

## MARCHES LEP LTD BOARD MEETING PAPER

<b>Meeting date:</b>	23 March 2021				
<b>Agenda Item:</b>	7				
<b>Item Subject:</b>	South Wye Project – legal dispute				
<b>For:</b>	<b>Discussion</b>		<b>Decision</b>	<b>X</b>	<b>Information</b>

### Purpose of the paper:

- To provide a brief update on discussions between Shropshire Council (as the LEP’s “Accountable Body”) and Herefordshire Council about the dispute relating to the clawback of £3.8m due to Shropshire Council terminating, on behalf of the LEP, the funding agreement for the South Wye Project in January 2020.
- To seek the LEP Board’s approval for the Chair and Chief Executive to have full authority to agree an appropriate resolution to the dispute at a mediation session planned for 23/04/2021.

### Summary of recommendations:

- To note the legal dispute correspondence between the two parties in section 1 of this report.
- To authorise the LEP Chair and CEO to have full and unfettered authority to agree an appropriate resolution to the dispute with Herefordshire Council via the mediation process outlined in section 2 of this report.

**Main points** (recommendations to be highlighted in bold at the end of each section as required):

#### 1. Legal correspondence

This item is brief because of its contentious nature and the need to ensure that members of the Board are not placed in a position where they have a conflict of interest. Members should be reassured that both the Chair and Chief Executive have continued to be involved in this matter.

As outlined at the 24 November 2020 LEP Board meeting update, the Accountable Body sent another letter on 11 November 2020 to Herefordshire Council requesting a further response to clarify the issues in the claim for repayment that Herefordshire were disputing. A response was received on 25 November 2020 and the position remained that Herefordshire Council dispute the LEP’s entitlement to clawback any funding.

The Accountable Body sent further correspondence on 9 February 2021 to Herefordshire Council reiterating the Accountable Body’s rights to terminate the Funding Agreement and countering Herefordshire Council’s assertions as to wrongful termination and statements as to significant progress of the Project.

Separately, on a confidential and ‘without prejudice’ basis, the Accountable Body also proposed the format of mediation to try to reach a resolution as the parties’ respective positions had become clearer through correspondence and on 1<sup>st</sup> March 2021, Herefordshire Council confirmed they agreed to entering a mediation process.

#### 2. Mediation

Through subsequent correspondence, the parties have agreed a date for the meditation meeting of 23 April 2021 and agreed the appointment of the mediator who will conduct the process.

## MARCHES LEP LTD BOARD MEETING PAPER

The LEP Chair and Chief Executive are seeking the LEP Board's authority to undertake this formal mediation with the aim of finding an appropriate resolution to this dispute to try to avoid litigation and they will be supported in that mediation process by the S 151 officer and legal representation.

**Financial implications:**

The legal costs incurred by the LEP from March 2020 until mid- December 2020 are £39,969.72 including VAT. The LEP will incur further costs due to the letter being issued on 9/02/21 and then a contribution to the mediation costs.

**Legal implications:**

In the event that the mediation is successful, the agreement reached between the parties will be documented by way of a settlement agreement. It is likely that Herefordshire will insist on the agreement being in full and final settlement of any and all claims pursuant to the funding agreement.

**Risks, opportunities and impacts:**

The LEP has spent £3.8m of Local Growth Funds but has not received any outputs for this expenditure. MHCLG may seek reimbursement of these funds in due course hence the need for the LEP with the Accountable Body to seek the recovery of the funds.

**Equality implications: None**

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