

## Report of the Chief Executive

**EAST MIDLANDS DEVELOPMENT CORPORATION – INTERIM VEHICLE THE ESTABLISHMENT OF EM DEVCO COMPANY LIMITED BY GUARANTEE CLG****1 Purpose of the report**

- 1.1 To seek approval for the establishment of an Interim Vehicle, to be known as 'EM Devco CLG', to maintain progress prior to a Statutory Development Corporation being created by Parliament. This includes approval for the establishment and governing documents for this new company, the approval of a joint agreement between the local authorities and the emerging companies, nomination of a representative from this Council to sit on the Board and contributions from the various councils to finance the initial stages over the next few years prior to handing over to a delivery vehicle to develop and build out the concepts on each of the three sites. The background and detail of this initiative are set out in the appendices to this report.

**2 Background**

- 2.1 The Government identified three sites in the East Midlands with potential for regeneration, initially through an interim private/public development company set up by the relevant local authorities: Broxtowe, North West Leicestershire, Rushcliffe and Leicestershire and Nottinghamshire county councils. The Broxtowe site is at Toton and Chetwynd Barracks alongside but separate from the proposed HS2 interchange.
- 2.2 In July 2020 the Secretary of State confirmed his support for the establishment of an Interim Vehicle, to continue to build momentum prior to the creation of a statutory Development Corporation. At the July meeting of the Oversight Board, partners endorsed the establishment of an Interim Vehicle to maintain momentum, subject to approval of the five directly affect local authorities. Work has been underway to set up this new company, negotiated by separate external lawyers representing the emerging company, the county councils and the 3 district authorities.

**3 Financial Implications**

- 3.1 Details in respect of financial implications are contained within Sections 4.0 and 6.0 of appendix 1.

**Recommendation**

**The Committee is asked to RECOMMEND TO COUNCIL that:**

- 1. The proposal for the Council to join the interim vehicle and participate in its incorporation be approved.**
- 2. The Council enter into a proposed Members' agreement and articles of association as outlined in appendix 2 (the final content of these documents**

being delegated to the Chief Executive in consultation with the three group leaders)

**RECOMMEND TO THE FINANCE AND RESOURCES COMMITTEE and COUNCIL**

**3. the expected financial contribution of £500k over three financial years funded from the Council's general fund reserves, with the profile from 21/22, 22/23 and 23/24 to be confirmed.**

**SUBJECT TO the following conditions:**

- a) that the funds will not be used in a manner which contravenes state aid rules,**
- b) if the government decides not to financially contribute to the interim vehicle the Council, will reserve the right to review its financial commitment;**
- c) If government policy changes so that the HS2 hub station does not come to Toton the Council, will reserve the right to review its position**
- d) for consensus on a number of key points namely agreement by the council's representative on the board to the annual business plan; changes to the articles, the process for appointment of independent directors and the decision to move to a statutory development company.**

**The Committee is asked to RECOMMEND to Council that the appointment of a Director of the Interim Vehicle be approved.**

Background papers

Nil

## APPENDIX 1

**1. BACKGROUND**

- 1.1 In February 2019 the Government approved funding for a 2-year programme to explore the business case for a locally led development delivery vehicle for the East Midlands and asked the Midlands Engine (EMDC) to lead the work. The Midlands Engine was asked to consider three locations in the East Midlands; specifically, Ratcliffe on Soar Power Station site, Toton and Chetwynd Barracks (both in Nottinghamshire), and East Midlands Airport (in Leicestershire).
- 1.2 The development corporation programme is overseen by an Oversight Board (The Alchemy Board) supported by an Executive Group. The Oversight Board is made up of Leaders from the region's upper tier local authorities and directly affected districts alongside private sector; business community; central government; LEP's; and university representatives. The Executive Group is a smaller group of executive officers. Both are chaired by Sir John Peace, as chairman of the Midlands Engine. Anthony May (Chief Executive of Nottinghamshire County Council and Chair of the Midlands Engine Operating Board) is the Senior Responsible Officer and Ken Harrison is the Programme Director.
- 1.3 The overall ambition of the EMDC is to supercharge a new era of growth for the regional economy by enabling projects which build directly on the potential of HS2, the region's status as a major trade and logistics gateway and its historic strengths in research and development and industrial innovation; particularly research and innovation related to the emerging low carbon economy.

