

SOLENT LEP AND PORTSMOUTH CITY COUNCIL: PROTOCOL AND SERVICE SUPPORT AGREEMENT

Background

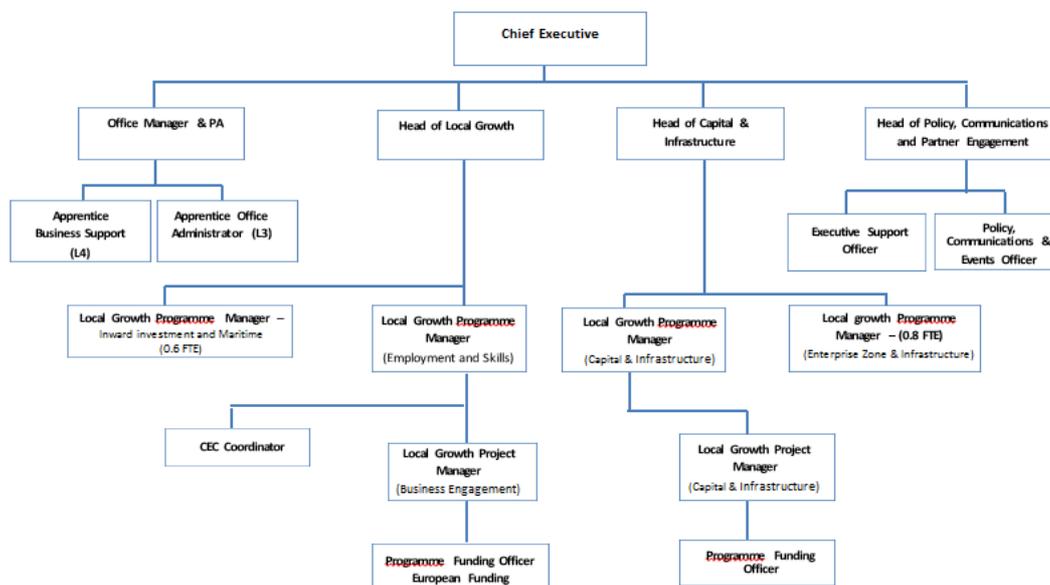
Solent LEP is a partnership organisation between the business community, the Higher Education sector, three unitary authorities, eight district councils and one county council, all of whom are actively working together to secure a more prosperous and sustainable future for the Solent area. These make up a fully-elected board of 15 directors.

The LEP is registered as a company limited by guarantee and it was incorporated on 18 March 2011. In keeping with the Articles of Association and in accordance with company law, the Board of Solent Local Enterprise Partnership Limited has been democratically elected by its members, thus ensuring that we have a robust, transparent and accountable delivery structure in place. The structures continue to evolve, reflecting the strategic role that the LEP has assumed as the lead body for Economic Development and the need to establish delivery capacity for its key programmes of work.

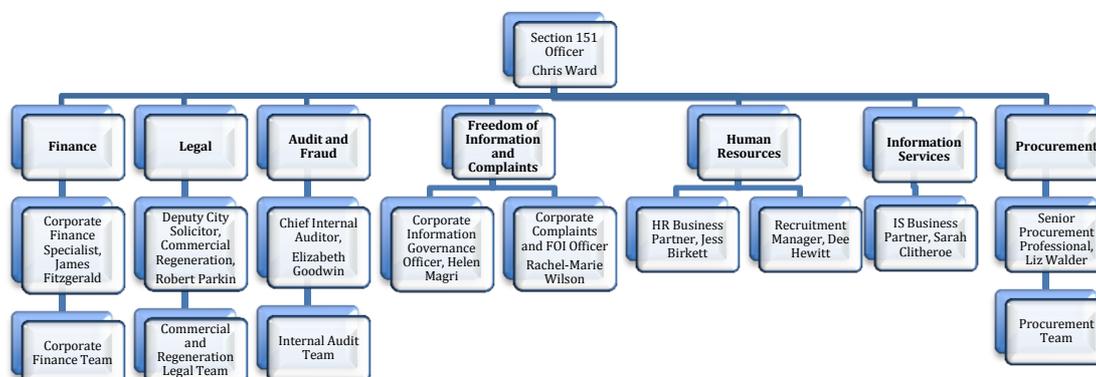
Effective provisions for timely and binding decision-making are a central component of the Solent LEP Strategic Economic Plan (SEP) and the EU Structural Investment Fund (EUSIF) Strategy. In pursuance of this and to ensure that the strategy and investments are effectively aligned, the Solent LEP Board has decided to establish a Funding, Finance and Performance Management Group to provide support and advice to the Board in relation to overall performance of commissioned activity against the published Solent SEP and EUSIF, to provide an overview of sources of funding that are being allocated to support activity under the published SEP and EUSIF and to provide an overview and scrutiny of financial performance.

