

<b>Decision maker:</b>	<b>Cabinet member corporate strategy and budget</b>
<b>Decision date:</b>	<b>Wednesday 7 August 2019</b>
<b>Title of report:</b>	<b>NMiTE Growth Deal Funding Agreement</b>
<b>Report by:</b>	<b>Head of Economic Development</b>

## Classification

Open

## Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

## Wards affected

Widemarsh

## Purpose and summary

To approve the underwrite of an element (£850,000) of Marches Local Enterprise Partnership (LEP) Growth Deal grant funding that has been awarded to the New Model in Technology and Engineering (NMiTE) Higher Education institute. The underwrite is required under the terms of the LEP Grant Funding Agreement.

Following a successful application by the council to the Marches LEP, NMiTE have been allocated a capital grant totalling £2.3m. The grant will enable NMiTE to adapt the Blackfriars Street premises and to purchase the specialist engineering equipment required to teach their first cohort of 50 students that are due to begin their studies in January 2020. A condition of the funding agreement is that in the event of material failure of NMiTE, determined by Shropshire Council as accountable body for the LEP, the council will have 12 months to identify an alternative body to deliver an equivalent set of outputs that would be agreed with Shropshire Council at the time. If the council fails to find an alternative body, and should there be a subsequent clawback by central government of the Growth Deal funds, the council shall within

10 days pay a sum equal to the value of all grant payments which have been paid to NMiTE for the purpose of the refurbishment or improvement of the Blackfriars Street premises (up to £850,000).

The council own the freehold of the Blackfriars Street premises, and has granted a long lease to the Department for Education (125 years). The Department for Education has subsequently granted a sub-lease to NMiTE (50 years).

## **Recommendation(s)**

That:

- (a) Herefordshire Council underwrite up to £850,000 of Marches Local Enterprise Partnership (LEP) Growth Deal grant funding allocated to the New Model in Technology and Engineering (NMiTE) Higher Education Institute.**

## **Alternative options**

1. Option 1 – Do not agree to underwrite £850,000 of the Growth Deal grant funding allocated to NMiTE. If the council were to not agree to the underwrite of £850,000 of grant funding the project cannot progress, which will put the development of the NMiTE at significant risk. The Growth Deal grant funds are critical to NMiTE to enable the development of the teaching facilities and equipment required to commence the delivery of Higher Education courses from January 2020.
2. Option 2 – The council could seek to become directly accountable for the Growth Deal grant funding from central government. The provision of the allocated £2.3 million grant funding is time critical. Any further delays potentially caused through renegotiating the administration of the funds is likely to mean that NMiTE would not be able to complete the required works to the Blackfriars Street premises in time, putting the development of NMiTE at significant risk.

## **Key considerations**

3. At the full council meeting on 7 March 2014 the council resolved that: “A Herefordshire University would bring a wide range of benefits to the county including supporting economic growth through the development locally of relevant higher level skills; encouraging younger people to study and work in the county; and contributing to the vibrancy of the county. This council welcomes the developing proposals to establish a university in Hereford, and the wide support being generated for the proposals. This council requests the executive to identify the most appropriate way in which the council can assist in securing the future of higher education in the county.”
4. On 22 May 2014, in line with the council resolution, the Cabinet member for Contracts and Assets decided to seek approval to enter into a memorandum of understanding with the new university Herefordshire (which is a Tertiary Educational Trust) and to commence negotiations on the granting of options for council owned sites in order to support the development of a university for the county (<http://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=2714>).

5. The development of NMiTE is expected to have a transformational impact on Herefordshire's economy. At present the county has low levels of unemployment (2.7%), but has a very low wage economy (19% below average national weekly wage), low productivity (27% below national average Gross Value Added per head of population) and low annual growth (circa 1% per year). 36.4% of people are qualified to NVQ level 4 or above compared to a national average of 39.3%. The county has an aging population with 24% of people 65 or over, compared to a national average of 18%.
6. The lack of Higher Education opportunities drives younger people to leave the county to study elsewhere, with limited higher value employment opportunities to attract people to then return and/ or to live and work in Herefordshire.
7. The growth of Hereford College of Arts (HCA) and development of NMiTE provides a unique opportunity to establish a higher education provision in the county, to retain and/ or attract a younger demographic, develop a highly skilled workforce, and draw higher value employers. In particular, NMiTE will be focussed on developing engineering skills to address a national shortage, establishing a competitive advantage.
8. However, as a completely new organisation NMiTE has limited available resources and a limited financial covenant. To become self-sustaining they will need to grow to a point where they have circa 1,200 students paying tuition fees. To reach this point they will need support to be able to access public funds, and to develop the teaching and student accommodation facilities required to operate/ attract students.
9. The LEP have allocated a £2.3 million Growth Deal grant to NMiTE. The funds will enable NMiTE to renovate the Blackfriars Street premises and to purchase the engineering equipment required to enable the commencement of higher education courses from January 2020. Timescales are now critical to complete these works prior to the first cohort of students arriving in January 2020. Without the grant funding NMiTE will not have the teaching space nor equipment required to be operational, significantly jeopardising the development of NMiTE.
10. Being in the early stages of development, NMiTE's limited direct access to financial resources means that they are reliant on government funding. On 26 October 2017 the Department for Education (DfE) announced a grant of up to £15m funding, a mixture of capital and revenue, over three years to support the establishment of the NMiTE. In addition to the £8m funding NMiTE is due to receive through the LEP) Growth Deal grant funding.
11. On 14 December 2017 the council's Cabinet agreed to be the Public Accountable Body for NMiTE during its establishment phase (<https://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?Id=4926>). Accountable body status means that the council is accountable for funding allocated to the NMiTE project by central government. Accountability involves receiving funds from central government, ensuring those funds are allocated and spent in accordance with any funding conditions specified, and providing reports on that expenditure.
12. The funding agreement between Shropshire Council, the council and NMiTE makes the LEP Growth Deal grant funding contingent upon the council agreeing to underwrite the element of the project (£850,000) that will be spent on the renovation of the Blackfriars Street premises. The council are the freehold owners of the building, which is currently subject to a 125 year lease to the Department for Education. Therefore, in the circumstance that the government seek to recover the grant there would be no asset to support the recovery of funds by the LEP.