**2. PROGRESS TO DATE**

- 2.1 Significant progress has been made in considering the strategic and economic case for the development corporation, with the evidence pointing to transformational benefits for the region, with 84k jobs, £4.8bn Gross Value Added (GVA) and at least 4,500 homes to be delivered.
- 2.2 The EMDC will contribute substantially to inclusive, zero carbon growth and levelling up by initially realising the enormous potential of the three key sites:
- HS2 Hub at Toton and Chetwynd - a new destination for knowledge-driven jobs and an exemplar zero carbon mixed-use community, showcasing next generation living, with a HS2 hub station offering unrivalled connectivity.
  - Ratcliffe Power Station and East Midlands Airport Area that together will provide a demonstrator for new technologies and methods of:
    - production and energy generation and supply.
    - transport and digital connectivity.
    - a proposal to be the UK's only Inland Freeport with the Country's largest and only 24-hour dedicated air freight hub being its main entry point to the freeport.
    - a global multi-modal hub and centre for trade and logistics with substantial housing growth proposed across the wider area; and
    - creation of ZERO on the Ratcliffe Power Station site, an international centre for the development of market-ready zero emission technologies.

2.3 In addition to the broad programme benefits outlined above, these are a number of specific benefits for each of the five authority areas. For Broxtowe, the identified benefits include the development of a comprehensive and integrated plan for the area around the HS2 interchange which will create a series of attractive and deliverable investment propositions associated with the other sites including:

- Delivering an internationally significant zero carbon community of 4,500 homes, 6,000 local jobs including an Innovation Hub, and a National Skills Academy for inclusive growth.
- Retaining and enhancing the unique and special qualities of our existing communities
- A world-class green and blue environmental investment programme with R&D in climate change and zero carbon
- Sensitively located and carefully thought through co-location of mixed uses, with the potential for incorporating new homes, employment opportunities and infrastructure investment within that world-class landscape.
- Transforming connectivity and accessibility through key infrastructure – a new link road to Toton Station; multi-modal links to and from the station; better access to the M1. Delivery of the key infrastructure is critical to maximise the wider development benefits.
- Environmental programmes including the enhancement of the River Erewash corridor and integrated cycling and walking improvements.
- Delivering the UK Biodiversity Hub and Innovation Campus to become the UK centre of excellence for skills and businesses in carbon zero and sustainable technologies.
- Linking with and supporting local bids to the Future High Streets Fund and Towns Fund.
- Investment in major infrastructure improvements which include enhancing J24 M1; enhanced links to the A453 and A50 – including the option to dual the A453 connection to the A42
- An enhanced transport hub at East Midlands Airport connected to the East Midlands Parkway rail station and the HS2 Hub at Toton
- Enhanced rail head connection from the SEGRO Logistics Park at East Midlands Gateway to the wider rail network
- Shared benefits from the key sites in the wider East Midlands Development Corporation programme

2.4 Work is continuing on the preparation of the detailed business case, which will set out to Government how it meets the criteria for public-sector intervention. It will establish a case for change, a value for money assessment, commercial viability, financial affordability, and a route to delivery. It is anticipated that this will be submitted to Government in March 2021.

2.5 The initial stages of the programme highlighted the lack of any off-the-shelf model in statute to deliver the region's aspirations for a locally led approach of the kind envisaged. Instead a new model of governance is required, a Locally Led Urban Development Corporation (LLUDC).

2.6 There has been an ongoing and positive dialogue with Government regarding the most appropriate legislative pathway to establish this new type of Development Corporation:

- 2.6.1 In January 2020, the Midlands Engine responded to the MHCLG 'Development Corporation Reform: Technical Consultation'.
- 2.6.2 In July 2020 the Secretary of State confirmed his support for the establishment of an Interim Vehicle, to continue to build momentum prior to the creation of a statutory Development Corporation; and
- 2.6.3 In August 2020, the [Planning White Paper consultation "Planning for the Future"](#) includes positive reference to the Development Corporation work on page 69 with the following statement:
- "As we bring forward planning reform, we also want to ensure we have in place the right delivery mechanisms, including development corporations. A good example that we are already progressing is development at Toton in the East Midlands, where we have announced our intention to support the establishment of a development corporation to maximise the area's international links and create tens of thousands of new homes and jobs. We want to see more schemes of this kind, backed by modern delivery models, around the country."
- 2.7 The Parliamentary processes required to establish a new type of development corporation will take time and at the July meeting of the Oversight Board, partners endorsed the establishment of an Interim Vehicle to maintain momentum, subject to approval of the five directly affected local authorities.

