

## **Council – 16th April 2012**

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

**Service:      Development and Delivery**

#### **1.      Summary**

- 1.1      The Council, with its Black Country 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) is one in a number of investment initiatives and programmes which aims to support this wider comprehensive approach to business and enterprise growth, by addressing a clearly identified need to provide modern floor space to accommodate future business need.
- 1.2      Cabinet at their meeting on 8 February 2012 agreed to the submission of a full application for European Regional Development Fund (ERDF) to the Department for Communities and Local Government (DCLG) for circa £8million in support of the BCBPIP.
- 1.3      The BCBPIP report informed Cabinet that a further report would be presented to Full Council seeking authority for the Council to act as the ‘accountable body’ for the BCBPIP on behalf of the sub-regional Black Country Authorities.

#### **2.      Recommendations**

- 2.1      That Council agree for Walsall Council to act as the accountable body for the Black Country Business Property Investment Programme (BCBPIP) and enter into a funding agreement with the Department for Communities and Local Government (DCLG) upon approval of the application.
- 2.2      That Council note the reduction in the total ERDF budget available for the Black Country Business Property Investment Programme since being approved by Cabinet on 8 February 2012.

#### **3.      Report detail**

- 3.1      Cabinet at their meeting on 8 February agreed to the submission of a full application for ERDF funding to DCLG for circa £8million in support of the BCBPIP. The Cabinet report is attached (appendix) and provides a detailed account of the Programme, Council priorities, Risk management, Financial implications, Legal implications, Property implications, Staffing implications, Equality implications and Consultation.
- 3.2      The report to Cabinet in February 2012 included a Programme funding figure of circa £8m for the BCBPIP. However since the Cabinet Resolution, further confirmation has been received from Officers at DCLG regarding the potential

ERDF funding available for the Programme. This takes account of a de-commitment exercise undertaken by DCLG across the West Midlands region. The impact of this is that the BCBPIP will now have approximately £6.7million available to it, subject to approval, in support of its original investment intentions.

- 3.3 The reality of the reduction in the funding available is that taking into account the revenue element of the Programme (approximately £292,500 from ERDF) there is in the region of £6.4million capital available to support delivery of projects within the Programme; a reduction of £1.6 million. The application to DCLG is therefore made on this basis. However it should be noted that the final figure for the ERDF funding will not be known until the funding agreement has been signed with DCLG. This figure will also be further influenced by the level of demand from the market (investors/ developers) when the Programme is launched as this may see the Council require less or greater funding to support developer/ investor activity.
- 3.4 The outputs reported to Cabinet have since been pro-rated to take into account the reduction in funding available from DCLG. In summary, the key outputs and SMART objectives for a reduced Programme are anticipated as follows

#### Outputs

- 145 jobs created
- 4ha of Brownfield land reclaimed and/or redeveloped
- 12,000sqm of new/refurbished:floorspace
- 12,000sqm of new/refurbished floorspace with environmental accreditation
- £19,259,934 of private sector investment leverage

#### Smart Objectives

- By 2015 through the provision of new floorspace enable the start up or expansion of 12 new businesses across the Black Country.
- By 2015 to have reclaimed and/or redeveloped 4 ha of Brownfield land in the Black Country.
- To improve the economic performance of the Black Country by contributing £2,175,000 additional GVA to the Black Country from December 2015.

It should be noted that outputs and objectives will not be finalised until the full application is approved by DCLG and Walsall Council enters into a funding agreement with DCLG. Therefore there is a possibility that the outputs and objectives reported above will change.

### 3.5 **Accountable body**

- 3.5.1 The BCBPIP has been fully developed and will be delivered in accordance with the Council's Grants Manual and Accountable Body Protocol.

3.5.2 DCLG requires an accountable body to be identified for all projects that it enters into contract with. As applicant, it is proposed that this should be undertaken by Walsall Council on behalf of the Black Country local authorities. The accountable body and applicant are deemed one and the same for DCLG and therefore there are no further risks and issues accompanying the accountable body status over and above those for the applicant. A thorough risk assessment has been carried out for the BCBPIP prior to submission of the application; section five of the appended Cabinet report provides detailed information on risk management and the process by which all risks will be managed throughout the Programme's lifetime.

#### **4.0 Financial implications**

4.1 The financial implications associated with the delivery of the BCBPIP are provided in detail in the appended Cabinet report. The financial impact of the reduction in the potential ERDF available for the Programme is detailed in section 3 of this report.

#### **Background papers**

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

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Tim Johnson  
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28 March 2012

## Cabinet – 8 February 2012

### Black Country Business Property Investment Programme

<b>Portfolio:</b>	Councillor Andrew - Deputy Leader, Regeneration
<b>Service:</b>	Regeneration Services
<b>Wards:</b>	Wards within the SUD boundary (see <b>Appendix A</b> )
<b>Key decision:</b>	Yes
<b>Forward plan:</b>	Yes

#### 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 raft of other initiatives and programmes, supports this wider comprehensive approach to business and enterprise growth.
- 1.2 Following a report to cabinet in September 2011, this report provides further detail regarding a bid to Department for Communities and Local Government (DCLG) for £8million of European Regional Development Fund (ERDF) grant funding which, is intended to lever a further £24million of private sector match. This programme will assist Small Medium Enterprises (SMEs), property owners and developers across the Black Country make available new and refurbished accommodation to support employment growth across the Black Country. Evidence collected in the preparation of the Black Country Core Strategy (BCCS), the Local Economic Assessment (LEA), and from market engagement suggests that the deficiency in high quality employment land and premises is a major barrier to economic growth. Specifically, support will be targeted for SMEs' and SME developers within the Sustainable Urban Development (SUD) boundary (**Appendix A**) which was firstly determined in 2008. Grant is also conditional upon planning permission.
- 1.3 The programme meets the council's priority around the 'economy', which is one of three priorities, as set out in Walsall's Corporate Plan for 2011 / 2012. The programme will also work towards delivering key policies within the recently adopted BCCS. The BCCS recognises 'an *urgent demand to renew existing employment areas*' and sets out the need for a three- fold increase in high quality employment land by 2026.
- 1.4 Since the September report, the BCBPIP has been taken through the Outline Stage of DCLG's Application process and was endorsed by the Programme Delivery Team on the 21<sup>st</sup> September 2011.

- 1.5 Subject to Cabinet's endorsement of the programme bid, the full application will be submitted to DCLG and a further report presented to Full Council on the 23<sup>rd</sup> February 2012 when approval will be sought for Walsall to act as accountable body for this Black Country wide ERDF programme.