13. The council's underwrite of the £850,000 liability on behalf of NMiTE will only crystallise if central government decides to claw back the grant funds from the LEP. The risk of this is considered to be low as the clawback is possible only if all of the following conditions apply:
- The NMiTE project fails:* there is a Material Failure (as determined by Shropshire Council) in the delivery of NMiTE, resulting in the non-delivery of the contracted outputs; and
  - The council cannot find an alternative project to deliver equivalent outputs:* if the NMiTE project fails then the council will use its best endeavours to find an alternative body to support an alternative project to deliver an equivalent range of outputs; if the council is unable to identify such an alternative project within 12 months; then
  - Central government could decide to seek clawback of the grant funds from the LEP.* If central government decide to claw back the grant, then the agreement between the LEP, NMiTE and the council would then allow the LEP to claim the money from Herefordshire Council (within 10 days). However, this is considered to be unlikely as there is no provision for clawback in the Section 31 notice between Ministry of Housing Communities and Local Government (MHCLG) and the LEP.
14. The council will continue to work closely with NMiTE to ensure the successful delivery of the project. Progress of the NMiTE project will be monitored to provide an appropriate level of understanding of risk management within the Project and allow the council to judge whether the likelihood of Material Failure is increasing or decreasing. The monitoring will include:
- The LEP will appoint an individual (the "LEP Representative") who will assist with the *monitoring of the overall NMiTE project. The LEP Representative will be based in the council's premises and the council and NMiTE will allow the LEP Representative all access reasonably required for the monitoring of the Project and will follow any reasonable instructions of the LEP Representative;*
  - The NMiTE Board will invite the Director of the LEP or another LEP officer to attend its Board meetings relating to the project as an observer;*
  - The Leader of the council will be Herefordshire Council's observer on the NMiTE Board;*
  - The council's Section 151 officer, reflecting the council's role as public accountable body for NMiTE, will continue to attend NMiTE's Finance & Infrastructure Committee. NMiTE's Chief Operating Officer is responsible to this committee for reporting variations to the budget. The Finance Manager will provide a Monthly Monitoring Pack for scrutiny by the Finance & Infrastructure Committee; and*
  - The council's Section 151 officer or other appropriate senior officer will also attend NMiTE's Property Committee.*
15. NMiTE are already well progressed with a number of the required outputs. At the LEP Board in January NMiTE reported that they had £2.3m in private capital match and that they anticipated achieving the £3.3m by 31 March 2020.
16. As it is recognised that the development of NMiTE is testing a new model in delivery of higher education, in response to a national shortage in engineering skills, central government have previously provided written assurances to the LEP that the likelihood of clawback in the event of project failure is limited. In a letter dated 18 January 2019 the Secretary of State for the Department for Business, Energy and Industrial Strategy states

'The Marches LEP, alongside its accountable body, Shropshire Council, can therefore be reassured that we would not seek to penalise it for supporting an innovative project such as this, so long as it has taken reasonable steps to mitigate risks'.

17. Following its decision taken on 14 December 2017 the council is already the accountable body for £15m of Department for Education funding for the development of NMiTE and it has a project accountable body role in support of the LEP funding (<http://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=4926>).
18. Therefore, given the importance of NMiTE to supporting the economic growth of Herefordshire, and the low level of associated risk, it is recommended that the council agree to underwrite up to £850,000 of the grant which will be utilised to renovate the Blackfriars Street premises.