### 3.0 ESTABLISHING THE INTERIM VEHICLE

- 3.1 Subject to the approval of the recommendations in this report, the Interim Vehicle, to be known as EM DevCo will be incorporated on a date to be confirmed. in the form of a Company Limited by Guarantee (CLG). The five local authorities with administrative responsibilities within the current scope of the programme (Toton, Chetwynd Barracks, East Midlands Airport Area and the power station at Ratcliffe on Soar), will be the members of the company, namely:
- Broxtowe Borough Council
  - Leicestershire County Council
  - North West Leicestershire District Council
  - Nottinghamshire County Council
  - Rushcliffe Borough Council.
- 3.2 The Interim Vehicle will, in part, mirror the intended form of the statutory Development Corporation and will consist of:
- An Oversight Authority comprising the 5 Local Authorities who will be the guarantee holders and corporate 'Members' of the CLG.
  - An independent skills-based board of directors, including up to 11 directors, made up of a combination of independent and non-independent directors - the independent directors will be appointed through an open recruitment process and non-independent will be representatives from the 5 local authorities; and
  - Local delivery vehicles/ special purpose vehicles or joint ventures for each site.

- 3.3 The Interim Vehicle will not have any statutory powers; these will remain with the relevant local authority partner until the establishment of the statutory development corporation.
- 3.4 The draft Members Agreement and draft Articles of Association set out the formal constitutional arrangements for the CLG. A summary of key matters is included in this report at (**Appendix 1.**) Approval to establish the Interim Vehicle will confirm the authority's agreement to the details within these documents. The two County Councils (Leicestershire and Nottinghamshire) have jointly commissioned Bevan Brittan and the three District and Borough Councils (Rushcliffe, Broxtowe and North West Leicestershire) Browne Jacobson to provide independent advice. These documents have been based on an agreed set of principles developed between the 5 Local Authorities.
- 3.5 There remain some outstanding points to be agreed on the Members Agreement and Articles of Association, but at this stage the key matters for consideration are highlighted below, for ease of reference.
- The Interim Vehicle has applied for funding from MHCLG. Once the level of that funding has been confirmed, the Council will be asked to determine what level of contribution it can make to the Interim Vehicle's operating budget for the financial year 2021/22. This will be provided to the Interim Vehicle in the form of a grant.
  - Nottinghamshire County Council to assume the responsibility of Host Authority for the Interim Vehicle, this will be for the purposes of back office services e.g. accommodation, HR, procurement and financial administration.
  - Matters to be reserved for agreement by the Oversight Authority i.e. the 5 Local Authorities who will own the CLG, as detailed in para 3.2 above. Matters reserved to the local authorities shall be split in to two 'tiers' with tier 1 requiring the unanimous approval of all local authorities, and tier 2 requiring 75% agreement based on the weighted voting rights. (The precise matters to be included in each tier is subject to final agreement).
  - The Interim Vehicle Board Size and Composition.
  - The key risks, which are as follows:

There are risks that the Development Corporation does not get approval from Government or the required level of funding, in the immediate or longer term, and so it does not deliver or does not progress beyond the initial 3-year interim vehicle stage.

There is a risk that after the initial 3-year term, further funding will be required from local authority partners to support the development corporation. This will need to be reviewed by each individual partner at that point in time if required and based on outputs delivered to date. There is no commitment to fund beyond the initial three years. It is expected that if a statutory

development corporation is set up by government in the future it will be funded and will be able to borrow and secure investment from private equity firms to deliver the ambitions.