## **2. Recommendations**

- 2.1 That Cabinet agree to endorse the submission of a full European Regional Development Fund (ERDF) application to Department for Communities and Local Government (DCLG) for the circa £8million Black Country Business Property Investment Programme (BCBPIP)
- 2.2 That Cabinet agree to delegate authority to the Executive Director – Regeneration in consultation with the Portfolio Holder for Regeneration to enter into a Funding Agreement and any ancillary related documents as required with DCLG.
- 2.3 That Cabinet delegate authority to the Executive Director – Regeneration to enter into a Collaboration Agreement, based on the draft document as set out in **Appendix B** and any ancillary related documentation. The Collaboration Agreement sets out the framework for joint working between the Black Country authorities (Walsall, Sandwell, Wolverhampton and Dudley) to enable delivery of the BCBPIP.
- 2.4 That Cabinet agrees to a £60,000 revenue contribution towards overall management costs for the life of the BCBPIP, which will form 25% of the total Black Country Authorities contribution.
- 2.5 That Cabinet delegate authority to the Executive Director – Regeneration, following consultation with the Executive Board of the BCPIP Programme, to enter into any deeds, contracts and other related documents in relation to the award and management of grant to individual applicants under the BCBPIP.

## **3. Report detail**

- 3.1 At its meeting in September 2011, Cabinet endorsed the approach to the preparation of a full application to bid for £8million of ERDF funding for the BCBPIP. It is intended that the ERDF grant funding will lever a further £24million of investment for the Black Country economy. Following the September report, approval of the outline application was gained from DCLG and, subject to conditions, progress to the full application stage was endorsed. Since that time, work has been ongoing to develop the full application and a robust framework for successful delivery and governance of the programme.
- 3.2 As reported in September, the concept for the BCBPIP has been developed out of a recognised need to promote investment to stimulate economic growth and job creation within the Black Country. A number of recent key pieces of evidence (including Walsall's Local Economic Assessment, Black Country Core Strategy and Brownfield Land Assessment) highlight the sub-region's long term problems relating to the limited supply of quality employment land and premises available to help local companies and new investors grow their businesses and promote economic growth. The underlying cause of this poor quality land relates to the

type of heavy industrial production and mineral extraction that once underpinned the Black Country economy, with many sites now contaminated and/or requiring remediation before they can be re-developed. The economic downturn has further exacerbated these issues with a reduction in values which has further impacted on the viability of many schemes with an increased number of development appraisals demonstrating costs in excess of values generated.

- 3.3 The Black Country Authorities have the opportunity to intervene and provide ERDF funding to mitigate these impacts on projects and deliver economic priorities for the sub-region. The outline approved BCBPIP will provide funding for a programme of activity that will facilitate and bring forward development projects from April 2012 until 2015. The programme would provide for £8million of gap funding to support bringing back into use existing sites and redundant premises, making available new, modern business accommodation to support the growth plans of Black Country wide businesses and new investors, leveraging a minimum of £24million of private sector investment. The scheme will seek to support commercial and industrial schemes (planning use classes - B1a,b,c, B2, B8) across the four Black Country boroughs; it should be noted however that residential and retail schemes are ineligible for European Funding under this programme's rules.
- 3.4 The new Programme will address the viability gap in bringing commercial development forward, by providing up to 25% of ERDF funding towards the total development costs of projects. Additional funding (up to 10%) may be available for listed properties and those developed under the Heritage Economic Regeneration Scheme (HERS) scheme. This additional sum is also available to those looking to deliver projects to a BREEAM (Building Research Establishment Environmental Assessment Method) Excellent or Outstanding standard.
- 3.5 Funding is specifically for Small Medium Size Enterprise (SME) developers and occupiers which are defined as a businesses employing fewer than 250 persons and which have either an annual turnover not exceeding 50 million euro, or an annual balance sheet total not exceeding 43 million euro. The end beneficiary must also fall within the Sustainable Urban Development (SUD) boundary (see **Appendix A**). Within Walsall the SUD area includes; Bloxwich, Blakenall, Birchills, Leamore, St Matthews, Palfrey, Pleck, Bentley and Darlaston North, Darlaston South and Willenhall.
- 3.6 In summary, key outputs for the proposed programme are anticipated to be as follows. It should be noted that outputs will not be finalised until the full application is approved by DCLG.
- 180 Jobs created
  - 5 hectares of Brownfield land reclaimed and / or redeveloped
  - 15,000 sqm of new / refurbished: floorspace
  - 15,000sqm of new / refurbished floorspace with environmental accreditation
  - £24million of private sector investment levered

## **Governance**

- 3.7 Walsall is proposed to act as the accountable body for this high profile Black Country wide programme, leading its development and administration. Nevertheless, throughout the programme's development, the Black Country authorities have been continually involved ensuring agreement to all key elements. As set out within the 'Collaboration Agreement' (see draft at **Appendix B**), this working relationship will continue during the programme's delivery. Wolverhampton, Sandwell and Dudley councils are in the process of signing up to the legally binding agreement that sets a framework for joint working between parties to enable the delivery of the programme. Wolverhampton, Dudley and Sandwell will be seeking sign-off of the Agreement prior to Cabinet on the 8<sup>th</sup> February.
- 3.8 Essentially, the Collaboration Agreement ensures commitment to the process and a shared responsibility between Black Country authorities, thereby, mitigating risk for Walsall as the accountable body. The agreement confirms an equal financial contribution towards programme running costs and ensures, that in the unlikely event of a project defaulting and DCLG clawing back funds, the local authority where the project beneficiary is located will pay to Walsall an amount equivalent to the monies that Walsall are required to pay back to DCLG.
- 3.9 The Collaboration Agreement also sets out the governance structure for the programme. In summary, it is proposed that an Executive Board, comprising of the Black Country Heads of Regeneration will oversee the programme's continued development, operational delivery, effective co-ordination, joint working between authorities and be the key decision maker for individual applications to the programme. Reporting to this group and overseeing the programme's delivery will be a Black Country wide Steering Group, consisting of senior Regeneration staff from each local authority.
- 3.10 A dedicated Programme Manager, based at Walsall, will be recruited specifically for the programme. This individual will chair and report directly to the Steering Group, report to the Executive Board and oversee the day to day running of the programme. Additionally, to support the programme manager, a part-time Programme Support Officer will also be recruited. Both officers will sit on the WMBC Working Group, which has been meeting on a weekly basis throughout the development of the programme, ensuring that all programme issues are adequately resolved, necessary processes are in place and all risks are explored and mitigated. The group comprises of WMBC legal team, finance officers and senior regeneration staff. Please refer to schedules 1 to 5 of the draft Collaboration Agreement (**Appendix B**) for further details of roles and responsibilities and the Programme's overall governance structure.

