

**CANNOCK CHASE COUNCIL**

**CABINET**  
**16 NOVEMBER 2006**

**REPORT OF CHIEF EXECUTIVE**

**PORTFOLIO LEADER – ACCESS TO SKILLS AND ECONOMIC DEVELOPMENT**

**FINANCIAL MANAGEMENT OF THE DISTRICT CENTRE MANAGEMENT INITIATIVE PROJECT**

**1. Purpose of Report**

To consider a proposal put forward by the Southern Staffordshire Chamber of Commerce (the Chamber) that Cannock Chase Council take on future financial management of the District Centres Management Initiative (DCMI) project from 1 October 2006 to 31 March 2008.

**2. Recommendations**

- 2.1 That the Council takes responsibility for the future financial management of the District Centre Management Initiative (DCMI) project from 1 October 2006 to 31 March 2008, subject to the Chamber indemnifying the Council for any financial liability howsoever arising prior to the Council taking responsibility.
- 2.2 That subject to the above the Chief Executive in consultation with the Cabinet Leader for Access to Skills and Economic Development, be authorised to enter into appropriate Agreements, including a Novation Agreement for European Regional Development Fund purposes on behalf of the Council.

**3. Key Issues**

- 3.1 The District Centres Management Initiative (DCMI) project, which is funded by the European Regional Development Fund (ERDF), Cannock Chase District Council (CCDC), Staffordshire County Council and partners from the private sector was due to complete at the end of March 2006. In order to allow the project to achieve its full potential, the Chamber submitted a Change Request to Government Office for the West Midlands (GOWM) requesting approval to extend the DCMI project to the end of March 2008, (financial completion – 31 December 2007 and practical completion – 31 March 2008), on the basis that future management of the project be taken on by the Council.
- 3.2 In 2005 Cannock Chase District Council agreed for £10,000 per annum, funded from S106 monies, to be committed to support the DCMI project as match funding contribution towards employment of a town centre manager in order to demonstrate that the project is capable of

adding value to the three main centres of Cannock, Hednesford and Rugeley for the period of within which the ERDF resources are available.

- 3.3 Due to changes to the Chamber's in-house capability, (loss of Business Link and British Business Parks personnel) management arrangements for the project have been removed. As a consequence Southern Staffordshire Chamber of Commerce has requested that CCDC consider becoming the new Accountable Body for any extension to the project.
- 3.4 The request to extend the project has now been approved by GOWM and a Novation Agreement has been issued as part of the hand over process, (see Annex 1).
- 3.5 Since the onset of the project from April 2003 the project has made progress and a partnership has been formed with the aim of leading to a dedicated and sustainable "limited by Guarantee Company". Representatives from both the public and private sector have shown their commitment to the activity.
- 3.6 If the revised financial management arrangements of the DCMI project do not go ahead then the project will lose out on the opportunity to realise all of its outputs and results (Businesses Assisted, Public Transport Initiatives, Increase in Day Visitors) and funding will be lost to the area, both of which would have a negative impact on the CHASE Objectives and Cannock Chase, Burntwood and Brownhills ERDF Package.
- 3.7 In order for CCDC to take on management of the DCMI project it must enter into a Novation Agreement with the Chamber and the The First Secretary of State. By signing the Novation Agreement CCDC will take on complete ownership of the DCMI project retrospectively from April 2003 through to project closure – March 2008.
- 3.8 As a consequence CCDC will accept all liability in respect of the project activity and expenditure. Therefore in order to minimize this risk, the Council proposes that the Chamber provide indemnity cover, covering any issues arising concerning the expenditure/activity of the DCMI project from the start of project, 1 April 2003 leading up to the point of takeover on 1 October 2006.
- 3.9 Internal arrangements relating to financial management of the project will be the responsibility of the Economic Development service and will mirror the Management Information Systems set up and utilized for the European funded 'Implementation Cost Project', which is currently managed by CCDC.

