

Divisions Affected - All

CABINET

27 February 2024

Local Enterprise Partnership (LEP) Functions: Transition Arrangements

**Report by
Corporate Director for Environment and Place**

RECOMMENDATIONS

1. The Cabinet is **RECOMMENDED** to
 - a) Note the government announcement on the transfer of Local Enterprise Partnership core functions;
 - b) Approve the creation of a County Council controlling interest in the Oxfordshire Local Enterprise Partnership (OxLEP Ltd), subject to agreement by OxLEP Ltd's board
 - c) Consent to a change to OxLEP Ltd's governance to amend the Articles of Association and By-Laws to enable the County Council to take a controlling interest, if agreed by the OxLEP board;
 - d) Delegate authority to the Corporate Director of Environment and Place in consultation with the Executive Director of Resources the Leader of the Council and the Executive Member for Infrastructure and Development Strategy to take such operational decisions as are required to conclude the integration process, including concluding the Articles of Association.

Executive Summary

1. Government has announced that from 31 March 2024, Local Enterprise Partnerships (LEPs) will cease to have official recognition and that existing LEP functions will transfer to upper-tier local authorities or combined authorities, where they exist.
2. Following this announcement, it is important to establish a new governance framework to ensure local arrangements continue to meet government guidance. It is proposed that the County Council creates a controlling interest in OxLEP Ltd. To enable this to happen the OxLEP Ltd Board would need to consider and approve a revision its Articles of Association and By-Laws whereby the County Council will become the sole 'member' of the company, exercising its membership functions through Cabinet.
3. Cabinet is recommended to delegate the operational conclusion of the negotiation and integration process to the Corporate Director for Environment and Place in consultation with the Executive Director of Resources, the Leader of the Council and the Executive Member for Infrastructure and Development Strategy.
4. Subsequent to the change of ownership, there will be an opportunity in conjunction with the LEP and local stakeholders to revise the local framework of economic planning and partnerships and the system's capacity and capability requirements for the future.

Background

5. Formally launched in March 2011, OxLEP Ltd was initially established as a partnership with the local authorities, businesses and education sector in the area, and was incorporated as a not-for-profit company limited by guarantee on 31 March 2015.
6. The OxLEP Ltd company board consists of six local authority directors (Leaders), three further and higher education directors and nine private sector directors alongside the LEP Chief Executive. OxLEP Ltd Board meetings are also attended by the Council's S151 Officer.
7. Oxfordshire County Council acts as OxLEP's Accountable Body in respect of OxLEP Ltd's core funds and any additional central government funding received.
8. The Spring Budget 2023 set out that government was minded-to withdraw government support (core funding) for LEPs from April 2024 and to transfer LEP functions to local authorities, where appropriate and where not already delivered by combined authorities.
9. Subsequently in August 2023, government confirmed that from April 2024, the government's sponsorship and funding of LEPs will cease. The associated guidance states that the government expects the functions currently delivered by LEPs – namely, business representation, strategic economic planning, and the delivery of government programmes where directed – to be exercised by upper

tier local authorities, where they are not already delivered by a combined authority. In Oxfordshire's case this means Oxfordshire County Council.

10. As private enterprises, LEPs may choose to continue operating, but government will now support local authorities to take on LEPs' functions as set out in the March 2022 LEP integration guidance. The integration of LEP functions into upper tier local authorities is to 'be undertaken as quickly as possible, ensuring a smooth and orderly transition'. Published guidance also expects that assets built up using public funds will remain within the public domain. There is an expectation that decisions on the transfer of assets should be agreed by LEPs, Accountable Bodies, and respective local authorities by March 2024, however the guidance is not prescriptive in the approach local areas should take. There is a significant degree of flexibility given to allow for local solutions to be agreed by relevant parties and the guidance also recognises that practical elements of integration and the transfer process may need to extend beyond March 2024.
11. Government guidance outlines that government expects areas to publish their (existing, new, or updated) economic strategy within six months of receiving funding, that the principles of effective, independent and diverse business representation should remain in any new arrangements, and that upper tier local authorities should seek input to their integration and future delivery plans from all relevant partners, including district and borough councils and the LEP, as appropriate.