## **Process**

- 3.11 Throughout the programme successes will be promoted and regular discussions will take place between all necessary parties including the Black Country Steering Group, Executive Board and Walsall's Working Group, which will ensure processes and risks are continually monitored and scrutinised. A summary of the 'programme process' is provided below and a detailed account within **Appendix C and D**.

### **Programme Approval / Launch**

- High-profile joint Black Country launch event and national promotion - may also involve a joint launch of the Growing Places Fund

### **Two Stage Application Process**

#### **Stage One**

- Developers and occupiers invited submit expressions of interest (EOI).
- Assessments undertaken by the Black Country wide Steering Group - ranking EOIs against set criteria; project deliverability, eligibility, basic financial vetting.
- Black Country Executive Board sign off successful EOIs and invite to full application stage.

#### **Stage Two**

- Submission of detailed full applications, together with development appraisals.
- Robust, detailed application assessment by an independent experienced Technical Advisor, consisting of: appraisals to the Royal Institute of Chartered Surveyors Valuation Standards (Red Book) to set the viability gap, assessment of the capability of applicants to deliver schemes both in terms of resources and financial, tenant demand, site conditions, value for money, compliance with state aid standards and risk.
- Technical Advisor's final recommendations presented to the Steering Group.
- Each local authority, where projects are located, complete checks to gain approval to proceed.
- Final projects signed off by Executive Board - If deemed to be any risk to the Council, project agreements will not be pursued.
- N.B - It should be noted that the Technical Advisor will be liable for any mistakes made during the technical appraisal process.

### **Legal Agreement / Legal Charge**

- Successful applicants enter into legally binding grant agreement with Walsall Council, conditional on planning permission.
- Agreements transfer risk of clawback and other conditions (outputs, spend profile) in the funding agreement that Walsall Council will enter into with DCLG to the applicant.
- Legal charges - where grant amount exceeds £250,000.

### **Claims Process**

- Projects commence and submit regular claims to Walsall Council.
- Appointed Technical Advisor verifies all project claims; making site visits at regular intervals, ensuring eligibility, all works are completed in accordance with the project's grant agreement and the programme ERDF funding agreement.
- Advisor to provide a verification and works valuation certificate to Walsall Council to confirm payment.
- Walsall makes payment to the applicant and claims funding back from DCLG on a monthly basis. The regularity of claims minimises the risk for the council as the council will only need to bank roll one month of expenditure before it is able to claim.
- Programme claims undertaken by the Programme Manager, additional checks undertaken by Finance before receiving Head of Finance sign off.
- N.B - It should be noted that the Technical Advisor will be liable for any mistakes made during the claims process.

## **Demand**

- 3.12 Walsall's LEA identifies a dynamic picture amongst Walsall's businesses with a large proportion of companies intending to expand in the next 5 years. However, as described within 3.2 above aspirations to grow are hampered by a limited supply of quality employment land and premises and a viability gap in bringing forward development.
- 3.13 Together with the need that has been identified within the LEA, and other evidence bases including the BCCS and the Brownfield Land Study (2011), recent work amongst Black Country partners has attempted to understand market demand for the programme across the sub-region. To date, 18 projects totalling £48,246,000 have been identified. Whilst this figure exceeds the overall value of the ERDF programme (£32million), it should be noted that, at this stage, fairly limited information has been provided by possible applicants. As detailed within paragraph 3.11, projects will need to be subject to a detailed application process to ensure applicants meet programme requirements.
- 3.14 Walsall and our Black Country partners continue to undertake further work to understand demand for the programme. However, whilst current demand levels indicate interest in the programme, officers have found that, without full programme approval, there has been some reluctance by agents and developers to provide project information. We understand that this may be because information is deemed to be of a commercially sensitive nature. It is thought that a truer picture of demand will only be established once the Programme has been approved and the competition is launched. Therefore, wide promotion from the outset of the programme will be essential to ensure that all potential projects are identified.

## **4. Council priorities**

- 4.1 The project will have positive implications for the Black Country's economy. The project 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 councils economic priority, as set out in the corporate plan 2011 / 12. 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.

## **5. Risk management**

- 5.1 This programme offers a new source of funding for the commercial and industrial development sector within Walsall and the Black Country. It therefore offers an excellent opportunity to stimulate economic development and create jobs throughout the sub-region. 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 full ERDF application. Regeneration Officers have been working closely with the Council's finance, legal and risk management teams to ensure that all potential risks are scoped out and both the Council's accountable body protocol and Grants Manual are followed precisely. The governance structure for the programme will ensure that there is a robust mechanism in place for ongoing monitoring of risk throughout the life of the programme, senior management will continually oversee this process (see **Appendix B** schedule 1 - 5 of the Collaboration agreement).

- 5.2 Essentially, the key risk for the Council is that DCLG claw back funds that the Council has committed or paid to third party applicants. This potentially could occur if an applicant receives grant from the Programme and then defaults so that the required outputs (jobs created, private sector leverage, floorspace created / refurbished and reclamation / redevelopment of brownfield land) are not achieved or if ineligible spend is paid out to applicants. Detailed work has taken place with all colleagues to play out potential scenarios and measures put in place to ensure this risk is minimised and transferred. However, in the event of this happening, it has been agreed as per section 4.8 of the 'Collaboration Agreement' (see **Appendix B**) that the Local Authority where the project is located will take all reasonable steps to mitigate the amount of monies clawed back from WMBC and to pay to WMBC an amount equivalent to the monies that Walsall is obliged to pay back to DCLG. This is another measure to reduce risk for Walsall Council as accountable body for this programme.
- 5.3 Whilst the risk of clawback for the programme could potentially be critical, we are minimising the chances that DCLG will exercise their contracted rights to claw back. In order for an applicant to have been awarded funding, as per section 3.11 above, several rigorous checks will have taken place during the application stage and a robust grant agreement and possibly legal charge will be entered in to, this will reduce the risk of an applicant defaulting and not achieving outputs. The experienced Technical Advisor will also ensure that all spend is 'eligible', with further checks being undertaken by the Programme Manager. As per section 5.1 above there will be ongoing risk management to ensure potential problems are dealt with sufficiently at an early stage. Further to this, it is proposed that there will be a 'break clause' during the early stages of the programme. If, following the high profile launch and wide promotion there is limited demand for funding or if projects are deemed to be ineligible, there will be an opportunity for Walsall to terminate the funding agreement with CLG. At this stage projects will not be committed therefore there will be no risk of clawback.
- 5.4 A copy of ERDF's standard grant funding agreement has been made available to officers, this indicates the likely conditions of grant offer and consequently risk to the council. However, whilst most risks are understood and measures to minimise put in place, the full extent of risk will only be fully ascertained once DCLG have approved the full application and the Council receives the ERDF grant funding agreement specifically for the BCBPIP. At this stage, prior to signing the agreement, there will be an opportunity for Walsall's Legal Services team to enter into contract negotiations with DCLG. Once negotiations have taken place, a revised and final risk matrix will be presented to the Executive Director and Portfolio Holder for Regeneration, enabling a full review of risk. Only once all risks are fully understood and mitigation measures put in place, will the Executive Director - Regeneration in consultation with the Portfolio Holder for