REPORT INDEX

Background	Section 1
Details of Matters to be considered i.e. Options Considered, Outcome of Consultations etc.	Section 2
Contribution to CHASE	Section 3
Section 17 (Crime Prevention) Implications	Section 4
Human Rights Act Implications	Section 5
Data Protection Act Implications	Section 6
Risk Management Implications	Section 7
Legal Implications	Section 8
Financial Implications	Section 9
Human Resource Implications	Section 10
Conclusions	Section 11
List of Background Papers	Section 12
Annexes to the Report	Annex 1, 2, 3

Section 1

**Background**

In November 2000 the Council agreed to be an active partner in an initiative led by the Southern Staffordshire Chamber of Commerce and Industry (the Chamber) to introduce town centre management into Cannock Town Centre. As a result the Council supported the initiative with staff time resources as well as a commitment of £3,000 per annum from 2001 to 2003.

In April 2003 the District Centres Management Initiative (DCMI) project through the Chamber was successful in gaining approval via a funding application submitted to Government Office for the West Midlands (GOWM) for £579,201 which was part funded by the European Regional Development Fund (ERDF) and partners from the public and private sectors.

In 2005 Cannock Chase District Council agreed for £10,000 per annum, funded from S106 monies, to be committed to support the DCMI project as match funding contribution towards employment of a town centre manager in order to demonstrate that the project is capable of adding value to the three main centres of Cannock, Hednesford and Rugeley for the period within which the ERDF resources are available.

The DCMI project involves sustaining and continuing the Cannock town centre management initiative and, subject to the agreement of stakeholders, extending it to the other district centres of Hednesford and Rugeley. Its mission is to:

- Create safe and secure centres by reducing crime and the fear of crime through identifying areas of criminal activity and agreeing ways to combat them;
- Raise the profile of current and new prevention activities that reinforce the message of safe and vibrant centres in the Chase District;
- Encourage the development of attractions, facilities and events and build on local assets;
- Promote these assets to develop a visitor economy in the Chase District;
- Facilitate environmental improvements to foster 'civic pride';
- Encourage improved access in and around the district centres for all sections of the community;
- Promote a wide range of leisure, entertainment and arts activity for all sections of the community;
- Develop partnerships between the public and private sector and assist in the dissemination of information to stakeholders through the use of traditional and new technology; e.g. the setting up of a dedicated web-site and improve the range and quality of centre facilities.

Section 2

Details of Matters to be Considered

The DCMI project was due to complete in (European Funding terms) at the end of March 2006 but, in order to allow the project to achieve its full potential, the Chamber submitted a Change Request to GOWM requesting and gaining approval to extend the DCMI project to the end of March 2008,

(financial completion – 31 December 2007 and practical completion – 31 March 2008), on the basis that Cannock Chase District Council (CCDC) take on the financial management of the project for the extension period.

Due to changes to the Chamber's in-house capability, (loss of Business Link and British Business Parks personnel) management arrangements for the project have been removed. As a consequence, Southern Staffordshire Chamber of Commerce has requested that CCDC consider becoming the new Accountable Body for any extension to the project.

Since the onset of the project from April 2003 the project has made progress and a partnership has been formed with the aim of leading to a dedicated and sustainable "limited by Guarantee Company". Representatives from both the public and private sector have shown their commitment to the activity.

In order for CCDC to take on financial management of the DCMI project it must enter into a Novation Agreement with the Chamber and The First Secretary of State. By signing the Novation Agreement, CCDC will take on ownership of the DCMI project retrospectively from April 2003 through to closure – March 2008.

As a consequence CCDC will accept all liability in respect of the project activity and expenditure. Therefore in order to minimize this risk, the Council proposes that the Chamber provide indemnity cover, covering any issues arising concerning the expenditure/activity of the DCMI project from the start of project, 1 April 2003 leading up to the point of takeover on 1 October 2006.

Internal arrangements relating to financial management of the project will be the responsibility of the Economic Development service and will mirror the Management Information Systems set up and utilized for the European funded 'Implementation Cost Project', which is currently managed by CCDC.

