remain the responsibility of the BCLAs, with these responsibilities not transferring to the WMCA.
- 4.22 The Legacy Funds are still required to follow an Assurance Framework, compliant with the government's National Assurance Framework. The amended Collaboration Agreement is drafted on the basis that BCLAs and projects must comply with the existing BC LEP Assurance Framework "in so far as it is applicable". This approach has been discussed with BEIS who consider that this is reasonable – changes to National Frameworks are reducing meaning that the BCLEP Framework will still be compliant.
- 4.23 In practice, this will mean that change requests and investment decisions, if any, would need to be approved at the Heads of Regeneration Working Group and BCJC only. Investment decisions (relating to BCEZs only i.e. the Gasholder project) would still need a Green Book compliant business case, which would be appraised by the SABs independent technical advisors. This would not apply to funds shared equally between BCLAs in Table 1 above, and the BCEZ from 1 April 2025, which would follow Local Authority protocols and governance.

### **Enterprise Zone Memorandum of Understanding**

- 4.24 Enterprise Zones are the only significant BC LEP Fund that is not fully committed, so government have specifically requested that a (non-legally binding) Memorandums of Understanding ("MOU") in relation to Enterprise Zones is agreed between them and the BCLAs. The relevant government department and signatory to this MOU is still to be confirmed as at the date of this report.

### ***Council Plan priorities***

- 4.25 The Council has committed to five key areas of focus in the Council Plan 2022-2025 which support the overall aim of reducing inequalities and maximising potential.
- 4.26 The updated legal agreements as set out in this report will help support delivery against the strategic priorities of:
- *Internal Focus: All Council services are efficient and effective.*
  - *Economic: Enable greater local opportunities for all people, communities and businesses*

### ***Risk management***

- 4.27 There is a risk that the revised Collaboration Agreement does not comply with National Government requirements. This has been mitigated by engaging with BEIS throughout the LEP integration to understand national changes and requirements. Given national requirements are reducing there is a remote risk that the Agreement is non-compliant.
- 4.28 There are various risks associated with the BC LEP legacy funds (i.e. non-achievement of outputs, risk of clawback etc) but these are existing and not additional risks resulting from the recommendations in this report. These are already being mitigated from existing processes as set out in the BC LEP Assurance Framework and the Collaboration Agreement. BEIS have confirmed that management and decision making in relation to BC LEP Legacy Funds will remain the responsibility of the BCLAs, and will not transfer to the WMCA, ensuring that uncommitted Legacy Funds will be invested within the Black Country. This ensures that uncommitted Legacy funds are reinvested in the Black Country.
- 4.29 Enterprise Zones: There is associated financial risk and reward with the new arrangements from 1 April 2025, as set out in paragraphs 4.30-4.35 in the financial implications section below.

### ***Financial implications***

- 4.30 There are no direct financial implications associated with the approval of the Collaboration Agreement and the EZ MOU. All costs associated with the delivery of SAB functions by Walsall Council, including making amendments to the Collaboration Agreement and EZ MOU, are covered from 'top-slicing' of the grants managed, or from the interest generated from funding held, or a mixture of both, as agreed by the BC LEP and the BCJC. SAB costs are budgeted and funded up to 31 March 2026 when output reporting for Legacy Funds are expected to cease.
- 4.31 Walsall Council will benefit from an equal (one quarter) share of the unallocated Legacy Funds, as set out in Table 1.
- 4.32 There are significant implications associated with the BCEZ reverting to their geographical Local Authority by 31 March 2025. All existing commitments referred to in the December 2020 Cabinet report will be honoured (i.e. SAB management costs, the £250,000 annual pipeline development grants and historic revenue costs being recovered).
- 4.33 From 31 March 2025 Walsall Council will take the risk and reward of its own EZ surpluses, forecast to be c£3m by 31 March 2038 – although note that this surplus is after taking into account borrowing costs of our approved schemes being Phoenix 10, Parallel 9-10 and Boxpool. If Walsall's business rates collected are less than modelled, and are insufficient to cover borrowing costs associated with Walsall EZ investments or historic revenue costs, then the Council will be left with a liability. This also applies in the reverse in that if business rates collected are in excess of forecasts (noting that reasonable



levels of contingency have been applied) then the Council will benefit from that surplus generated rather than it having to be returned to a consolidated BCEZ.