Regeneration authorise that the funding agreement be entered into; fully committing Walsall to act as accountable body for this Programme.

## 6. Financial implications

- 6.1 The ERDF programme will provide £8million of capital grant funding between 2012 and 2015. ERDF is also to provide additional revenue funding to support 50% of the programme management costs. These costs include the Technical Advisor, management and administration costs, promotion, audit and evaluation and legal charges. The estimated total revenue costs for the programme are £550,972. All cost projections have been comprehensively assessed and are derived from knowledge of comparable costs and intelligence from similar gap funding schemes. Generous estimates have been made to allow for increases. However, true costs for the programme will not be known until it has been launched and is in operation.. For instance, we do not yet fully understand the costs associated with the Technical Advisor and obviously costs will vary depending on the number of grant applications received.
- 6.2 The total ERDF contribution towards the revenue element is expected to be £272,486. It is anticipated that the private sector will make a 50% contribution towards the costs of the technical appraisal, this is likely to be £2,500 per project. The collaboration agreement confirms that the remainder of the programme costs are to be equally split between the four Black Country authorities. The total sum of local authority costs is estimated to be £225,986, £56,496.50 per local authority. To account for increases in costs section 5 of the collaboration agreement obligates each local authority to make an initial contribution with a sealing limit of £60,000, but the Parties agree and acknowledge that in the event the costs exceed this amount then each party will act reasonably in agreeing to pay a further contribution to WMBC.
- 6.3 The Head of Finance has confirmed that a total of £60,000 for Walsall's revenue contribution will be made available over the life of the programme. This will come from contingency.

## 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 BCBPIP. Specifically Legal officers have been and will continue to be involved in the following elements:
- Collaboration Agreement
- 7.2 Legal Services have supported the development of the Collaboration Agreement, which sets the framework for joint working between Black Country authorities. See section 3.6 above and **Appendix B**.
- Technical Advisor
- 7.3 A procurement process is underway to procure the services of suitably qualified and experienced Technical Advisor. The tender documentation has been developed in collaboration with the Council's legal and procurement teams to ensure that all documentation adheres to the Council's Finance Rules and Contract Rules and European Regulations. The Contract for the Technical

Advisor's services will oblige the appointed Technical Advisor to advise the Council appropriately in relation to the BCBPIP project applications and they will be liable for any breach of those obligations during the appraisal of applications and the verification of claims.

#### ERDF Funding Agreement with DCLG

- 7.4 Subject to approval of the full ERDF application, Walsall Council will enter into a Funding Agreement with DCLG for delivery of the BCBPIP including the contracted outputs within section 3.6 above. To ensure that an acceptable grant agreement is issued, as detailed within 5.4 above, prior to entering into the agreement contract negotiations will take place between Legal Services and DCLG. Unless the terms of the funding agreement can be agreed, the Executive Director - Regeneration will be recommended not to authorise Walsall Council to act as accountable body for the Programme.

#### Grant Agreements

- 7.5 Project applications that are successful will be required to enter into a grant agreement with the Council as accountable body. This will require the applicant to deliver a number of outputs, will define timescales for delivery and set the level of ERDF funding required to meet the projects viability gap. The grant agreement will allow for the grant funding to be paid to the applicants' in stages, dependant on the applicants achieving set milestones in the delivery of their projects. Any outputs that DCLG impose on WMBC will also be reflected in individual applicants grant agreements. This will minimise risk for the Council and pass the relevant DCLG Funding Agreement requirements on to the applicant. In the event of an applicant defaulting under the grant agreement with Walsall Council, then the Council will not make the remaining parts of the grant payment to that applicant and so will not claim those funds from DCLG.

#### Legal Charge

- 7.6 Together with the legally binding grant agreement, the Council may also take a legal charge over the land being developed. However, because of the likely costs of enforcing a legal charge (approx £12,000 per project) they will only be put in place for grants over a value of £250,000. In the event an applicant going bankrupt and not producing necessary contracted outputs, the existence of the legal charge may assist the Council to recover any costs through equity in the property. However, it is likely that there will be other charges on the land / property from the applicants' development funder (bank / building society), so the ability to recover any funds from the applicants' through this route is likely to be limited.

#### State Aid

- 7.7 The project will provide funding under an approved State aid "Regional Aid" scheme and will limit the ERDF contribution to a maximum of 35% of the value of the individual project or to the allowed ceiling in cases where this may be higher. A key element of the independent Technical Advisor's role will be to ensure all projects are compliant with the State aid scheme.

## **8. Property implications**

- 8.1 In terms of Council owned property, there are no implications arising from the proposals in this report. The council could not promote a project through the programme; projects have to be promoted by the private sector.
- 8.2 The Black Country Investment Programme will however, increase the quality and supply of existing private employment sites and premises across the Black Country, attracting inward investment from occupiers and investors alike.

## **9. Staffing implications**

- 9.1 There will be ongoing implications for staff within the Regeneration Directorate and Resources Directorate (Finance Services and Legal Services) in forming part of the 'WMBC Working Group' and administering the programme. Cabinet members should be reassured that the team is experienced in the delivery of grants programmes including ERDF.
- 9.2 If the application for funding is successful then two officers, who will be based at Walsall Council, will be recruited to perform the programme management and support functions, specifically for this ERDF programme.
- 9.3 In the first instance a secondment opportunity will be explored within the Black Country authorities, if suitable candidates can not be found it is intended that an external recruitment process will be undertaken to appoint both officers. However, it should be noted that, as per the grants manual, the formal appointment of these post will not take place until ERDF is confirmed.