### Section 3

#### Contribution to CHASE

The 'District Centres Management Initiative' project involves sustaining and continuing the successful Cannock Town Centre Management Initiative and extending it to the other district centres of Hednesford and Rugeley. Its mission is to improve the prosperity and attractiveness of the Chase district centres of Cannock, Rugeley and Hednesford. In addition to physical/access improvements to the District centres, many activities such as the establishment of business group networks will not only attract new investment and create sustainable employment opportunities, but also engender a safe and secure environment for visitors/users to the district centres which all contribute to the CHASE objectives.

### Section 4

#### Section 17 (Crime Prevention) Implications

Not relevant to this report, which relates to Cannock Chase District Council requesting approval to take on management of the District Centres Management Initiative.

### Section 5

#### Human Rights Act Implications

There are no identified implications in respect of the Human Rights Act 1998 arising from this report.

### Section 6

#### Data Protection Act Implications

There are no identified implications in respect of the Data Protection Act arising from this report.

## Section 7

### Risk Management Implications

In order to minimise the risk of the Council inheriting any retrospective liabilities arising from the DCMI project in terms of expenditure and compliance with spend criteria, the Council is proposing that the Chamber provide indemnity cover covering any liabilities arising related to the DCMI project from the start of project leading up to the point of takeover on 1 October 2006.

The staff resources of the DCMI project will remain in the employ of the Chamber.

If CCDC declines the request to takeover management of the DCMI project then the project will lose out on the opportunity to realise all of its outcomes and funding will be lost to the area.

## Section 8

### Legal Implications

There are clear and proven benefits of the DCMI project. However the management and accountability of the funding fell outside the scope and responsibility of Cannock Chase District Council (CCDC). The funding has been provided for specific purposes and the GOWM requires there to be an Accountable Body for the expenditure of the fund.

The current Accountable Body is the Southern Staffordshire Chamber of Commerce (SSCC), however due to changes in its in-house capability and financial management arrangements, SSCC is no longer able to continue to discharge the obligations imposed on the Accountable Body for the purposes of the fund. Moreover, the extension of the DCMI project is subject to a key condition, namely CCDC taking over fully responsibility as the Accountable Body.

In order for CCDC to take over as the Accountable Body and in turn ensure the extension of the DCMI project, CCDC must enter into a Novation Agreement.

However, the liability of the full Accountable Body applies to the fund as a whole and does not take account of changes in the Accountable Body. Liability and responsibility for the expenditure/management of the fund cannot, under the DCMI be apportioned. CCDC cannot be certain that the fund has been expended in accordance with the spend criteria or managed appropriately (despite no evidence existing which suggests this). Should it later transpire that the fund has been expended outside the scope and remit of its purpose, or mismanaged to any extent, then CCDC, as the Accountable Body, would be liable to repay any sum improperly spent/mismanaged notwithstanding CCDC was not, at the material time, the Accountable Body.

It is thus of fundamental importance that CCDC ensures that appropriate indemnity cover is provided by SSCC which is sufficient to ensure that should an issue arise (during the period it was not the Accountable Body) relating the use (or other management issues) to which the fund has been expended, CCDC will not be personally required to cover any such a liability.

## Section 9

### Financial Implications

The £10,000 contribution towards match funding the core costs of the DCMI project (including employing the town centre manager) will continue to be contained within the approved budget of

£10,000 within Town Centre Management until the conclusion of the project on 31 December 2007. This budget is funded by the use of identified Section 106 contributions specific to Economic Development and is detailed in Table 2d of the Approved Budget Book for 2006-07 to 2008-09.

Subject to the Chamber agreeing to provide indemnity cover for financial undertakings for the period 1 April 2003 to the point of takeover on 1 October 2006, the Head of Planning and Regeneration does not anticipate there being any additional financial requirement from the Council other than staff time. It is envisaged that all expenditure incurred will be financed by external contributions / funding, however should there be instances of expenditure that cannot be recovered externally, these will be contained within existing Economic Development budgets.