Current LEP Functions and Resources

12. OxLEP Ltd delivers a wide range of activities across Oxfordshire. The work programme is agreed annually. In summary OxLEP Ltd:
 - Leads on business engagement to support economic development activities and prioritisation
 - Convenes and engages with the Oxfordshire Whole System on behalf of Oxfordshire businesses
 - Is responsible for the production the strategic economic plan, and other related strategies, including Destination Management Plan, Clean Growth Strategy and PAZCO
 - Delivers Department for Business and Trade (DBT) funded Growth Hub.
 - Delivers Careers Enterprise Company provision
 - Delivers Skills Boot camp
 - Leads Internationalisation and Inward Investment with DBT
 - Leads Social Contract programme
 - Leads Visitor Economy Renaissance Programme
 - Manages legacy capital programmes
13. OxLEP Ltd also currently has responsibility for the delivery of agreed Enterprise Zone (EZ) outcomes and the allocation of associated retained business rates across the two Enterprise Zones amounting to 216 hectares (ha) these are

Science Value UK (EZ1) and Didcot Growth or Science Vale Growth Accelerator Enterprise Zone (EZ2).

14. The Enterprise Zones (EZs) were established to facilitate collaboration between public and private sectors and between different authorities by focusing on areas of genuine economic opportunity in order to maximise the positive effect on the wider economic area. EZ status was awarded on the basis that retained business rates would be used to support a LEP's economic priorities. As such, OxLEP is able to retain business rates growth in the two EZs for a 25 year period and to use those funds for key economic priorities, related to the zones themselves or elsewhere within its functional economic area of Oxfordshire.
15. The Vale of White Horse District Council (The Vale) acts as Accountable Body for the two EZs under terms set out in Memoranda of Understanding (MoUs) between the Vale, OxLEP Ltd, the County Council (as OxLEP Ltd's Accountable Body) and the respective billing and collection authorities.

Proposed Approach

16. To ensure an orderly transfer of functions and then subsequent development and design to support the delivery of future strategy, a three-phase approach to transition has been developed to cover transition, implementation, and establishment. This is set out below:
 - a. **Phase 1 – Transition (By 1 April 2024)**

During this phase, interim governance arrangements will be put in place, to be agreed in consultation with the current LEP board, but to establish Council control as per government guidance, demonstrating that the functions move to the County Council. The Corporate Director of Environment and Place will have day to day responsibility for the LEP functions (within the company arrangements to be agreed, dependent on the transition option supported by Cabinet) and company registered office address (if relevant) will be amended to County Hall.
 - b. **Phase 2 – Implementation (1 April – 30 September 2024)**

During the first six months there will be a review of purpose and economic planning, including updates to the Strategic Economic Plan. A medium-long term business plan will be developed along with ongoing review of operational alignment with existing council economic and related functions. The medium-term approach to business engagement and broader partnership bodies will also need review in-line with the new operating model and strategy. Alignment of policy and processes, ensuring optimum operational efficiency with the County Council will also form part of this review. The current board will be asked to continue to serve to support the implementation process.
 - c. **Phase 3 – Establishment (1 October 2024 – 31 March 2025)**

Having developed a new medium-long term business plan we would expect revised operating model, structure and governance to be fully implemented during this period. The revised links and interactions with wider economic development resources within the Oxfordshire system will be reviewed.