## **10. Equality implications**

- 10.1 The Property Investment Programme 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. This is important given the social disadvantage which has arisen as a result of the decline in the area's traditional industries as highlighted in the Council's recently published Employment Land Review (2011).

## **11. Consultation**

- 11.1 The BCBPIP has been developed in consultation with senior management at 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 throughout, attending weekly programme meetings. As per section 3.13 and 3.14, initial consultation has taken place with the private sector. Dialogue is also ongoing with DCLG to ensure successful development of the full application and the LEP Board are also aware and support this programme.

## Background papers

N/A

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A handwritten signature in blue ink, appearing to read 'Tim Johnson', with a vertical line to its right.

Tim Johnson  
Executive Director – Regeneration  
30 January 2012

A handwritten signature in blue ink, appearing to read 'Adrian Andrew', with a vertical line to its right.

Councillor Adrian Andrew  
Portfolio holder Regeneration  
30 January 2012



**DATE:** \_\_\_\_\_ 20[ ]



**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 Investment Programme**

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

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**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]

**BETWEEN:**

- (1) Walsall Metropolitan Borough Council of Civic Centre, Darwall Street, Walsall, WS1 1TP (“**WMBC**”);
- (2) **DUDLEY METROPOLITAN BOROUGH COUNCIL** of [ \_\_\_\_\_ ];
- (3) **SANDWELL METROPOLITAN BOROUGH COUNCIL** of [ \_\_\_\_\_ ]; and
- (4) **WOLVERHAMPTON CITY COUNCIL** of [ \_\_\_\_\_ ];  
(together being “**the Parties**”)

**WHEREAS:**

- (A) The Parties have agreed to collaborate to apply to the European Regional Development Fund (ERDF) for £8million of funding 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.2 of the Local Government Act 2000 to “promote the economic, social and environmental well-being” of their respective areas and the Project fits within the Sustainable Communities strategy adopted under s.4 of that Act.
- (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:

**Commencement Date** means [ ] April 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 Department for Communities and Local Government

**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 15 new businesses
  - to secure at least £24m of private sector investment
  - to improve the built environmental quality of the Black Country
  - to facilitate the delivery of 15,000m<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 £9m per annum additional value to the Black Country economy through the provision of floorspace to accommodate 300 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:
- 3.3 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;
- 3.4 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,
- 3.5 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,
- 3.6 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.
- 3.7 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] 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 Programme Management team in delivery of their duties and
- 3.3.4 Ensure alignment with local and sub regional and regional strategies.
- 3.8 The planning, and overall management of the Programme shall be vested in a WMBC Programme Team to be known as the BCPIP 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 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 The Parties agree that in the event that monies are paid out in relation to a project situated within the administrative area of one of the Parties and that project does not proceed to the satisfaction of CLG to the extent that monies are clawed back from WMBC as the accountable body under the Funding Agreement, then the Party in whose administrative area that unsuccessful project was within will:
  - 4.9 take all reasonable steps to mitigate the amount of monies clawed back from WMBC; and
  - 4.10 pay to WMBC an amount equivalent to the monies that Walsall is obliged to pay back to CLG.

## **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.

## **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 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 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 BCPIP 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 BCPIP 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:
- 8.2 information which at the time of disclosure is generally available to the public,
- 8.3 information which the Parties obliged to release under the provisions of the Freedom of Information Act 2000,
- 8.4 information which after disclosure becomes generally available to the public through no fault of the receiving party,
- 8.5 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
- 8.6 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.
- 8.7 The confidentiality obligations set out in this clause shall survive for a period of five (5) years after the termination of the Programme.
- 8.8 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 Party is affected by Force Majeure it shall forthwith notify the other party 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 and shall continue in force until 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.

## **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 [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:
- 14.5 The Royal Institution of Chartered Surveyors;
- 14.6 The Institute of Chartered Accountants in England & Wales; or
- 14.7 The Law Society of England and Wales.
- 14.8 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.
- 14.9 Where costs of the Independent Person remain unpaid by the Party liable to pay them pursuant to this clause, the other party 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:
- 16.2 delivering the same by hand,
- 16.3 sending the same by pre-paid registered post, or
- 16.4 sending the same by facsimile transmission,
- 16.5 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.
- 16.6 Any notice or information sent by post in the manner provided by clause 16.2 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.

- 16.7 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 either 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.

## **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

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 Operand i**

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 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 representative shall have one vote.

8.2 Decisions will be made by a simple majority of the representatives present 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.