- 3.6 Once established the first key task will be to consider appointments and develop a business plan. It will be the responsibility of the Board to deliver the business plan which will need the approval of the Oversight Authority and which will be reviewed on an annual basis. Approval will be required of the Oversight Authority for decisions that fall outside the business plan especially those which have a budgetary implication.
- 3.7 The Council's Jobs and Economy Committee endorsed a Statement of Intent in February 2020. This included requirements for inclusive and sustainable growth, local people being equipped with skills to benefit from the job opportunities, gains in natural capital and not to redirect existing business rates to the development corporation. It is considered that the Interim Vehicle proposals align with the Statement of Intent and are in accordance with the key objectives being established through ongoing projects, including the Toton and Chetwynd Masterplan and the Erewash Environmental Works commission.
- 3.8 The proposals for the Interim Vehicle are in accordance with the Council's Corporate Plan. This includes the focus on providing good quality housing for everyone through building more houses, supporting skills and development through job opportunities for local people and an emphasis on protecting the environment through exemplar low carbon development and new green and blue infrastructure which will also provide health benefits for existing and new residents

#### **4.0 FINANCIAL IMPLICATIONS**

4.1 The core costs for 2019-20 and 2020-21 of the Midlands Engine development corporation programme so far have been funded by Government, through the Ministry of Housing, Communities and Local Government (MHCLG). The total funding was £2 million, spread equally across 2 years (2019/20 and 2020/21). The programme team has also received additional resources through a mix of direct funding and in-kind support from partner Local Authorities.

4.2 The Interim Vehicle will require additional funding to bring forward the proposals. As such, in September 2020 the programme submitted a £18.6m ask to Government as part of the Comprehensive Spending Review 2020 (CSR) process to cover the first three years, which is awaiting decision (**Appendix 2**).

4.3 The CSR proposition includes the establishment of a dedicated and focussed team and governance structure to rapidly progress delivery and undertake the following tasks, which would be crucial steps to delivering the benefits highlighted above. This would include:

- Providing detailed, deliverable investment plans
- Establishing commercial arrangements
- Investing in enabling infrastructure which unlocks the key sites
- Acquiring and assemble the land needed for coherent delivery of homes and jobs

- Delivering key early outcomes:
  - 1,500 additional new homes
  - 500 jobs
  - £25m Gross Value Added (GVA) Growth per annum
  - Paving the way for statutory development corporation with powers and investment.

4.4 As outlined in the key matters for consideration, para 3.5 above, if the recommendations in this report are approved, Broxtowe Council will be required to contribute to the Interim Vehicle's operating budget, subject to the conditions outlined in para 6.2, for the financial year 2021/22, 2022/23, and 2023/24 (see para 6.2 for further details). If this is the case, the Council will utilise general fund reserves for this purpose.

## **5.0 OTHER OPTIONS CONSIDERED**

5.1 Not to establish the Interim vehicle, but this is highly undesirable because momentum would stall and the deliverability of the benefits set out in this report would be put into considerable doubt.

5.2 As outlined, there is an expectation from the Midlands Engine that local authority partners fund the development corporation interim vehicle for its planned three years of operation. Providing this funding will ensure that this Council has a seat at the table to play a key role in shaping the Development Corporation into the future to ensure the delivery of maximum benefit for Broxtowe Council and the region.

5.3 The alternative option is to not support this proposal. The Development Corporation could continue without the support of local authority partners, although this would be far from ideal. In the short term, Broxtowe Council will retain planning control but in the longer term (when the formal development corporation/delivery vehicle is established) this is unlikely to be the case as this will be self-funding and therefore the Council would lose any control of the site and its future development.

### **Reason/s for Recommendation/s**

5.4 To approve the Establishment of the Interim Vehicle, facilitating the delivery of the benefits outlined above. If established and supported with the required resources and expertise the Development Corporation would attract nationally and internationally significant investment and development into the East Midlands. This type of investment is not something that the Council, or landowners, could attract on their own.

## **6.0 FINANCIAL IMPLICATIONS FOR BROXTOWE BOROUGH COUNCIL**

6.1 Following negotiations, it is expected that the Council's financial contribution will be approximately £500k over three financial years funded from the Council's general fund reserves, with the profile from 21/22, 22/23 and 23/24 to be confirmed. However, the Council's financial contribution is subject to the following conditions:

- a) that the funds will not be used in a manner which contravenes state aid rules,

- b) if the government decides not to financially contribute to the interim vehicle the Council, will reserve the right to review its financial commitment;
- c) If government policy changes so that the HS2 hub station does not come to Toton the Council, will reserve the right to review its position
- d) for consensus on a number of key points namely agreement by the council's representative on the board to the annual business plan; changes to the articles, the process for appointment of independent directors and the decision to move to a statutory development company.

