

**Meeting of the Cabinet – 25 April 2013**

**Report of the Director of the Urban Environment and the Director of Corporate Resources**

**European Regional Development Fund (ERDF) applications**

**Purpose of Report**

1. To seek approval for the Council to act as Guarantor on European Regional Development Fund (ERDF) applications submitted by third party organisations.

**Background**

2. The 2007-2013 ERDF programme contains 5 priorities for delivery. Priority 3, achieving Sustainable Urban Development (SUD) aims to develop projects that meet the following criteria:
  - Stimulating physical improvements and access
  - Securing an enterprise community
  - Tackling worklessness
  - Energy & sustainable environment
3. The Council is currently working with partners to secure potential funds to implement the following projects under the Priority 3 SUD Package

*Ruskin Mill Educational Trust; Glasshouse Development Project.*

This project will refurbish 2 underused industrial buildings to create new business floor space, enhance the interpretation of the site's heritage and improve access to and visibility of the Glasshouse as a business/tourism/cultural destination. The value of this project is estimated at £1.08m with up to £381k sought from ERDF.

*Dudley Canal Trust; Learning & Access Hub - The Portal Project*

This project seeks to provide a new visitor centre with educational facilities on land leased by the Council to the Trust at Todds End. The proposal would form a significant contribution to increasing the visitor numbers as a key element of the proposed leisure cluster at the Castle Hill. The value of this project is estimated at £3.35m with £997K support sought from ERDF. The project has already secured HLF funding and this application for ERDF grant is the final funding application required to allow the project to proceed.

4. On 16th March 2011 the Cabinet considered a report on ERDF funded projects and authorised delegations to Cabinet Members in consultation with Directors to

submit and act as the Accountable Body and Applicant for third party body ERDF applications in certain situations, and where risk levels to the Council could be reduced to an acceptable level. Whereas this approval was for the Council to act as the Applicant and Accountable Body on behalf of 3<sup>rd</sup> party organisations, the Department for Communities and Local Government (DCLG), who administer ERDF programmes, now wish to see funding applications made directly by non-local authority applicants and with a Guarantor in place who can be made responsible for grant clawback in the event of project failure.

5. As Applicant and Accountable Body the Council takes responsibility for the project with the third party organisation taking on the delivery role. The Council enters into a funding agreement with DCLG and takes responsibility for all the obligations set down in this agreement including scheme monitoring and submission of financial claims. The Council receives the grant funding on behalf of the third party organisation and makes payment to it when it is satisfied that grant conditions have been met. In the event of any irregularities resulting in clawback of grant the Council is the primary organisation responsible for repayment.
6. Where a Guarantor is required, the 3<sup>rd</sup> party organisation takes responsibility for the project and acts as Applicant and Accountable Body. The Council, acting as Guarantor, enters into a legally binding 'Deed of Guarantee' with DCLG and the 3<sup>rd</sup> party organisation. Through this Deed the Council will be agreeing to guarantee the obligations set out in the Funding Agreement made between DCLG and the 3<sup>rd</sup> party organisation. The Deed would only be enforced if the 3<sup>rd</sup> party organisation defaulted on its obligations.
7. It should be noted that DCLG would only enforce the Deed of Guarantee after all reasonable actions to obtain repayments from the grant recipient had been taken.
8. Whereas the Council taking the role of Applicant and Accountable Body requires considerably more resources in project administration than if it were Guarantor, greater protection is afforded to the Council in this role as it is able to withhold grant payment to the 3<sup>rd</sup> party organisation in the event of non-compliance with grant conditions. This would not be the case as Guarantor since the 3<sup>rd</sup> party organisation would be claiming and receiving grant payments directly from DCLG.
9. Whilst recognising the social, economic, cultural and environmental benefits of these projects, should the Council agree to act as Guarantor, it could face a significant risk of grant clawback in the event of any failure to deliver in accordance with the ERDF contractual requirements. For these reasons, it is proposed that the Council only acts as Guarantor for projects where there is an identified realisable chargeable asset in value terms to mitigate any risk of potential ERDF grant clawback. It is proposed that this requirement stand regardless of whether projects are subject to Guarantor or Applicant and Accountable Body requirements.
10. Members should note that the 16th March 2011 Cabinet report referred to in Paragraph 4 also sought approvals with regard to the proposed White House Cone project in Wordsley. Proposals are still in development for this project, however, DCLG require the Council to act as Applicant and Accountable body for this project, and as a result it is not included in this report. It is considered that this project is complementary to and not in competition with the Glasshouse Development project given that the former is primarily a cultural project based on the history of glassmaking in the area, and the latter a centre for innovation, enterprise, creativity and learning.