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

### **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

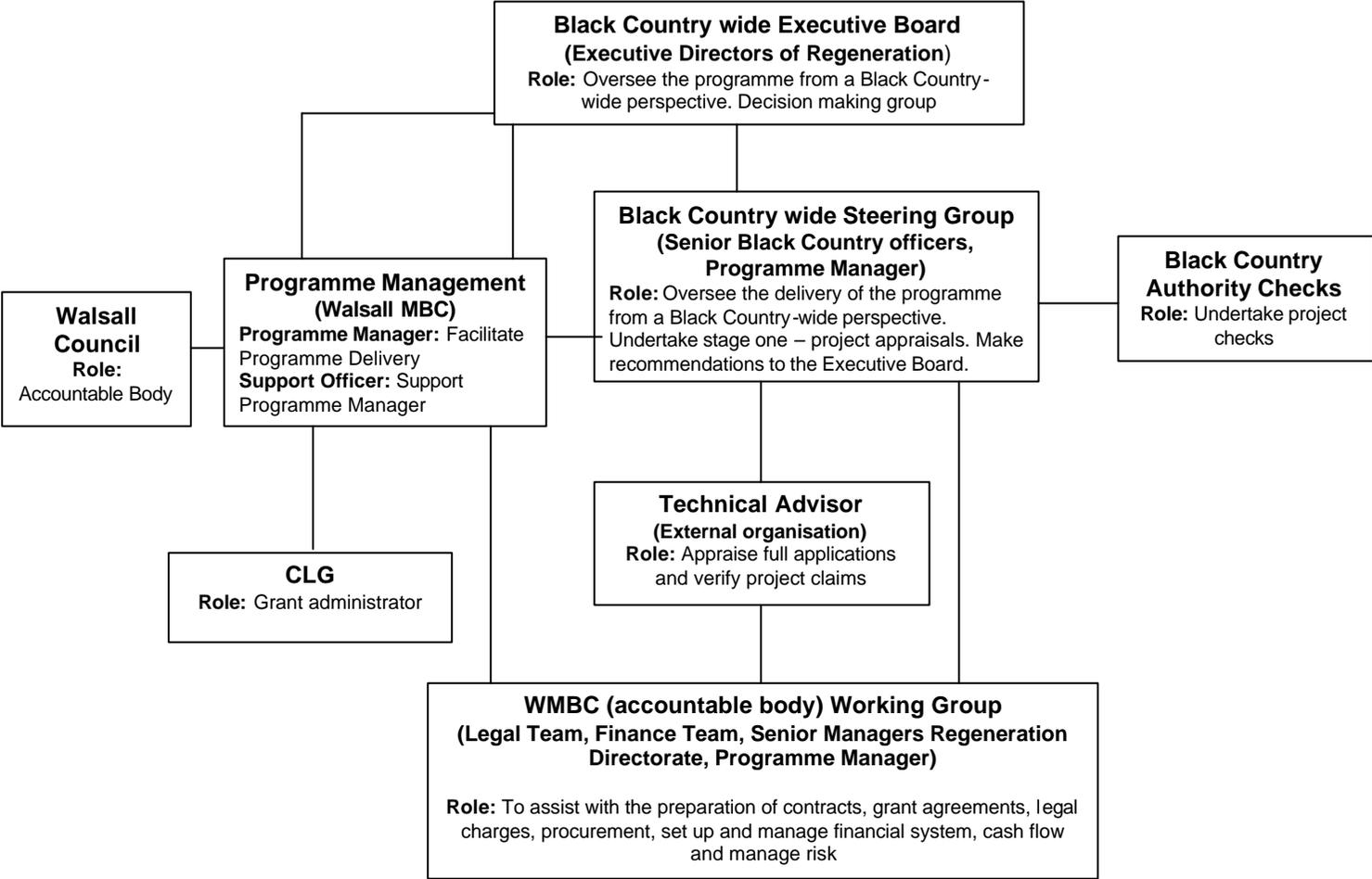
### Anticipated Programme Costs

#### Black Country Business Property Investment Programme

	<b>Cost (£)</b>
<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

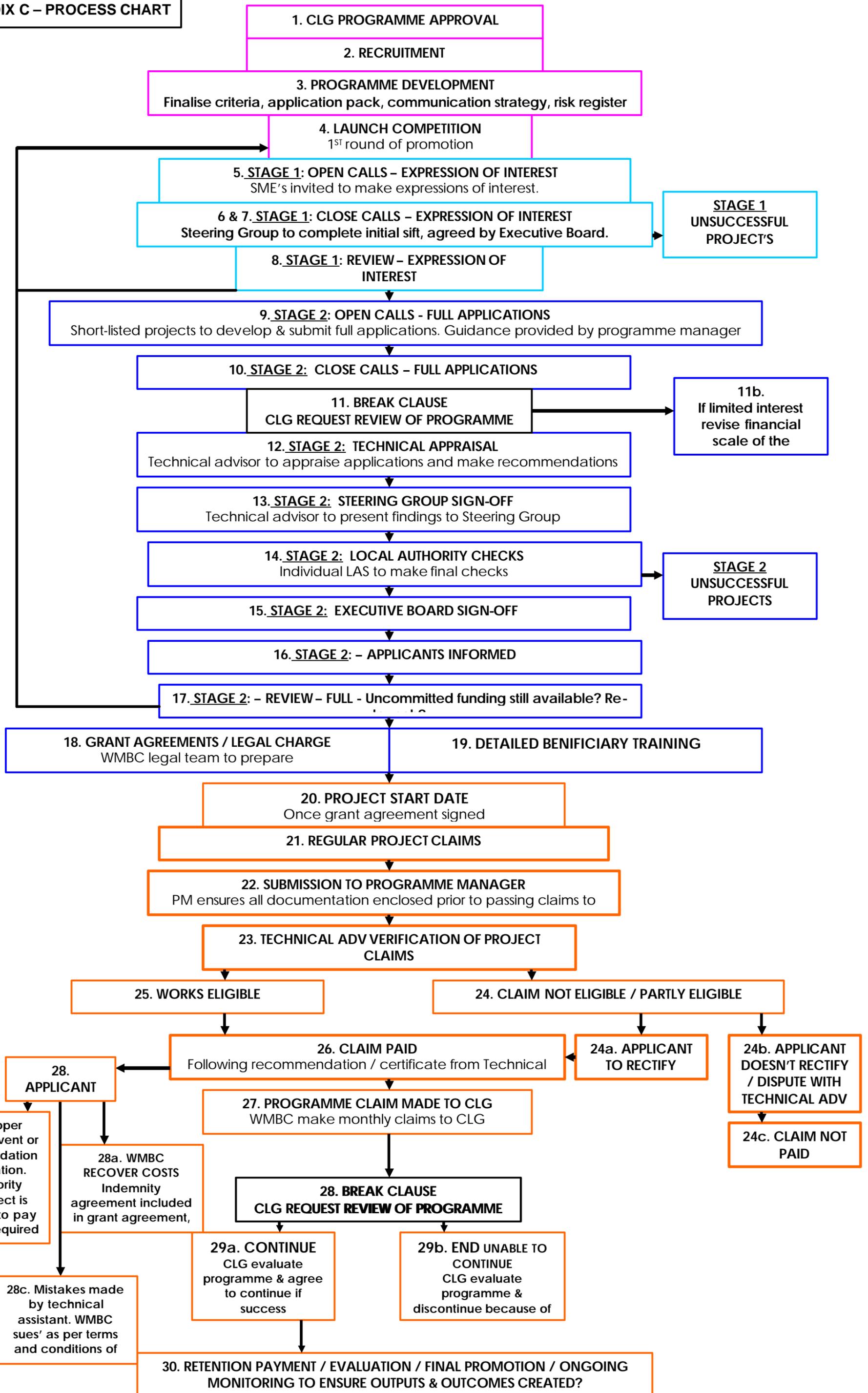
**SCHEDULE 5 – Governance Structure**





**APPENDIX C – PROCESS CHART**

**ONGOING EXECUTIVE BOARD, STEERING GROUP, PROGRAMME TEAM MEETINGS, ONGOING PROMOTION**



## APPENDIX D - BCBPIP PROCESS

	STAGE	Timescales
1	<b>CLG Programme Approval</b> <ul style="list-style-type: none"> <li>○ WMBC to sign contract with CLG.</li> </ul>	Apr '12
2	<b>Recruitment</b> <ul style="list-style-type: none"> <li>○ Formally appoint Programme Manager (recruitment process will have taken place prior to CLG approval).</li> <li>○ Formally appoint Technical Advisor (OJEU process will have taken place prior to CLG approval).</li> </ul>	Apr '12
3	<b>Programme Development</b> <ul style="list-style-type: none"> <li>○ Induction meeting with all involved in programme.</li> <li>○ Steering Group and Technical Advisor to finalise application criteria and application pack.</li> <li>○ Steering Group to agree communication strategy – Executive Board to sign off.</li> <li>○ Update risk register.</li> </ul>	Apr – May '12
4	<b>Launch Competition (Round One)</b> <ul style="list-style-type: none"> <li>○ 1 / 2 launch events to take place. Individual surgeries will follow each event so potential applicants can speak to the Programme Manager, Steering Group members and Technical Advisor. Clear guidance to be provided to all applicants from the outset including eligibility rules and costs associated with application process.</li> <li>○ Wide publicity within the Business Desk, Estates Gazette – other relevant publications.</li> <li>○ Append application packs and guidance notes to relevant programme websites.</li> </ul>	May '12
5	<b>STAGE ONE - Open Calls (Expression of Interest)</b> <ul style="list-style-type: none"> <li>○ Programme Manager to be key contact for applicants during this period. If / when necessary the Programme Manager will contact other relevant officers (e.g. planning) and Steering Group members to request information to resolve queries.</li> </ul>	<u>Open Calls</u> End May '12 (3 week period)
6	<b>STAGE ONE - Close Call (Expression of Interest)</b> <ul style="list-style-type: none"> <li>○ In the first instance, all expressions of interests to be received by the Programme Manager.</li> <li>○ The Steering Group, chaired by the Programme Manager, will undertake an initial sift. This will be based on the 'set' criteria (project information, eligibility, financial standing, deliverability).</li> <li>○ If necessary, additional necessary SME checks will be completed.</li> <li>○ Do we need finance to check company's financial status?</li> <li>○ Applicants will be automatically disqualified if they are deemed ineligible / undeliverable etc. Other elements of the expressions of interest will be scored and applicants ranked.</li> </ul>	<u>Close Calls</u> 3 <sup>rd</sup> wk of Jun '12  <u>Initial sift</u> End Jun - 2 <sup>nd</sup> wk Jul '12 (2 week period)
