**Agenda Item 6**

**SSLEP Closure Process and Future Voice of Business**

**SSLEP Executive Board is asked to consider, comment and vote on the following recommendations:**

1. The Board notes the legal advice on the closure of the SSLEP commissioned from Bevan Brittan.
2. Agree that the issue of Directors liabilities be addressed through the closure of the company.
3. Agree that the company be closed following the voluntary dissolution process and Directors each sign the appended striking off application (DS01 form) to formally resign from the company.
4. Note the Government’s position that existing governance arrangements for decision making by the LEP are to be followed, although civil service advice suggests taking a pragmatic approach.
5. Agree that residual SSLEP activity be managed through the joint committee, including consultation with the SSLEP Chairman up to the formal closure of the company.
6. Application to close the company is made on the 30th June 2024, 3 months after the cessation of all SSLEP activity.
7. Consider and comment upon the progress so far on the future business voice for the area, including its emerging principles and strategic priorities, as set out in the report and appendix.

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6th March 2024

1. **Background**
   1. Following the Government’s change in policy direction and the integration of LEP functions into local democratic institutions from April 2024, the SSLEP considered a Future LEP Arrangements report in September 2023. This included the following recommendations which, due to the meeting not being quorate, were subsequently agreed by all the Executive Board members through the Electronic Procedure in September / October:
2. The Executive Board agrees in principle to the closure of the SSLEP by the end of March 2024, subject to legal advice on the closure process and the LEP and its Directors’ liabilities.
3. The SSLEP’s functions and assets to be transferred to Staffordshire County Council (SCC) as the Accountable Body, in line with Government guidance and in consultation with Stoke-on-Trent City Council (SoTCC).
   1. Legal advice commissioned from Bevan Brittan on these issues is set out in appendix 1, with the salient points set out in summary in this report. This provides a clear procedure for the closure of the SSLEP as a private company limited by guarantee.
4. **Directors Liabilities**
   1. A set out in the Future LEP Arrangements report, one of the most important issues to consider in the closure of the SSLEP is whether any action is needed to ensure that any Directors liabilities are addressed. Legal advice provided by Bevan Brittan on this issue is set out below:
   2. *“In transferring the business and assets of SSLEP to Staffordshire County Council (SCC) to implement the LEP transition, the directors are exposed to a low degree of risk of challenge e.g. for breach of duty or effecting a transaction at an undervalue. Any damages awarded for successful claims for breach of duty are payable to the SSLEP, and with all of SSLEP’s assets being transferred to SCC, potential applicants are unlikely to incur the legal costs instigating any such action where SSLEP has not continuing business and assets will not be disbursed to any members (apart from SCC). Challenges for breach of duty can be instigated by:*

* *the directors (who are unlikely to challenge one of their number);*
* *by an insolvency practitioner (appointed following the insolvency of an entity, which will not be the case); or*
* *in very limited circumstances and with the permission of the court, by the members (using a procedure which has various hurdles to be overcome by the applicant).*

* 1. *Challenges for a transaction at a undervalue (which the transfer is unlikely to be because SCC is assuming all of SSLEP’s liabilities in consideration of the transfer of SSLEP’s assets), can be instigated by:*

* *an insolvency practitioner appointed in respect of SSLEP within 2 years of the transaction, if SSLEP was effectively insolvent at the time (assuming that SSLEP will be solvent at the time of the transfer, this will not apply);*
* *a creditor prejudiced by the transaction, where the transaction aims to defrauding the creditor by putting assets beyond their reach; it is irrelevant whether SSLEP is solvent or insolvent at the time (this is not the intention, particularly with SCC agreeing to pick up responsibility for any liabilities).”*

* 1. Essentially this advice states that there is no way a claim can be made against the Directors of the LEP with all assets and liabilities to be transferred to the Accountable Body, as recommended within the Financial Reserves report. No further action is therefore required with regards to Director’s liabilities and this can simply be handled through the closure of the company and transfer of the assets and liabilities to SCC.

1. **Closure Process**
   1. The Executive Board has already agreed in principle to the closure of the SSLEP and as set out within the legal advice, it needs to be decided as to whether this is done by the company being either:
2. Voluntarily dissolved (an administrative process), instigated by the SSLEP’s Directors; or
3. Wound up (through a formal liquidation).
   1. The main creditor of the SSLEP is SCC whilst other creditors are minimal. It is therefore recommended the SSLEP be dissolved using the voluntary dissolution process because it is deemed highly unlikely that this will be challenged by creditors and neither the SSLEP nor SCC requires the legal certainty that a formal liquidation would provide. This is also a far more cost-effective option with the expense of formal liquidation being unwarranted.
   2. To voluntarily dissolve the SSLEP, the company must not have traded in the previous three months, after which at least half of the Directors need to sign the application to strike off the company. While the Accountable Body has always submitted a set of dormant accounts for the SSLEP, legal advice received suggests to still maintain a 3-month period following the formal ceasing of activity on 31st March 2024 before formal closure is submitted. It is therefore recommended that the Executive Board agrees to the final closure of the company and each Director signs the striking off application form (appendix 2) to formally resign from the SSLEP.
4. **Governance**
   1. Recent Executive Board meetings have not been quorate and decisions have needed to be made through the written procedure process, although decisions still need to be ratified at the following meeting of the Board provided this is quorate.It has been considered as to how this may be simplified, including making changes to the Assurance Framework, delegating authority, and several of the Directors resigning so that that only a minimal number of Directors are required to authorise decisions.
   2. However, advice from Government has been to persevere in obtaining quorate decisions through the existing arrangements. This is clearly challenging for many LEPs across the country and therefore more recent discussions with civil servants has suggested taking a pragmatic approach in securing any necessary decisions through the LEPs.
   3. In the interests of brevity, it will therefore be important for any decisions and requirements for the Executive Board to meet to be kept to a minimum. If the Executive Board agrees to the recommendations set out within this report, there should be no need for the SSLEP to make any further decisions, with decision-making responsibilities transferring to the local authorities through a joint committee arrangement.
   4. The joint committee is to be established based on the principles followed in relation to SCC’s and SoTCC’s existing shared services (e.g. Archives and Coroners). This will include political representation from both authorities to make any necessary decisions on residual LEP activity, functions transferred to the local authorities as appropriate and the management of the LEPs assets in accordance with the recommendations set out within the Financial Reserves report. It is recommended that the activity of the joint committee includes consultation with the SSLEP Chairman as appropriate until the SSLEP is formally dissolved.
5. **The Voice of Business**
   1. Through guidance released alongside its decision to cease funding the LEPs and additional guidance released on 19th December 2023, Government has made it clear that it views it to be important to retain the key strengths of this local, business-oriented institution, namely in providing a strong, local business voice to support public sector decision-making. Meeting Government’s expectations on the provision of the business voice function will be important in the ability of the local authorities to access funding, not only for the responsibilities transferred from the LEP such as the Growth Hub and Careers Hub, but also in wider future Government programmes and funding streams.
   2. It will therefore be vital that there remains an effective business voice in the area, not only to meet Government requirements but also our local expectations and ambitions. The Leaders of the local authorities considered this at the end of January 2024 and the emerging views on the principles, priorities, governance, resource, etc, for the business voice function are set out within appendix 3 to this report for consideration and comment.