Governance Framework

17. Given the Government's decision to devolve LEP responsibilities to upper tier local authorities before the end of March 2024 a revised governance framework is needed that ensures that the County Council, as the body accountable for decisions, retains ultimate control.
18. Three options have been considered as part of phase 1:
 - Option 1 – Transfer current LEP staff directly into County Council employment
 - Option 2 – Create a new County Council owned company and transfer LEP staff and functions to this
 - Option 3 – Create a County Council controlling interest within the existing company structure
19. With Option 1 there are several disadvantages including potential redundancies, resignations or TUPE issues as staff are transferred to the County Council, costs and deliverability of winding up the existing LEP company within the time-period, the risk that business representation becomes less-engaged, and a loss of focus of board expertise. There would be a need to establish a new Business Board or mechanism to meet the requirements of business engagement as detailed in the guidance. It may also be the case that losing the flexibility of a company structure may reduce the opportunities to act in innovative ways in the future.
20. For Option 2, disadvantages include the cost and deliverability of creating a new company to fulfil largely the same role within the timescales; staff would still need to go through TUPE to transfer staff between the 'old' and 'new' companies; a replacement or revised board would be needed which would need to meet the requirements for strong business engagement, and potential loss of involvement from other parties.
21. Therefore, both Options 1 and 2 have been discounted due to the potential costs and ability to be delivered within the time period. Instead, Option 3 is recommended as the preferred option, and it is proposed that the County Council supports the creation of a controlling interest in OxLEP Ltd to adhere to government guidelines and the OxLEP Ltd Board is approached to revise its Articles of Association and By-Laws to enable this to happen.
22. The proposal in Option 3 is that the County Council will become the sole member of OxLEP Ltd. The company member function will be exercised by Cabinet during the implementation phase. However, this function may be delegated to an individual cabinet member, sub-committee or officer in future, following a review of the mechanisms through which the County Council exercises governance of its entities and the future governance structure of the LEP itself.
23. Future OxLEP Ltd board membership would need to be agreed within this approach and the Council would seek to maintain broad engagement at board level. Such an amendment would need to be agreed by the current LEP board.

24. Under Option 3, to avoid public procurement and VAT reclaim issues, the company would most likely need to qualify as a “Teckal” company. A Teckal company is a type of company that is wholly owned by a local authority and is exempt from certain procurement regulations. To be Teckal compliant, the local authority must control all of the shares in the company and must also exercise effective day-to-day control over its affairs. The company must be “inwardly and not outwardly focused”. At least 80% of the activity of the Teckal company must be for its public sector owners.
25. Option 3 is preferred because it is deliverable within the timescales, maintains continuity of service and meets government guidance. It also preserves the legacy expertise, experience and engagement of the current LEP, as far as possible, and if agreed, this will provide the structure for the council to demonstrate that the appropriate future governance is in place. The approach will ensure an orderly transfer of functions and form the basis for subsequent development and design to support the delivery of future strategy.
26. This option enables the County Council to demonstrate it meets the government guidance of delivering the core functions currently delivered by LEPs, including local economic planning. Government have outlined an expectation that areas publish their (existing, new, or updated) economic strategy within six months of receiving funding. This will provide the opportunity for the County Council to reconsider the Strategic Economic Plan and economic planning more broadly in line with the strategic priorities for the area and the emerging devolution deal.
27. OxLEP Ltd sits within a wider economic partnership landscape that includes the Future Oxfordshire Partnership. As part of the transition a review of how the new operational arrangements relate to these partnerships will be undertaken to ensure continued positive engagement within the wider system.

Corporate Policies and Priorities

28. LEP transition aligns with the vision set out in the County Council’s Strategic Plan to lead positive change by working in partnership to make Oxfordshire a greener, fairer and healthier county. It also supports the priorities of:
- Putting action to address the climate emergency at the heart of our work
 - Tackling inequalities in Oxfordshire
 - Investing in an inclusive, integrated and sustainable transport network
 - Working with local businesses and partners for environmental, economic and social benefit

Financial Implications

29. Government guidance is that assets of the LEP should be transferred to the public sector, and this includes those reserves retained to cover the potential risk of future redundancies. Similarly, in relation to Enterprise Zones, the future functioning, management, and governance of these should be agreed locally, in

line with any pre-existing arrangements. Where LEPs cease operations, areas should reach locally agreeable and workable solutions to ensure a smooth transition of functions. Government expects that all decisions on the transfer and future management of assets will be taken by the LEP and its Accountable Body by March 2024 but recognises that the actual transfer process may stretch beyond that.