Portsmouth City Council (the Council) act as the accountable body for the LEP: the Council's section 151 Officer acts as the Chief Financial Officer, and the LEP team, who provide strategic, and logistical support, is led and staffed by the Council employees. These officers promote the objectives of the LEP, and act for the purposes of the company, while having the authority to administer funds held by the Council as accountable body under the supervision of the section 151 officer.

Solent LEP Executive Team Structure Chart



Portsmouth City Council team



Purpose of this protocol and service agreement

This protocol sets out how the Council will provide support and operational supervision, and how it will conduct itself as accountable body for the LEP related projects and activities.

Role of the Council as Accountable Body

The LEP conducts its business in accordance with its Memorandum and Articles of Association. While certain business of the LEP will be conducted in accordance with the meetings and access to information rules prescribed by Part VA of the Local Government Act 1972, the Council in holding and administering funds, is required to do so in accordance with its statutory duties, which include duties relating to proper accounting and expenditure (including due diligence in relation to applicants), and the recording of decision-making.

As accountable body, the Council is responsible for securing the delivery of project outcomes, and will do so by way of appropriately structured contract and project documentation.

Role of the Chief Financial Officer

The statutory head of finance (section 151 officer) to the Council acts as Chief Financial Officer to the LEP. This officer is in receipt of a general delegation from the Council in relation to accountable body matters, and through a team which includes commercial, financial, and legal officers undertakes the following:

- Holds funding and makes payments to delivery bodies;
- Ensures the separable accounting for LEP related funds;
- Provide financial statements to the LEP Board, Executive and Funding Finance and Performance Management Group;
- Ensures that the recommendations, advice and activities of the LEP and its sub-panels are deliverable, are appropriately structured, and comply with statutory obligations, (for example, those under the Equality Act 2010, the Data Protection Act 1998, procurement, state aid and environmental duties etc);

- Conducts due diligence in relation to applicants and relevant third-parties;
- Monitors funds to ensure that they are used appropriately;
- Monitors the compliance of LEP business in accordance with the relevant assurance framework, maintaining an official record of Solent Local Growth Advisory Group (LGAG) proceedings and documents;
- Procuring the independent audit of LEP related funds and activity and ensuring, with the LEP, an appropriate response;
- In relation to schemes for which the Council is accountable body, to be responsible for the supervising the integrity of decision-making, and for taking and defending legal proceedings;
- To ensure appropriate audit processes are in place in relation to LEP activity;
- To ensure compliance with agreed policy protocols on behalf of the LEP, including; Freedom of Information Requests, Whistleblowing and Complaints;
- To ensure appropriate HR support is available to the LEP Executive;
- Undertake all procurement on behalf of Solent LEP;
- To provide all IT infrastructure and associated support to the LEP.

Support Budget

The Chief Financial Officer will agree with the Chief Executive of the Solent LEP a budget based on total cost recovery, and the terms of service provision at schedule 1.

Service standards and terms of service

A schedule of service standards appears within the terms of service at schedule 1.

Terms of Service

1. Parties and Purpose

- 1.1. These Terms of Service set out the performance standards and governance framework by which Portsmouth City Council (the Council) will engage and deliver work (the Services) with and for the Solent LEP Secretariat (that team of Portsmouth City Council employees who work to the Solent LEP (the LEP)), together "the Parties".
- 1.2. The Parties acknowledge that these Terms of Service are intended to govern the working relationship between the LEP (as defined above) and the Council, however, the Parties acknowledge that these terms may create a contractual relationship between Solent Local Enterprise Partnership Limited (registered company number: 07569938) of 1 London Road, Southampton, Hampshire, England, SO15 2AE (the LEP Company) insofar as Services provided by the Council are Services to the LEP Company (which shall be a matter of fact in each instance).

2. Roles and responsibilities

- 2.1. The respective roles of Council and LEP are set out at Annex 1.

3. Duration

- 3.1. These Terms of Service shall continue unless revised or terminated in accordance with the terms herein.