## **Finance**

11. The major consideration in the Council becoming the guarantor is that there must be identified realisable assets that could realistically be sold to fund any potential clawback of ERDF grant if necessary.
12. Back to back legal agreements with third parties would be required, reflecting all ERDF contractual obligations including grant clawback in order to mitigate risk to the Council.
13. Dedicated Council staff (for project compliance and financial monitoring) will be essential to ensure the level of risk to the Council is minimised and provide the required level of confidence with contractual compliance. No additional staffing resource will be required.

## **Law**

14. The main provisions relating to European Regional Development Fund are contained in the EC Regulations 1080/2006 and 1083/2006 European Regional Development Fund and further amended Regulations.
15. Section 111 of the Local Government Act 1972 empowers the Council to do anything which is calculated to facilitate, or is conducive or incidental to the discharge of its functions.

## **Equality Impact**

16. These proposals comply with the Council's policies on Equality and Diversity.

17. With regard to Children and Young People:

There is no direct effect of the proposals on children and young people

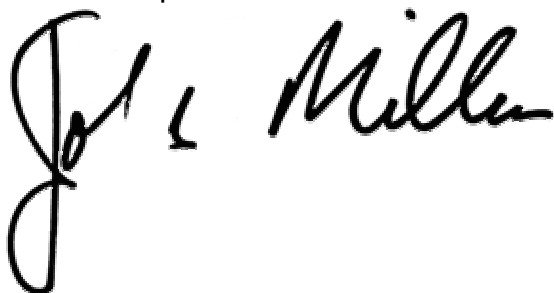
There has been no specific consultation with children & young people

There has been no direct involvement of children and young people in developing the Proposals.

## **Recommendation**

18. It is recommended that the Cabinet:-
  - a) Authorise that the Council act as a Guarantor for those projects outlined in paragraph 3 and for any further such projects in this current 2007-13 and future 2014-2020 European Programmes, where there is a realisable chargeable asset to and where a risk assessment has been undertaken that identifies acceptable risk to the Council.

- b) Authorise the Director of Corporate Resources and the Director of the Urban Environment to undertake the necessary property valuations and legal work to ensure that the proposed charging of the assets is sufficient to protect the Council's position and the cost of this be met by the relevant third party organisation.
- c) Authorise the Cabinet member for Regeneration and the Cabinet member for Human Resources, Law and Governance, in consultation with the Directors of the Urban Environment and Corporate Resources, to;
- Enter into back to back legal agreements with third parties benefiting from ERDF grant where the Council is the Guarantor to ensure grant conditions and liabilities are passed on.
  - Ensure that, where appropriate, third parties secure at their own expense independent expertise to confirm compliance with key areas of the ERDF grant process such as procurement and defrayment of expenditure accord with EU requirements.



.....  
**John Millar**  
**Director of Urban Environment**



.....  
**Philip Tart**  
**Director of Corporate Resources**

Contact Officer: Sheila Ray  
Telephone: 01384 815272  
Email: [sheila.ray@dudley.gov.uk](mailto:sheila.ray@dudley.gov.uk)

### **List of Background Papers**

Cabinet 16<sup>th</sup> March 2011:- Report of the Director of the Urban Environment and the Director of Corporate Resources on European Regional Development Fund (ERDF) applications