- 4.34 However, on a consolidated basis the Council had access to a higher level of buffer against business rates shortfalls i.e. the consolidated surplus forecast to the end of the BCEZ was c£60m whereas the Walsall generated surplus within that total is only forecast to be c£3m, albeit there was no guarantee that the consolidated surplus could be used to address our project specific forecasts.
- 4.35 Walsall Council will also benefit to a capped value of £14.898m to contribute to the Gasholder funding package, funded from Wolverhampton generated surpluses subject to a Green Book compliant business case being completed and the investment being approved at BCJC.

### ***Legal implications***

- 4.36 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, the Council's Executive has the power to setup an Executive Joint Committee.
- 4.37 An Executive Joint Committee is effectively an extension of Cabinet, making decisions on behalf of Cabinet where it has delegated authority to do so. Delegation does not prevent Cabinet from choosing to excise the powers instead of the Executive Joint Committee, nor withdrawing at any time the delegation for a specific matter or item or in its entirety.
- 4.38 The Collaboration Agreement is a legal document that requires its signatories to adhere to the governance and protocols in managing the BC LEP Legacy funds.
- 4.39 The SAB and legal and finance officers of each BCLA have been consulted on the drafting of the Collaboration Agreement. Therefore these documents can be completed as soon as the BCLAs have each secured their own formal Cabinet approvals to these arrangements. The completion of the associated binding agreement will also be progress alongside this work to provide each of the parties with the protection and risk mitigation associated with a legally binding document.

### ***Procurement Implications/Social Value***

- 4.40 There are currently no procurement or social value implications arising directly from this report.

### ***Property implications***

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

### ***Health and wellbeing implications***

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

### ***Reducing Inequalities***

- 4.43 There are no direct equality implications arising from this report.

### ***Staffing implications***

- 4.44 There are no staffing implications arising directly from this report. All costs associated with the delivery of the SAB functions by Walsall Council, including making amendments to the Collaboration Agreement and BCEZ MOU agreements are already funded, as set out in the Financial Implications sections of this report.

### ***Climate Impact***

- 4.45 There are no climate impact implications arising from this report.

### ***Consultation***

- 4.46 ABCA Chief Executives and ABCA Leaders have been consulted on throughout 2022/23 in relation to BCLEP Legacy funds and the integration plan.
- 4.47 Heads of Regeneration Working Group have been consulted throughout 2022/23 in relation to BCLEP Legacy funds and the integration plan, as well as being consulted on the Collaboration Agreement, and will be consulted on the draft EZ MOU.
- 4.48 The SAB and legal and finance officers of each BCLA have been consulted on the drafting of the replacement Collaboration Agreement, and will be consulted on the draft EZ MOU.

## **5. Decide**

It is recommended:

- 5.1 That Cabinet approve the revised Collaboration Agreement, attached as **Appendix A**, with significant changes set out in further detail in this report.
- 5.2 That Cabinet delegate authority to the Director of Finance, Corporate Landlord and Corporate Performance (s151) in consultation with the Leader, to make any final amendments and authorise the sealing by the Council of the Collaboration Agreement.
- 5.3 That Cabinet delegate authority to the Director of Finance, Corporate Landlord and Corporate Performance (s151) in consultation with the Leader, to negotiate, approve and sign the Memorandum of Understanding for Enterprise Zones.

## 6. Respond

- 6.1 Enter into the Collaboration Agreement.
- 6.2 Enter into the EZ MOU with the relevant government department.

## 7. Review

- 7.1 The Collaboration Agreement and the consequences of the proposals set out in this report will be reviewed from time to time as local and national policies and practises evolve.

## Appendices

Appendix A: Black Country Executive Joint Committee Collaboration Agreement

### Background papers

Cabinet – 16 December 2020: Approving the Supplemental Deed of Variation to the Black Country Joint Committee Collaboration Agreement

Cabinet – 20 October 2021: Approving amendments to the Black Country Executive Joint Committee Collaboration Agreement

Cabinet – 14 December 2022: Update On Streamlining Black Country Ways Of Working – Black Country Consortium Ltd

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Signed



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22 March 2023



Councillor M Bird  
Leader of the Council

22 March 2023