4. Communications

- 4.1. Instructions and communications to the Council will be accompanied by information as to which LEP officer is leading on a given matter, together with such information as the Council shall require, and will be given by e-mail, in writing (i.e. by letter, memo), in person or by telephone to either of:

Chris Ward

Finance: James Fitzgerald

Legal: Robert Parkin

Audit and Whistleblowing: Elizabeth Goodwin

Freedom of Information: Helen Magri

Complaints: Rachel-Marie Wilson

Employee Relations: Jess Birkett

Recruitment: Dee Hewitt

Information Services: Sarah Clitheroe

Procurement: Liz Walder

Requests for routine contract advice should be addressed to the LEP legal team general inbox.

Following which it may be actioned, or distributed for action.

- 4.2. Any communications to the LEP may be addressed to:

Anne-Marie Mountifield

Head of Local Growth: Stuart Baker

Head of Capital & Infrastructure: Marc Griffin

Head of Policy, Communications and Partner Engagement: Richard Jones

Routine requests for advice should be addressed to:

Solent LEP Executive Support Officer

- 4.3. Both parties commit to notifying the other in relation to any central Government communications which relate to the services covered within this protocol and service support agreement. In the event that either party is in receipt of hard copy documentation, this will be notified to the relevant partners in line with the details provided in 4.1 and 4.2 and, where transfer of documentation is required, this will be undertaken via recorded delivery to the following addresses:

FAO: Chris Ward
Portsmouth City Council
Civic Offices - Floor 3, Core 3
Guildhall Square
Portsmouth
PO1 2AL

FAO: Anne-Marie Mountifield
Solent LEP Office
2nd Floor
1000 Lakeside
Western Road
North Harbour
Portsmouth
PO6 3EN

5. Responding to Communications

- 5.1. Each party shall aim to respond to communications from the other within the following target times:

5.1.1. where something is urgent, a response will be given as soon as reasonably practicable.

5.1.2. for non-urgent matters, a response should normally be given within five working days. Where a full response cannot be given in this time period, the party shall aim to respond as soon as possible thereafter and in any event within 10 working days.

6. Knowing who is Dealing with a matter

- 6.1. The Council's written communications with the LEP on individual matters shall contain the name and contact details of the actual person dealing.

7. Instructions and Updates

7.1. The LEP will aim to instruct the Council in a timely fashion in relation to given matters in order for the Council to advise fully on relevant legal, financial and policy issues including but not limited to:

- 7.1.1. Fund compliance;
- 7.1.2. State aid;
- 7.1.3. Delivery structures;
- 7.1.4. Property and planning implications;
- 7.1.5. Recipient standing and status;
- 7.1.6. Nature and scope of audits;
- 7.1.7. Freedom of Information requests;
- 7.1.8. Complaints;
- 7.1.9. Procurement.

7.2. The Council will aim to keep the LEP instructing officer informed of progress in a case at appropriate intervals. Information will be shared when key stages in the matter are reached

7.3. The LEP will provide the Council with clear, timely and accurate instructions, and any necessary supporting documentation.

8. Charging for Services

8.1. Services provided by the Council shall be charged at rates detailed on a statement of rates (Statement of Rates).

8.2. The Council will provide the Statement of Rates in writing within one month from 1 April in each year.

8.3. The Council shall provide a monthly report to the LEP of the charges incurred by the Council on LEP business.

9. Initial Meeting, Review Meetings, and Governance Arrangements

9.1. The Parties shall hold regular review meetings, which shall be not less than every three months, to consider the needs of the LEP for support and whether the way in which services are being provided is meeting those needs and to discuss ongoing projects, and upcoming matters. The Council welcomes feedback on its performance and the identification of areas in which performance and Client satisfaction can be improved.

9.2. The Governance Arrangements set out in this protocol and service support agreement may be amended at any time by agreement between Head of Legal Services and the Chief Executive of the Solent LEP.

10. Comments, Complaints, Freedom of Information and Fraud

10.1. The Council welcomes comments and suggestions about how services are provided, whether this is to commend the Council on something which has been handled particularly well, or where there is concern that a matter could have been handled better. The Council approaches such comments in a positive way to assist with the continuous improvement of services. The Solent LEP Enquiry and Complaints policy can be found at: <https://solentlep.org.uk/media/1941/solent-lep-enquiry-and-complaints-policy.pdf>