## Section 10

### Human Resource Implications

There are no identified Human Resource implications arising from this report as the personnel currently in post who deliver the DCMI project will remain in the employ of the Chamber. The Chamber will invoice the Council for reimbursement of salaries.

## Section 11

### Conclusions

The DCMI project was due to complete at the end of March 2006 but, in order to allow the project to achieve its full potential, the Chamber submitted a Change Request to GOWM requesting and gaining approval to extend the DCMI project to the end of March 2008 on the basis that Cannock Chase District Council (CCDC) take on the management of the project for the remaining period.

Due to changes to the Chamber's in-house capability, financial management arrangements for the project have been removed. As a demonstration of support, Southern Staffordshire Chamber of Commerce has requested that CCDC consider becoming the new Accountable Body for any extension to the project.

In order for CCDC to take on management of the DMCI project it must enter into a Novation Agreement between the Chamber and The First Secretary of State. By signing the Novation Agreement CCDC will take on ownership of the DCMI project retrospectively from April 2003 through to closure – March 2008. As a consequence CCDC will accept all liability in respect of the project expenditure during this period.

In order to minimize the risk to the Council it is proposed that the Chamber provide an Indemnity Agreement which will cover any issues arising concerning the expenditure of the DCMI project from the start of project leading up to the point of takeover on 1 October 2006, as well as a formal acceptance that management of staff resources will remain with the Chamber.

CCDC will only take on Accountable Body status for this project at the point that it feels comfortable that it is not exposed to any liabilities arising from the start of the project to the point of takeover.

## EUROPEAN REGIONAL DEVELOPMENT FUND: FINANCE GUIDANCE NOTE 4.1

### GUIDANCE ON DRAFTING AND EXECUTING NOVATION AGREEMENTS

#### FOR SINGLE PROJECTS

##### Introduction

1. This annex provides guidance on drafting and executing novation agreements. For the purposes of this guidance, references to recitals and clauses are references to recitals and clauses in Form A1. However, whilst it does not relate to them directly, this guidance may also be read in conjunction with the other standard forms, with the exception of Forms C1 and C2 .

##### Drafting

2. A draft agreement should be prepared using the appropriate standard form by the GO European Secretariat and sent to ODPM Legal for approval. It should be accompanied by a brief explanation of the background to the agreement and copies of any relevant documents, such as the offer letter and any letters amending it. It is helpful to ODPM Legal if the draft is sent by e-mail. Form A1 sets out the terms on which the First Secretary of State ("the FSS") is prepared to accept a novation of an ERDF grant offer letter. Details to be inserted into the standard form are shown in brackets. Any optional details or optional parts of the standard form are shown in italics.
3. Parties - For the purposes of Forms A1, B1 and C1, the First Secretary of State ("the FSS") should be named as a party to the agreement. This applies even if the offer letter has been issued by the Secretary of State for Transport, Local Government and the Regions ("the SSTLR") or the Secretary of State for the Environment, Transport and the Regions ("the SSETR"). The reason for this is that the rights, duties, liabilities and obligations of the SSETR under any offer letter issued by him were vested in the SSTLR by virtue of the Secretaries of State for Transport, Local Government and the Regions and for the Environment, Food and Rural Affairs Order 2001 (S.I. 2001/2568). By virtue of the Transfer of Functions (Transport, Local Government and the Regions) Order 2002 (S.I. 2002/2626), the rights, duties, liabilities and obligations of the SSTLR under any offer letter issued by him or the SSETR are now vested in the FSS. This is explained in Recital B which need not be used in relation to any offer letter issued by the FSS.