7	<b>STAGE ONE - Applicants informed (Expression of Interest)</b> <ul style="list-style-type: none"> <li>○ The Programme Manager will provide a report to the Executive Board prior to applicants being notified.</li> <li>○ The Programme Manager will inform successful and unsuccessful applicants. Writing to unsuccessful applicants providing reasons for</li> </ul>	3rd wk of Jul '12

	lack of success and, if applicable, applicants will be invited to submit at a further round of the competition.	
<b>8</b>	<b>STAGE ONE - Review (Expression of Interest)</b> <ul style="list-style-type: none"> <li>○ Review success of stage one competition – do we need more, do we change anything? Do we need to plan another round straight away?</li> </ul>	End Jul '12
<b>9</b>	<b>STAGE TWO – Open Calls (Full Application)</b> <ul style="list-style-type: none"> <li>○ Applicants proceeding to the full application stage will be invited to meet with the Programme Manager and the Technical Advisor to discuss, in detail, the requirements for the full application (1hr meetings for each applicant?).</li> </ul>	<u>Open Calls</u> End Jul '12 (4 week period)
<b>10</b>	<b>STAGE TWO – Close Calls (Full Application)</b> <ul style="list-style-type: none"> <li>○ Completed full applications sent to Programme Manager with payment for appraisal.</li> <li>○ Prior to payments being processed, the Programme Manager will complete an initial review – this will ensure that forms have been completed and there are no obvious missing documents – at this stage there will be an opportunity to go back to applicants if there are obvious omissions.</li> <li>○ Payments will then be processed and applications passed to the Technical Advisor to undertake a thorough appraisal.</li> </ul>	<u>Close Calls</u> End Aug '12  End Aug '12 (1 week period)  2 <sup>nd</sup> wk Sept '12
<b>11</b>	<b>BREAK CLAUSE</b> <ul style="list-style-type: none"> <li>○ CLG and WMBC to review successes of the programme.</li> <li>○ If limited interest may revise the financial scale of the programme.</li> </ul>	
<b>12</b>	<b>STAGE TWO – Technical Appraisal (Full Application)</b>  The appointed Technical Advisor shall complete the full appraisal form which will include the following elements; <ul style="list-style-type: none"> <li>○ Appraise applicant's development appraisals in order to assess the proposed project value including land value, construction cost, professional fees, developer's profit, finance and other costs. Appraisals should be undertaken as per the Royal Institute of Chartered Surveyors Valuation Standards ('red book').</li> <li>○ Provide a detailed description of the project and the extent to which the scheme meets the objectives of the programme.</li> <li>○ Assess the capability of the applicant to deliver the scheme both in terms of relevant skills and resources as well as financial capability. The consultant will not be responsible for financial vetting but will be required to use the outcome of the financial vet undertaken to inform the appraisal.</li> <li>○ Consider the deliverability of the project in terms of key issues such as site conditions and tenant demand.</li> <li>○ Ensure the project is capable of achieving the required environmental standards as agreed in the programme e.g. BREEAM Excellent / Outstanding.</li> <li>○ Ensure the appraised scheme is compliant with State Aid and ERDF Regulations.</li> </ul>	2 <sup>nd</sup> wk Sept – End Sept '12 (2/3 week period)