11. Audit and Fraud

- 11.1 The Solent LEP will maintain and manage a risk register to cover all areas of LEP activity on a regular basis. This will be reviewed by the FPPMG on a quarterly basis and shared with Portsmouth City Council's Audit and Fraud team to assist in the development of an annual programme of audit activity.
- 11.2 The Council will undertake an annual programme of audit activity for the LEP, the scope of which will be agreed on an annual basis by the FPPMG. Findings and recommendations will be reported to the FPPMG by exception on a quarterly basis and, on an annual basis, a detailed report will be provided.
- 11.3 The Council will endeavour to undertake and report on audits identified by the FPPMG within one quarter, with specific timeframes to be agreed by the Solent LEP Chief Executive and Council Chief Internal Auditor in consideration of specific audit requirements.
- 11.4 The Council will undertake independent audits of specific matters on an exceptional basis in relation to any area covered by this protocol and service support agreement, where deemed appropriate by the Solent LEP Chief Executive and Council Chief Internal Auditor, and in line with the LEPs Complaints policy in relation to any concerns raised regarding potentially illegal, unethical or immoral conduct.

12. Confidentiality

- 12.1. The Council shall not make use for its own purposes of, or disclose to any person (except as may be required by law or as referred to in Paragraph 13.2)), any information contained in any material provided to it by, or prepared by it for, the LEP, which is of a confidential nature.
- 12.2. Files may be required to be produced to quality assessors as part of an audit or quality check. Where this is the case, the Council shall ensure that the assessor is required to maintain confidentiality in relation to the files.

13. Data Protection Act 1998

- 13.1. The Council shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Act.
- 13.2. The Council shall not disclose personal data to any third parties other than:
 - (a) to employees and sub-contractors to whom such disclosure is reasonably necessary in order to carry out the service; or
 - (b) to the extent required by law.

14. Freedom of Information Act 2000 ('FOIA')

- 14.1. The parties recognise that they are subject to legal duties which may require the release of information under the FOIA or any other applicable legislation governing access to information, and that they may be under an obligation to provide information to third parties on request. Such information may include matters relating to or arising out of this Agreement.
- 14.2. Each party will assist the other to enable it to comply with its obligations. In the event that

either party receives a request for information under the FOIA or any other applicable legislation governing access to information, and requests the other party's assistance in obtaining the information that is the subject of such request or otherwise, the parties will respond to any such request for assistance at its own cost and promptly, and in any event within seven days.

15. Legal Requirements

- 15.1. Each party shall at all times conduct its affairs in a reputable manner, and observe all legal requirements.

16. Legal Liability

- 16.1. The Council and the LEP Company shall be liable for the consequences of any breach of its obligations under this Agreement, including any injury to, or death of, any person, or loss of, or damage to, any property, except and to the extent that such consequences are a direct result of the act, omission, default or negligence of the other party, or except and to the extent that such breach is a direct result of circumstances beyond the party's control which could not reasonably have been avoided by that party. The Council and the LEP Company shall maintain such insurances as are necessary to cover this liability. A copy of the Council's officer indemnity insurance is available on request from the City Solicitor of the Council.

17. Default and Termination

- 17.1. Subject to Paragraph 16.6 if either party considers the other party to be in default of their obligations under this Agreement (and the matter is not resolved via the complaints procedure under Paragraph 10), they may notify the other party in writing of the way in which it is considered they are in default, and if appropriate the matter shall be considered by the parties at a meeting. The parties shall make a reasonable effort to agree a joint plan of action to remedy the situation.
- 17.2. Subject to Paragraph 16.6 where, despite any action taken in accordance with Paragraph 16.1, a party still considers the other party to be in default, they may give that party notice specifying the default and the action to be taken to rectify it ("Default Notice"). The Default Notice shall state a period of time, being a reasonable period of time, in which the required action is to be taken.
- 17.3. Subject to Paragraph 16.6 if either party is in default of their obligations under this Agreement and fails to comply with a Default Notice the other party may give notice in writing terminating this Agreement ("Termination Notice"). A Termination Notice shall take effect four weeks from its date.
- 17.4. Subject to Paragraph 16.6 termination of this Agreement shall have no effect on the liability of either party to the payment of any sums arising under it, or any rights of remedies of either party already accrued, prior to the date upon which termination takes effect.
- 17.5. Subject to Paragraph 16.6 notwithstanding and without prejudice to the above paragraphs of this clause 16, either the Council or the LEP Company may terminate this Agreement following six (6) weeks of written notice to the other.
- 17.6. No "termination" shall have the effect of entitling the LEP or LEP Company to commission accountable body support (including monitoring and financial and legal supervision) without:

17.6.1. A resolution of the LEP Company board;

17.6.2. The agreement of the section 151 officer, chief executive and monitoring officer of the Council, and the chief executive of the LEP.