4. Where an offer letter makes an offer of both ERDF grant and ESF grant, separate novation agreements are required. Novation of ESF grant must be dealt with by DfES who should be consulted in this regard by the GO European Secretariat. ODPM Legal should continue to be consulted in relation to the novation of the ERDF part of the offer letter. However, where an offer of ERDF grant has been made by a Secretary of State other than the SSTLR or SSETR (such an offer is unlikely to have been made since DETR became the Managing Authority for ERDF), novation should be handled by the department of that Secretary of State rather than ODPM.
5. Where the First Secretary of State is a party to the agreement, the wording relating to him in the parties clause and the signature clause as shown in the standard form of agreement should not change. However, the wording in those clauses which relates to the other parties will vary according to whatever type of organisation each of the those parties happens to be. For the purposes of Form A1, it has been assumed that the Transferor is a council and that the Transferee is a company. ODPM Legal may need to ask you for further information about the other parties in order to advise you on the appropriate form of wording to be used in the signature clauses.
6. Recitals – *Recital A*: The recitals are where the background to the agreement is set out. Details of the offer letter (including details of letters revising the offer letter) and the amount of grant offered should be entered in Recital A.
7. *Recital B*: The first paragraph in this recital explains the effect of SI 2002/2626 (see paragraph 4 above) and should be used where the offer letter was issued by the SSTLR (the second paragraph should be deleted). Where the offer letter was issued by the SSETR, the second paragraph of this recital which explains the effect of both SI 2001/2568 and SI 2002/2626 (see paragraph 4 above) should be used (the first paragraph should be deleted).
8. *Recital C*: Ideally, novation should take place before the Project or business has been transferred to the Transferee rather than after the event. Where an agreement for such a transfer has been made between the Transferor and the Transferee, the date on which that agreement is to take effect should be inserted in Recital C.
9. *Recital D*: The wording of this recital is not usually altered.

10. *Recital E*: This is only necessary where the offer letter is to be amended upon novation, examples include changes to the financial tables or output expected from the project. (See paragraph 14).
11. *Recital F*: This should be used where the agreement is to take effect on a date which is earlier than the date of the agreement (see paragraph 15).
12. Clauses – The clauses constitute the main part of the agreement and set out what is being agreed and by whom.
13. *Clauses 1 –3*: The wording of these clauses is not usually altered.
14. *Clause 4*: If the parties have inserted in Recital F (see paragraph 10) a date on which they wish the agreement to take effect, this date should also be inserted in Clause 4.
15. *Clause 5*: Any amendments referred to in Recital E (see paragraph 11) should be set out in Clause 5.
16. Testimonium – This clause usually connects the signatures and seals to the body of the agreement and generally declares that they are the signatures or the signatures and the seals of the parties.
17. Schedule(s) – Any schedules to the agreement should be set out after the testimonium.
18. Signature Clauses - The wording used in the signature clauses must be appropriate to whichever type of organisation the party to which it relates happens to be (see paragraph 6).
19. Documents – Any documents to be appended to the agreement should be specified in the schedules to the agreement (these need not be appended to the draft version).

## Execution

ODPM Legal will return the draft agreement to the GO European Secretariat, with amendments where these are necessary. This version should be treated as the final version of the agreement.

20. Number of agreements - Before the agreement is executed by the parties, copies of it should be made and each of these should be bound. The number of copies (agreements) should be equal to the number of parties to the agreement. In most cases, therefore, three agreements will be needed. When binding the agreements, care should be taken to ensure that any documents specified in the schedules are attached to the agreement.

21. The agreements should then be sent to the Transferor and Transferee for execution before being sent to ODPM Legal for sealing by the FSS. The Transferor and the Transferee should be asked not to date the agreements. Care should also be taken to avoid the agreements being date-stamped when they are returned to the GO European Secretariat.

22. Companies - Where a party is a company, it must execute the agreements by either:

- the signatures of two officers of the company - these must be either a director and a secretary or two directors; or
- the affixing and authentication of the company's seal.

Usually the former method will be used.

23. Councils - Where a party is a council, the agreements must be executed by affixing the council's seal to the agreement and the seal must be authenticated by an authorised officer of the council.

24. ODPM Legal are happy to advise on the appropriate wording and form of execution to be used in relation to other types of organisation.