## **7.0 LEGAL AND GOVERNANCE IMPLICATIONS**

### **7.1 Proposed Development Corporation**

7.2 The Midlands Engine has instructed Pinsent Masons to advise in relation to this matter. Pinsents have given detailed advice in relation to the various potential options for establishing a development corporation which has been reviewed by Browne Jacobson on behalf of the District/Borough Councils. Four key features were identified as needing to be satisfied for the development corporation:

- To be locally led in order to better meet the needs of the local area. An Oversight Authority is proposed, potentially comprised of local authority membership to have oversight and control of various powers of the development corporation.
- To have wide financial powers so as to be able to access a wide range of funding including private and public equity and debt finance, and grants and other investments. It is also proposed that the development corporation be given powers to become a community infrastructure levy charging authority.
- To have two streams of planning powers. Firstly, plan making powers, and secondly operational and enforcement powers to include the ability to approve planning applications.
- To be able to undertake delivery of projects and infrastructure, including the ability to determine planning applications and grant development orders. This will avoid multiple applications to separate local authorities where applications span more than one local authority area.

7.3 A number of existing forms of vehicles were considered with a view to meeting these requirements:

- A simple joint venture – considered to be inappropriate because it would not have the requisite power to progress this project with the complex make up of authorities and stakeholders involved.
- A Locally Led New Town Development Corporation – whilst this form of vehicle enjoys many of the powers identified for this project and is locally led, under existing legislation it would not have plan making or planning enforcement powers and it does not have the power to become a community infrastructure levy charging authority and so is limited in the funding streams it may be able to access.
- An Urban Development Corporation – there are many benefits to this form of vehicle, however the Secretary of State has the power to give binding

directions with which the vehicle must comply and so it does not have the benefit of being truly locally led.

- A Development Consent Order – these vehicles can have wider ranging powers but do have restrictions in terms of transport and economic development powers.

7.4 As none of the above existing vehicles are considered to meet all of the requirements of the proposed development corporation a new form of Locally Led Urban Development Corporation is proposed. This will require new primary legislation to be passed by Parliament. If legislated as suggested, then this new form of vehicle will offer the greatest benefits to the local authorities going forwards. However, at this stage the benefits are of course only hypothetical and represent a significant drawback to the proposed structure.

*Power to Establish the Development Corporation*

7.5 The power to establish the proposed form of development corporation will come through primary legislation, in a similar way to the current forms of Urban Development Corporation and Locally Led New Town Development Corporation. In both of those cases there is primary legislation in place which broadly provides a power to the Secretary of State to designate an area for the relevant purpose and to establish the relevant vehicle by way of an order of the Secretary of State. Such an order will provide certain powers to the vehicle established by the order, with the Secretary of State potentially being able to exclude powers. Depending on the nature of the vehicle proposed there are differences as to the process to be undertaken and also the nature of the order that may be made by the Secretary of State. In both cases Parliamentary approval of the order is required.

7.6 The proposal for the new form of development corporation follows a similar process. Primary legislation will be required in order to provide the Secretary of State with the power to designate an area and establish a development corporation by way of an order. Parliamentary approval of the proposed order will be required.

7.7 As such the Council will not take a formal decision to establish the proposed development corporation. This will be a matter for the Secretary of State with the approval of Parliament. The Secretary of State will however be required to consult in relation to the designation of an area and the making of an order to establish the development corporation. The Council will have the opportunity to respond to that consultation with a view to shaping the nature of the development corporation and the powers afforded to it. The Council may also make proposals directly to the Secretary of State in relation to the development corporation.

7.8 The possibility of the primary legislation itself establishing the development corporation without further steps being required by the Secretary of State is being explored. However, whether this is required will depend on how the primary legislation progresses.

7.9 Early involvement through the Interim Vehicle will be beneficial to the Council in helping it to shape the nature of the proposed development corporation, in particular with a view to ensuring a locally led position is established. The position

that is established with the Interim Vehicle is likely to be reflected in the development corporation in due course.