	<ul style="list-style-type: none"> <li>○ Consider the need for the project and whether the project offers good 'value for money' against the identified programme outputs and meets the criteria for the ERDF programme.</li> <li>○ In collaboration with the Programme Manager to devise a risk assessment. The Technical Advisor will then be expected to undertake a risk assessment for the programme with recommended risk mitigation measures to maximise the potential for the project to secure the projected programme outputs.</li> <li>○ Provide a summary report for review by the client group which will include recommendations as to the determination of detailed applications and to confirm that the recommended award is compliant with ERDF eligibility rules, state aid rules and other relevant criteria including adherence to BREEAM environmental standards.</li> </ul>	
<b>13</b>	<b>STAGE TWO – Steering Group Sign Off</b> <ul style="list-style-type: none"> <li>○ Technical Advisor to present appraisal findings to the Steering Group.</li> </ul>	End Sept '12
<b>14</b>	<b>STAGE TWO – Local Authority Checks</b> <ul style="list-style-type: none"> <li>○ Steering Group then to pass all approved applications to their respective Local Authority Risk teams for final checks.</li> </ul>	End Sept – Mid Oct '12
<b>15</b>	<b>STAGE TWO – Executive Board Sign-off</b> <ul style="list-style-type: none"> <li>○ Once projects agreed, the Programme Manager will prepare a report and present recommendations to the Executive Board for final sign-off.</li> </ul>	Mid Oct '12
<b>16</b>	<b>STAGE TWO - Applicants Informed</b> <ul style="list-style-type: none"> <li>○ Programme Manager notifies successful and unsuccessful applicants, providing detailed feedback to unsuccessful applicants.</li> </ul>	Mid Oct '12
<b>17</b>	<b>STAGE TWO - Review (Full)</b> <ul style="list-style-type: none"> <li>○ Review success of stage two competition – do we need more, do we change anything? Uncommitted funding still available? Do we need to plan another round straight away?</li> </ul>	Mid – End Oct '12
<b>18</b>	<b>Grant Agreement / Legal Charge</b> <ul style="list-style-type: none"> <li>○ Programme Manager ensures that all relevant detailed information is passed from the Technical Advisor / applications to WMBC Legal Team to inform the details of the grant agreement / legal charge (e.g. financial profiling information / landownership details / output information / details on grant intervention rate).</li> <li>○ WMBC prepare all legal charges.</li> <li>○ Grant agreements passed to applicants for sign-off.</li> </ul>	End Oct – End Nov '12 (4 week period)
<b>19</b>	<b>Detailed Beneficiary Training</b> <ul style="list-style-type: none"> <li>○ To take place in parallel with the grant agreement / legal charge process.</li> <li>○ Programme Manager / Monitoring Assistant to facilitate training sessions (possibly technical advisor).</li> <li>○ Will ensure that applicants are completely clear re. claims process, obligations of grant agreement and legal charge.</li> </ul>	Mid Nov '12
<b>20</b>	<b>Project Start Date</b> <ul style="list-style-type: none"> <li>○ Project commences once grant agreement signed / legal charge finalised</li> <li>○ Initial publicity to be considered.</li> </ul>	Beg Dec '12

21	<b>Regular Project Claims</b> <ul style="list-style-type: none"> <li>○ At agreed stages of the project (as per grant agreement) applicant to prepare claim forms for eligible expenditure with evidence of payment.</li> </ul>	Beg Jan '13 – 2014 / 2015
22	<b>Submission to Programme Manager</b> <ul style="list-style-type: none"> <li>○ Applicant to submit all relevant paper work to Programme Manager (claim form, QS report, proof of payment, bank statements)</li> <li>○ Programme Manager checks paperwork to ensure all relevant information has been submitted.</li> <li>○ If information outstanding, Programme Manager contacts applicants to request missing documentation.</li> <li>○ Completed claim forms forwarded to the Technical Advisor.</li> </ul>	(1 week period)
23	<b>Technical Advisor Verification of Project Claims</b> <ul style="list-style-type: none"> <li>○ Technical Advisor to verify project claims to ensure that all work has been completed in accordance with the Project's grant agreement and the Programme ERDF Funding Agreement.</li> <li>○ The process will consist of the verification of claim forms including; individual projects QS reports, paid invoices and bank statements. Throughout the life of each project, a small number of site visits will be required (upto a maximum of 5).</li> <li>○ Any claim queries the Technical Advisor will contact the applicant.</li> </ul>	(2 week period)
24	<b>Claim not Eligible / Partly Eligible</b> <ul style="list-style-type: none"> <li>○ The Technical Advisor provides a verification report identifying works that are not eligible and advises payment not to be made.</li> <li>○ If works not eligible the Technical Advisor / Programme Manager will discuss with applicant.</li> <li>○ Applicant rectifies work? If rectifies then able to pay claim.</li> <li>○ Doesn't rectify claim not paid.</li> <li>○</li> </ul>	
25	<b>Works Eligible</b> <ul style="list-style-type: none"> <li>○ The Technical Advisor will provide a full verification report and valuation certificate to Walsall Council's Programme Manager.</li> </ul>	
26	<b>Claim Paid</b> <ul style="list-style-type: none"> <li>○ Following receipt of the Technical Advisor's full verification report and valuation certificate the programme manager will make payment to the applicant.</li> <li>○ BACS payment made to the applicant.</li> </ul>	
27	<b>Programme Claim Made to CLG</b> <ul style="list-style-type: none"> <li>○ Programme Manager / Monitoring Assistant compiles monthly claim to CLG containing all detailed information.</li> <li>○ Claim checked by WMBC finance team.</li> <li>○ Claim signed off by S51 officer prior to claim being made to CLG.</li> </ul>	
28	<b>Applicant Defaults?</b> <ul style="list-style-type: none"> <li>○ <b>WMBC to recover costs</b> – indemnity agreement included in grant agreement, able to recover costs.</li> <li>○ <b>Developer become insolvent or goes into liquidation /</b></li> </ul>	

	<p><b>administration.</b> Local authority where the project is located has to pay clawback if required by CLG.</p> <ul style="list-style-type: none"> <li>○ <b>Mistakes made by Technical Advisor</b> – WMBC sues as per terms and conditions of their contract.</li> </ul>	
29	<p><b>Break Clause</b></p> <ul style="list-style-type: none"> <li>○ This may happen at any point during the programme.</li> <li>○ CLG review the programme.</li> <li>○ Complete an interim evaluation.</li> </ul>	
30	<p><b>Retention / Evaluation / Final promotion</b></p> <ul style="list-style-type: none"> <li>○ Retentions paid (12 months) after project completion.</li> <li>○ Evaluation of programme will follow final payments.</li> <li>○ Successes of scheme promoted.</li> </ul>	
30	<p><b>Ongoing Monitoring</b></p> <ul style="list-style-type: none"> <li>○ Following completion on site will ongoing monitoring may need to take place.</li> </ul>	