30. The Government confirmed on 19 December 2023 that they will provide up to £240,000 per local authority area in 2024/25 to deliver the functions previously delivered by LEPs – namely business representation, local economic planning, and delivery of Government programmes where directed – subject to final business case approval and the approval of integration plans. Funding beyond 2024/25 will be subject to future spending review decision. This core funding is separate to any programme funding that may be provided to support the delivery of, for example, Growth Hubs or Careers Hubs. Funding for the delivery of government programmes as directed will be communicated to authorities by the responsible government department or body as per usual processes.

31. Oxfordshire County Council is the accountable body for OxLEP Ltd. As an accountable body, the Council takes responsibility for receipt and financial probity of external funding on behalf of the OxLEP Ltd and ensures the proper and effective use of those funds. As required in Financial Regulations, where the Council acts as an Accountable body, a formal agreement (memorandum of understanding) is in place which sets out the operational protocols between the Council and OxLEP Ltd.

32. The Council has undertaken due diligence to ensure it understands the financial position of OxLEP and any risks associated with the transfer of ownership of the company to the Council under the three options outlined in paragraph 18.

Comments checked by:

Lorna Baxter, Executive Director of Resources

Legal Implications

The Council has taken external legal advice jointly with OxLEP in relation to company law issues, and separately has taken its own legal advice regarding employment issues. The various legal implications in each of these areas are summarised within the body of this report, in particular within the Governance Framework and Staffing Implications sections. As stated elsewhere in this report and within the recommendations, the preferred option is dependent on the agreement of the OxLEP Board and any legal changes will not take effect until that agreement is obtained.

Comments checked by:

Paul Grant, Head of Legal and Deputy Monitoring Officer
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Staff Implications

33. Under the recommendation, OxLEP Ltd remains the legal entity employing staff even though control of OxLEP Ltd moves to the Council. OxLEP Ltd staff would be notified of the change of ownership/control. No further changes are required by the Council. There would be no TUPE transfer and staff would remain employed by OxLEP Ltd.
34. In the event that OxLEP Ltd's status changes in the future, OxLEP Ltd has maintained a level of financial reserves to mitigate the operational risks of future funding challenges. As at March 2023, OxLEP Ltd's audited financial statements show total reserves held of £1.83 million, £225,000 of which is retained by the Council on its Balance Sheet in its capacity as Accountable Body. This reserves balance is budgeted to reduce only modestly (by £39,000) by 31 March 2024, the point at which OxLEP Ltd's net assets are due to transfer to the Council's control. The total reserves figure exceeds any potential staff costs in the event of termination of employment.
35. As stated above, Options 1 and 2 would have more significant staff implications and would both be likely to involve a transfer of staff under TUPE, either to the County Council or another company. Whilst recommending Option 3, there has been consideration of the employment law risks in relation to all three Options and how these risks can be managed, whilst also maintaining effective operational delivery and working relationships.

Equality & Inclusion Implications

36. There are no direct equality and inclusion issues arising from this report. Equalities will be considered when reviewing board membership and HR implications. Equality and inclusion will also be considered through the review of economic policy and strategy and business engagement, as set out above.

Sustainability Implications

37. There are no direct sustainability implications from this report. Sustainability will be considered within new policy development and service areas as they are developed

Risk Management

38. There are a number of opportunities and risks associated with the process to integrate LEP functions in order to begin delivery from 1 April 2024, including:

Risk	Mitigation
Responsiveness of LEP	Maintaining regular engagement with LEP to ensure continued progress against deadlines to develop a transition plan.
Costs exceed those planned	Due diligence on LEP structure and reserves.

Legacy programmes not meeting contracted outcomes	S151 Officer oversees the management and reporting of these programmes and latest position and forecasts indicate the programme outcomes are on track.
Current Contracts and New Contracts	Current contracts mapped and due diligence being undertaken.

Consultations

39. Key stakeholders across the business have contributed to the report.
Background papers:

1. Letter confirming government decision on future of LEPs (4 August 2023)
[Transfer of Local Enterprise Partnership \(LEP\) core functions to combined and local authorities \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
2. Letter providing final guidance on transfer of LEP Core Functions (19 December 2023)
[Correspondence related to the publication of guidance for local authorities delivering business representation and local economic planning functions - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

BILL COTTON

Corporate Director for Environment and Place

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