

**To:**

Councillor Alex Collis, Executive Councillor for Open Spaces, Sustainable Food and Community Well-being (Substitute for Cllr Rosy Moore, Executive Councillor for Climate Change, Environment and City Centre)

**Report by:**

Jane Wilson, Director of Neighbourhoods and Communities  
Tel: (01223) 457860 Email: [jane.wilson@cambridge.gov.uk](mailto:jane.wilson@cambridge.gov.uk)

**Subject:**

**Visit Cambridge Destination Management Organisation Legal Incorporation**

**1. Executive summary**

This paper sets out the work being undertaken by the Council and its partners, Cambridge BID, Fitzwilliam Museum Enterprises (trading arm of the University of Cambridge) and King's College, to establish a new destination management organisation (DMO), following the closure and liquidation of the former DMO, Visit Cambridge and Beyond, in July 2020.

The four partners have established an DMO 'working group' and brand known as 'Visit Cambridge', using the former VCB branding and other intangible assets, which they successfully acquired last autumn. The working group has identified the need for the new DMO to be legally incorporated to enable it to be independent and effectively fulfil its organisational

development and management needs, including business banking, entering into legal agreements/ contracts and procuring goods and services to support its DMO function and the recovery and development of a sustainable visitor economy.

This paper sets out the proposed business case for the new DMO and its proposed incorporation as a Community Interest Company (CIC), informed by learning from the former VCB business model performance and the impact of the COVID 19 pandemic on the city's visitor economy. The decision to pursue CIC incorporation has been informed by independent legal advice sought by both the Visit Cambridge working group and, separately, by the Council.

Subject to the Council supporting the incorporation of Visit Cambridge as a CIC, the Visit Cambridge working group is inviting the Council to nominate a representative to sit as a company director. Based on legal advice and the predominantly operational nature of the DMO business, this paper is recommending that the Council nominates an Officer, rather than elected Member, to sit as a Director on the CIC Board.

## **2. Recommendations**

**The Executive Councillor for Open Spaces, Sustainable Food and Community Well-being is recommended:**

**a) To approve the establishment of Visit Cambridge as a Community Interest Company (CIC)**

**b) To delegate authority to the Director of Neighbourhoods and Communities to complete all practical, financial and legal matters to enable Visit Cambridge CIC to be**

**established including approval of the final form of all necessary legal documentation.**

**c) To approve the City Council's officer representation on the Board of Visit Cambridge CIC, with the officer nominee decision to be delegated to the Director of Neighbourhoods and Communities**

### **3. Background**

- 3.1 In January 2016, the Council run tourism service, including staff, office and Visitor Information Centre (VIC), transferred under a formal business transfer agreement to the newly established independent legal entity, Visit Cambridge and Beyond (VCB). Under the terms of the agreement, the Council staff transferred to VCB's employment on their existing Council contractual terms and conditions in accordance with TUPE (Transfer of Undertakings (Protection of Employment) Regulations). Based on the approved business case for the externalisation of the tourism service to VCB, the Council committed to support VCB with an initial set up loan and three year tapering annual grant support package.
- 3.2 Despite the approved business plan and associated Council support package, including approved Guildhall office and VIC rental holidays, VCB was unable to generate sufficient income from traded activities achieve financial sustainability, posting annual account losses in each of its first three years.
- 3.3 In mid-2019, VCB advised its members that it had financial difficulties, and, in response, the Council convened a high-level roundtable with tourism partners, who agreed that clearer direction was required for tourism development and agreed to jointly commission work on a Destination Management Plan (DMP), to be funded by external partners, which would support the re-design of VCB, and any future

agreements on funding or other relationships with stakeholders.

- 3.4 Despite starting work on the DMP and service re-design, in January 2020, an already financially vulnerable VCB business was hit by the dramatic loss of the international visitor market and associated income, arising from the global COVID-19 pandemic; and, from March 2020, subsequent national lock down. In response, VCB undertook a strategic options review, which culminated in the VCB Board approving the strategic restructure of the service to a core tourism business development function (1 FTE), but this quickly proved unsustainable; and in June 2020, the VCB Board approved the formal closure of the VCB business and company liquidation.
- 3.5 In July 2020, the Council convened a high-level meeting with the University of Cambridge, Cambridge BID and other strategic tourism stakeholder interests to discuss the implications of VCB's closure and associated immediate, short-term tourism development needs. The outcome of the discussion was an expression of interest from the University and BID to work with the Council to acquire the VCB intangible assets and establish a Destination Management Organisation (DMO) to support the recovery of the city's tourism market.
- 3.6 In September 2020, the Council, in partnership with Cambridge BID, Fitzwilliam Museum Enterprises Ltd (FME) (the trading arm of the University of Cambridge) and King's College, successfully acquired the liquidated intangible assets of VCB, including its web domain name and brand identity, at auction. The full cost of the acquisition was £42K, with the Council and Cambridge BID each investing £14K; and FME and King's College, each investing £7K. The aim of the acquisition was to protect the VCB brand and associated intangible DMO assets for the benefit of the community.

- 3.7 The Council and its asset owning partners have since been operating, as a 'working group' to establish a new DMO to support the recovery and development of the city's tourism sector, and to use any income generated to reinvest in supporting sustainable tourism development. The new DMO will have a Cambridge city focus and, in recognition of this and of the acquired VCB brand assets, be officially named 'Visit Cambridge'.
- 3.8 The Visit Cambridge operation is currently being overseen as an unincorporated organisation under a Memorandum of Understanding (MoU) (appendix A) between the four asset owning partners – Cambridge City Council, Cambridge BID, FME and King's College. These four partners are currently each represented on the Visit Cambridge working group by a single senior officer representative. The chairmanship and secretarial functions of the working group are currently fulfilled by the Council.