18. File Retention, disclosure, and Storage

18.1. The Council will keep its file of papers relating to the services provided for the period set out in its document retention policy, or for any time period specified by Government regarding a specific programme of activity, after which they will be destroyed.

19. Assignment

19.1. Neither party shall assign or seek to assign or sub-contract any of their responsibilities under this Agreement without the prior consent in writing of the other party, such consent not to be unreasonably withheld.

20. Complete Agreement

20.1. This Agreement embodies the complete agreement between the parties in respect of the provision of legal services, and supersedes all other written understandings and agreements with respect to the matters referred to in this Agreement. Each party acknowledges that no other agreement or statement not contained in this Agreement shall be valid and binding on either party.

21. No Waiver

21.1. No failure by a party to insist upon the strict performance of any condition of this Agreement or to exercise any right of remedy upon breach of any provision of it shall constitute waiver of any condition or waiver of any subsequent breach or default in the performance of any condition.

22. Amendments

22.1. To be effective, any amendment to this Agreement shall be recorded in writing and shall be signed by the parties.

23. Severance

23.1. If any part of this Agreement becomes invalid, illegal or unenforceable the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their original intentions.

24. Reasonableness

24.1. Any steps of any kind to be taken by either party in accordance with the terms of this Agreement shall be taken reasonably, in good faith and without unreasonable delay.

25. Interpretation

25.1. This Agreement shall be governed interpreted and enforced according to the laws of England.

- 25.2. The singular shall include the plural and the plural the singular except where the context otherwise requires and any word which refers to or implies any gender shall include any other gender.
- 25.3. References to the Council and the LEP shall include in each case the party's employees and agents.
- 25.4. Day, week and month mean calendar day, calendar week and calendar month respectively.
- 25.5. Specific references to any statute, statutory instrument or other legislation shall be construed as including a reference to any re-enactment, modification, extension or replacement for the time being in force.

Annex 1 Roles and Responsibility

The Council will:

Hold funds and makes payments to delivery bodies, maximising interest bearing opportunities;

Ensure the separable accounting for LEP related funds and complete financial elements of grant returns and claims for funding;

Provide financial statements to the LEP together with a monthly review of the progress to date against approved revenue and capital programmes and produce a summary set of management accounts within a reasonable period to be presented to the Chief Executive of the LEP;

Update the LEP Board and FPPMG at each meeting with a report on progress to date against approved revenue and capital programmes for the current financial year up to the relevant month end;

Ensure that the recommendations, advice and activities of the LEP and its sub-panels are deliverable, are appropriately structured, and comply with statutory obligations, (for example, those under the Equality Act 2010, the Data Protection Act 1998, procurement, state aid and environmental duties etc);

Conduct due diligence in relation to applicants and relevant third-parties;

Monitor funds to ensure that they are used appropriately;

Monitor the compliance of LEP business in accordance with the relevant assurance framework, maintaining an official record of Solent Growth Forum proceedings and documents;

Procure the independent audit of LEP related funds and activity and ensuring, with the LEP, an appropriate response;

In relation to schemes for which the Council is accountable body, be responsible for the supervising the integrity of decision-making, and for taking and defending legal proceedings;

Provide a comprehensive accountancy service to the LEP including the filing of accounts with companies house.

Undertake an annual audit programme in relation to LEP services.

Provide all HR and recruitment services for the LEP.

Provide and maintain LEP IT Infrastructure.

Respond to all Freedom of Information Requests on behalf of the Solent LEP.

Undertake independent audits of specific matters in line with the LEPs Complaints policy in relation to any concerns raised regarding potentially illegal, unethical or immoral conduct.

The LEP will:

Formulate strategy, and policy, to further the LEP Company objectives

Manage the oversight and delivery of projects

Review and report to the LEP Board, FFPMG or relevant Delivery Panel in line with the Scheme of Delegation included within the Solent LEP Assurance Framework, on funding applications

Promote and manage project funding applications

Maintain and manage a risk register to cover all areas of LEP activity on a regular basis

Provide all information required by the Council in Relation to management of Fol, Complaint and Audit processes

Form of Agreement

The LEP and the Council shall comply with their respective obligations as set out in this Protocol and Service Support Agreement.

IN WITNESS of which this Agreement has been duly executed by the parties.

Signed for and on behalf of the LEP by:-

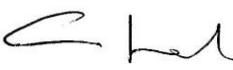


Signed  (Authorised Signatory)

Printed name: Anne-Marie Mountifield

Date 21st February 2017

Signed for and on behalf of the Council by:-

Signed  (Authorised Signatory)

Printed Name: Chris Ward

Date 21st February 2017