## Community impact

19. Acting as accountable body will help support the establishment of NMiTE which will in effect support the council's corporate plan priorities of giving young people a great start in life and support the growth of our economy.
20. The development of higher education provision in Herefordshire could have a transformational impact on our economy, retaining/ attracting younger generations to study and live in the county, attracting new businesses to invest in Herefordshire offering higher value employment opportunities, establishing an engineering skills base in a sector where there is a recognised significant national shortage. Students living and studying in the county will also have a significant impact on the local economy.
21. NMiTE is one of the council's strategic Partners. On 20 June 2016 the Cabinet member corporate strategy and budget decided to agree governance arrangements to support effective partnership working between Herefordshire Council and Herefordshire Tertiary Education Trust (HTET). This partnership, now known as the higher education partnership group (HEPG) and with a wider membership, is intended to provide clear and transparent governance to support use of public resources. The cooperation and transparency encouraged by the partnership will assist in mitigating the risks of the project. (<http://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=4309>)

## Equality duty

22. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:  
  
A public authority must, in the exercise of its functions, have due regard to the need to -
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

23. The development of NMiTE will support the council's commitment to equality by advancing equality of opportunity, with the potential of increased job opportunities.

## Resource implications

24. The council would be liable for the repayment of up to £850,000 of grant funds which NMiTE will use to renovate the Blackfriars Street premises.
25. The council's underwrite of the £850,000 liability on behalf of NMiTE will only crystallise if central government decides to claw back the grant funds from the LEP. The risk of this is considered to be low as the clawback is possible only if all of the following conditions apply:
- a. *The NMiTE project fails:* there is a Material Failure (as determined by Shropshire Council) in the delivery of NMiTE, resulting in the non-delivery of the contracted outputs; and
  - b. *The council cannot find an alternative project to deliver equivalent outputs:* if the NMiTE project fails then the council will use its best endeavours to find an alternative body to support an alternative project to deliver an equivalent range of outputs; if the council is unable to identify such an alternative project within 12 months; then
  - c. *Central government could then decide to seek clawback of the grant funds from the LEP and the LEP will require payment by Herefordshire Council within 10 days. However, this is considered to be unlikely as there is no provision for clawback in the Section 31 notice between Ministry of Housing Communities and Local Government (MHCLG) and the LEP.*
26. As outlined above, the risk of the council being required to repay the funds is considered low. Should the liability arise the funds would need to be resourced from ear marked revenue reserves.

## Legal implications

27. NMiTE has been allocated Local Growth Fund grant funding of £2.3 million by the LEP under section 31 of the Local Government Act 2003. The accountable body for this funding is Shropshire Council. Under the terms of the LEP Growth Deal grant funding agreement with the LEP, the council is required to underwrite £850,000 of the grant funding. There is no statutory requirement for this underwrite flowing from the allocation of funding from MHCLG to the LEP but Shropshire Council as the accountable body for the LEP requires the underwrite by the council as a condition of the grant funding agreement.
28. The council does not have a duty to enter into these arrangements but it has the power to do so under Section 1 of the Localism Act 2011 which confers upon the council a power to do anything that individuals generally may do (the general power of competence).

## Risk management

29. If the recommendations are agreed:

<b>Risk / opportunity</b>	<b>Mitigation</b>
---------------------------	-------------------

<b>Financial</b>	
------------------	--

NMiTE fail to deliver the project	
-----------------------------------	--

	The council will continue to work closely with NMiTE, assigning a member of staff
--	---

to proactively contract manage the project on behalf of the council and LEP. However, in the event of a Material Failure of the NMiTE project, the council will have 12 months to find an alternative project to deliver equivalent outputs. If it fails to do so, and central government decide to claw back the grant, the Shropshire Council will require payment from Herefordshire Council within 10 days.

In the event of NMiTE material failure, the council cannot find an alternative provider to deliver the outputs within the contractually defined period.

In the event of NMiTE material failure the council would negotiate an alternative set of outputs based on our assessment of what could be delivered at the time.

Central government seeks clawback of the funds in the event of NMiTE material failure and the council not being able to find an alternative provider.

NMiTE are already well placed to deliver the majority of the required outputs. Based on current assurances, the likelihood of clawback is considered low. However, in the event of a Material Failure of the NMiTE project, the council will have 12 months to find an alternative project to deliver equivalent outputs.

## Reputational

The development of NMiTE is of national significance, seeking to address a national skills shortage in engineering. Failure to fully utilise the national funding that has been made available to enable the development will be of reputational damage to the all of the LEP partners.

The underwriting of the renovation of the Blackfriars Street premises, will enable the Growth Deal project to progress.

## Consultees

- 30. Political groups have been consulted. No feedback had been received at the time of publication of this report.
- 31. NMiTE have also been consulted and are fully in support of the council underwriting the LEP Growth Deal grant funding.

## Appendices

None

## Background papers

Letter from the Rt Hon Greg Clark MP Secretary of State Department for Business, Energy & Industrial Strategy to the Chair, Marches Local Enterprise Partnership, 18 January 2019

Grant offer letter from Director, Cities and Local Growth Unit, 15 April 2019

Local Growth Fund (April 2019) grant determination (2019-20): No 31/3687

Letter from Shropshire Council to MHCLG 28 February 2019