25. Authentication - Once the agreements have been signed or sealed by the other parties, they should be sent to ODPM Legal for sealing. The agreements will then be returned to the GO European Secretariat for authentication of the FSS's seal and dating of the agreements. The FSS's seal should be authenticated by an official authorised to do so under the current authorisation which was made by the FSS on 12 December 2002.

26. Dating - The agreements should be dated by the official authenticating the FSS's seal once the other parties have signed or sealed the agreement. The agreements should not be backdated. If they are intended to take effect on an earlier date Recital F should be used (see paragraphs 11 and 15).

27. The GO European Secretariat should retain an agreement for future reference and should send the one of the remaining agreements to each of the other parties. There is no need to send ODPM Legal an agreement.

UPU6

February 2003

1. STANDARD FORM OF NOVATION AGREEMENT: TO NOVATE INDIVIDUAL PROJECT OFFER LETTER WHERE THERE IS TO BE A CHANGE OF PROJECT APPLICANT BEFORE PROJECT IS COMPLETED

*\*\*PLEASE REMEMBER TO DELETE BRACKETS WHERE APPROPRIATE\*\**

DATED [ \_\_\_\_\_ ] 200[ ]

THE FIRST SECRETARY OF STATE

- and -

SOUTHERN STAFFORDSHIRE CHAMBER OF COMMERCE & INDUSTRY

- and -

CANNOCK CHASE DISTRICT COUNCIL

\_\_\_\_\_

NOVATION AGREEMENT

\_\_\_\_\_

NOVATION AGREEMENT

THIS AGREEMENT is made on the [ ] day of [ ] Two thousand and  
[ ] BETWEEN

(1) **SOUTHERN STAFFORDSHIRE CHAMBER OF COMMERCE & INDUSTRY** ("the Accountable Body");

(2) **SOUTHERN STAFFORDSHIRE CHAMBER OF COMMERCE & INDUSTRY** of

Ridings House, Ridings Park

Eastern Way

Hawks Green

Cannock

WS11 2FH ("the Transferor"); and

(3) **CANNOCK CHASE DISTRICT COUNCIL** whose registered office is at

Civic Centre PO Box 28

Beecroft Road

Cannock

Staffordshire

WS11 1BG ("the Transferee").

**WHEREAS**

(A) By a letter dated 2nd January, 2003 under reference WMR/B/8000/2/426 and entitled District Centres Management Initiative, ("the offer letter") the Secretary of State offered the Transferor a grant not exceeding two hundred and sixty thousand (£260,000) in support of the project described therein ("the project") and the terms of the offer letter were accepted by the Transferor.

- (B) The Transferor and the Transferee have asked the Secretary of State to agree to the transfer to the Transferee of all of the rights, duties, liabilities and obligations of the Transferor contained in the offer letter.

IT IS HEREBY AGREED THAT

- (1) The Transferor with the agreement of the Accountable Body transfers to the Transferee all of the Transferor's rights, duties, liabilities and obligations under the individual project offer letter and the Transferee accepts the transfer.
- (2) In consideration of the Accountable Body consenting to enter into this agreement the Transferee undertakes to the Accountable Body to comply with and be bound by the individual project offer letter in every way and to accept and discharge all of the duties, liabilities and obligations of the Transferor under the offer letter as if the references in that letter to the Transferor were and had always been references to the Transferee.
- (3) The Accountable Body releases and discharges the Transferor from the performance of its duties, liabilities and obligations under the individual project offer letter and accepts the Transferee under the offer letter in place of the Transferor.

IN WITNESS of which this agreement has been duly executed as a deed by the parties the day and year first above written.

THE *[CORPORATE]* COMMON SEAL OF

Southern Staffordshire Chamber of Commerce & Industry

was hereunto affixed in the presence of:-

Name:

An authorised official of Southern Staffordshire Chamber of Commerce & Industry

EXECUTED as a DEED and

Delivered on the date hereof by

Name:

Director

Name:

Director/Secretary

Southern Staffordshire Chamber of Commerce & Industry

EXECUTED as a DEED and

Delivered on the date hereof by

Name:

Director

Name:

Director/Secretary

Cannock Chase District Council