*Nature and Structure of the Development Corporation*

7.10 The powers of the proposed development corporation will depend on the nature of the primary legislation that is ultimately passed. Whilst at this stage this is uncertain, it is proposed that this form of development corporation will be able to take on powers in its area to include acting as:

- Planning authority
- Highways authority
- Local transport authority

7.11 The Council's main role following establishment of the development corporation will be within the proposed Oversight Authority. The functions available to the Oversight Authority will be conferred by the legislation and the order creating the development corporation, but proposals include:

- The ability to give directions to the development corporation.
- The ability to appoint members of the development corporation.
- A requirement to give consent or approval to the acquisition or disposal of land by the development corporation; and
- A requirement to give consent in the event that the development corporation seeks to have additional powers conferred on it by a subsequent order.

7.12 Again the benefits of the Council being involved in the Interim Vehicle is that the position that is established is likely to be reflected in the development corporation in due course, and this provides the Council with the ability to influence the nature of the future development corporation.

*Legal Implications for the Council of the Proposed Development Corporation*

7.13 The key legal implication for the Council of the proposed development corporation is that to the extent that any powers in respect of a particular area are afforded to the development corporation, the Council will no longer be able to exercise such powers. As such the Council will lose a degree of control over those matters, the functions in respect of which are then to be exercised by the development corporation.

7.14 The potential for the legislation to include an ability for powers of the development corporation to be "switched on and off" is being explored. For example, certain powers may be afforded to the development corporation for certain phases of development, and otherwise revert to the Council. Again, this is only a proposal at this stage and what is ultimately the position will depend on the nature of the proposed primary legislation.

**7.15 The Interim Position**

*Power to Join the Interim Vehicle*

- 7.16 In the interim it is proposed that an Interim Vehicle be established as set out in this report. This Interim Vehicle is proposed to be in the form of a company limited by guarantee. The Council's power to join a company limited by guarantee comes from the general power of competence in Section 1 of the Localism Act 2011 ("the 2011 Act"). This gives the Council the power to do anything that an individual might do. The power is restricted by Section 4 of the 2011 Act which requires that a thing done for a commercial purpose must not be something that the Council is required to do by statute, and must be something that the Council may also do for a non-commercial purpose. Pursuant to Section 4, when doing something for a commercial purpose the Council must do this through a company, which includes a company limited by guarantee.
- 7.17 Development and regeneration areas have regularly utilised the general power of competence, and the Council may do so in the current matter.

*Nature and Structure of the Interim Vehicle*

- 7.18 As stated above, the Interim Vehicle will take the form of a company limited by guarantee. This means that the company will have no share capital, and the local authorities will be the guarantee holders and therefore the 'members' of the company.
- 7.19 Guarantees cannot be sold in the same way that shares can, therefore if a local authority wishes to leave the company, they would hand their guarantee back and leave. They could not pass their guarantee on to another body or organisation. The local authorities may leave the company at any time by giving 12 months' notice to the other authorities that they wish to leave.
- 7.20 While guarantee holders, the local authorities can exercise their control over the company in two key ways:
- Each local authority can appoint a director to the board, who will have a say in the day to day running of the company; and
  - As members, the local authorities together can take direction on the 'Consent Matters' set out in Schedule 1 to the draft Members Agreement.

- 7.21 At present, the following key provisions of the draft Members Agreement are awaiting finalisation by agreement between the local authorities:
- The division between Tier 1 and Tier 2 Consent Matters.
  - Whether funding will be provided as a grant or loan.

*Legal Implications for the Council joining the Interim Vehicle*

- 7.22 By joining the Interim Vehicle the Council will not delegate any of its statutory powers to the Interim Vehicle. The Council will retain control of these powers and any planning decisions will revert to each Council to be taken. The Council will not be bound by the considerations of the Interim Vehicle in exercising those powers.

**8.0 PLANNING IMPLICATIONS**

8.1 In advance of the statutory development corporation, it is anticipated that the Interim Vehicle would work with respective local authority partners to develop masterplans and supportive policy frameworks for the sites.

8.2 The five councils who will be the members of the Interim Vehicle will support it either individually or together through the following means:

- Planning policy expertise and related information associated with the three areas.
- Engage in site master-planning and ensure consistency with Local Plan review processes.
- Consult with the Interim Vehicle and engage their planning teams on land use and transport planning policies being developed as part of the current reviews of local plans and strategies.
- Consult with the Interim Vehicle and engage their planning teams on planning applications and other development management decisions relating to the development of the sites.

8.3 At this stage the broad principles for the statutory development corporation would likely mean:

- Planning powers will only be sought for land within the proposed development corporation area. The range of powers may include, as examples, plan-making; development management and associated revenue raising (e.g. CIL and s106) and compulsory purchase powers. Should any planning powers be provided to the development corporation, consideration will be given to how they will interact with the powers held by the surrounding planning authorities in respect of both how the powers are expressed and how they will be exercised.
- The requirements under the duty to co-operate will apply between the development corporation and local authorities, should the development corporation obtain plan making powers.
- Community engagement and consultation will be enshrined from the outset through the preparation of a statement of community involvement (SCI) and with a statutory consultation process envisaged.
- Planning fee income, which operates on a cost recovery basis only, will be paid to the development corporation for planning applications within its boundary.
- The partners will seek to ensure that the constituent local authorities will have an important role as statutory consultees for planning applications (and policy through the duty to co-operate and the SCI), which would ordinarily fall within their respective administrative areas.
- The development corporation will act as the s.106 and/or CIL authority for associated infrastructure and where appropriate this may include the

development corporation requiring developers to make contributions to strategic infrastructure outside of the development corporation's area.

- Potential implications from the Planning White Paper 'Planning for the Future' are currently unknown. Whilst Toton is referred to explicitly in the White Paper, the wider implications for plan making, infrastructure contributions and determining planning applications may impact the powers of a future Development Corporation.

8.4 The Part 1 (Aligned Core Strategy) and Part 2 Local Plans remain the relevant development plans when the Interim Vehicle is formed. The Broxtowe Part 2 Local Plan included Toton and Chetwynd Barracks as significant housing allocations and Toton is identified as a Strategic Location for Growth. The ambitions of the Interim Vehicle and any future Development Corporation should align with the Council's adopted development plans. However, growth levels beyond 2028 (the Part 2 Local Plan period) is subject to assessment as part of the Aligned Core Strategy Review. A Toton and Chetwynd Strategic Masterplan is currently being prepared in partnership with Nottinghamshire County Council and will form a Supplementary Planning Document. This also aligns with the growth ambitions for the area. This document must be approved by Broxtowe's Jobs and Economy Committee and will then be used to assess future planning decisions.

## **9.0 RISK SUMMARY**

9.1 At this stage there is limited legal risk in deciding to become a guarantee holder of the Interim Vehicle because there are no overly onerous obligations within the documentation, there is no obligation to contribute a specific amount of money and Broxtowe Council is able to leave the Interim Vehicle by giving notice.

9.2 Not appointing a non-independent director at this interim stage risks not being involved in the Consent Matter decisions and the long term Project.

9.3 The Council will retain its statutory powers, including planning powers. It is not until the development corporation is formally established following the passing of relevant primary legislation and an order having been made by the Secretary of State that the development corporation will be afforded any statutory powers. The extent of the powers afforded to the development corporation will depend on the nature of the primary legislation passed and also the Order made by the Secretary of State. Early involvement in the Interim Vehicle may assist the Council in shaping the nature of the development corporation. The loss of powers on the part of the Council can be mitigated by the extent to which the Oversight Authority retains power over any matters. This is likely to be influenced by the balance that can be struck in the interim period.

9.4 Depending on the exact nature of the final form of development corporation in the primary legislation, the Council may lose financial income from Section 106 contributions, community infrastructure levy payments and business rates. This however will only impact at the point of the development corporation being established and not the Interim Vehicle, and it is preferable for the Council to be

actively involved during this interim period so as to have the opportunity to influence the potential longer term position.

- 9.5 There is a risk that the HS2 Phase 2b Eastern Leg is not delivered or is not delivered in full. The Government announced in February 2020 that an assessment would be undertaken of how HS2 Phase 2b would be integrated with wider transport plans and how costs could be reduced. This will result in recommendations to the Government through the Integrated Rail Plan and is expected late 2020. The final decisions will then be made by Government. Any future decisions by Government in relation to HS2 may have implications for the type and extent of growth at Toton.
- 9.6 A summary of risks involved in approving the recommendations in the report are attached as appendix 4.