### **Business case for DMO and incorporation**

- 3.9 The COVID 19 pandemic and associated international and national lock downs/ travel restrictions has had a significant impact on the Cambridge economy and, in particular, the local tourism sector, including visitor attractions and hospitality and accommodation providers.
- 3.10 Despite summer 2021 city centre footfall levels returning to c20% below pre-COVID 2019 levels for the same period, the international tourism market has yet to return and is not expected to do so, to any degree, until summer 2022.
- 3.11 As set out in the MoU in appendix A, Visit Cambridge's overarching aim is to fulfil the role of a DMO for Cambridge city. Based on its DMO function, given the impact and

opportunity presented by the COVID pandemic to 'build back better', Visit Cambridge's short-term focus is on the following business objectives:

- To support the recovery and sustainable development of the city's tourism sector
- To market and promote the city and represent the city's tourism sector locally, regionally, nationally and international

3.12 Taking the learning from VCB and its associated unsustainable business model, Visit Cambridge's approach is to operate as a lean and agile organisation with minimal overheads, ie. office, staff, etc. Rather than directly employing staff, Visit Cambridge will use the available capacity of its constituent partners, especially the Council, Cambridge BID and FME, and its acquired VCB intangible assets, to fulfil its DMO aim and objectives and develop and deliver associated tourism infrastructure projects and associated marketing activity.

3.13 Using the acquired VCB intangible assets, Visit Cambridge has already developed a corporate logo and associated brand collateral; and built a 'static' interim visitor website, while it develops a fully digital dynamic web platform and app, with bookable product functionality, using funding secured through the Combined Authority. Rather than investing in the development and running of a 'bricks and mortar' VIC, Visit Cambridge is working with the Council to procure a mobile unit with 'pop up' functionality.

3.14 Visit Cambridge aims to use its digital and mobile assets to generate a modest sustainable revenue stream that will be used to manage an equally modest overhead costs

associated with running the DMO. Any surplus generated from Visit Cambridge's business operations will be invested back in the DMO and projects and activities to support sustainable tourism development in the city. In addition, Visit Cambridge will target 'soft' funding sources, including public grants and donations locally and, through its DMO status, Visit Britain and Visit England nationally, to fund the delivery of sustainable tourism development projects and activities. There is currently no plan for the DMO to directly employ staff; and instead, will use available capacity of its constituent partners, supplemented by external consultants, to deliver discrete externally funded project activity as required. Any future decision to invest in directly employed staff will be informed by a detailed business plan, covering business need and benefit and ability to cover associated revenue costs.

3.15 As well as delivering operational project and marketing activity, Visit Cambridge is committed to supporting strategic DMO activities, subject to available capacity, including acting as a 'voice' for the local tourism sector, supporting sector networking/ partnership building, advocacy and policy development. Visit Cambridge is also committed to work with strategic partners, including the Council, South Cambridgeshire District Council, Cambridgeshire and Peterborough Combined Authority, Visit East of England, Visit England and Visit Britain, to develop policies and plans which support the recovery and development of a sustainable visitor economy.

3.16 As Visit Cambridge is currently operating as an unincorporated organisation, it is fully dependent on its constituent partner organisations (the Council, Cambridge BID, FME and King's College) to be willing/ able to take on the liability of its organisational management needs,

including business banking, entering into legal agreements/ contracts and procuring goods and services. This dependency has been identified by the Visit Cambridge working group as a strategic risk and weakness and major constraint to Visit Cambridge being able to fulfil its DMO objectives and activities, efficiently and effectively, to support the recovery and development of the city's economic recovery.

- 3.17 To address this issue, the working group has resolved to pursue incorporation and appointed Hewitsons to provide independent legal advice on the following potential legal entity options: Company Limited by Share/ Guarantee; Community Interest Company (CIC) and Community Interest Organisation (CIO). Based on Hewitsons legal advice and Visit Cambridge's DMO community interest objectives and activities, the working group has resolved to pursue incorporation of Visit Cambridge as a CIC. Incorporation will enable Visit Cambridge to be legally independent and effectively fulfil its DMO function to support the short, medium and long-term recovery and sustainable development of the local visitor economy.
- 3.18 Each Visit Cambridge working group constituent member has committed to take this resolution through their respective corporate decision-making processes. To date, Cambridge BID, FME and King's College have each formally considered and confirmed their approval to establish Visit Cambridge as a CIC and to nominate directors to sit on its board.
- 3.19 To inform its own corporate decision making on the incorporation of Visit Cambridge as a CIC and representation on its board, the Council has sought its own independent legal review of Hewitsons options assessment

and associated board representation advice. This review work was undertaken by Bevan Brittan.

3.20 In summary, the legal views of Hewitsons and Bevan Brittan are consistent, with both concluding that the best legal entity option for Visit Cambridge is to be incorporated as a Company Limited by Guarantee or CIC, depending on the Visit Cambridge working group's evaluation of respective burdens and benefits of each. In reaching the decision to pursue CIC incorporation, the Visit Cambridge working group identified the greater community transparency, including need for community involvement in decision making, and use of company 'profits' for the benefit of the city community, to be the principal determining factors.

#### **a) Community Interest Company**

3.21 A CIC is defined by Hewitsons as: "*A limited company, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage.*" CICs are registered with Companies House and regulated by the CIC Regulator.

3.22 To be accepted as a CIC, Visit Cambridge must satisfy the CIC 'community interest' test, by providing a formal statement declaring that its activities will be carried out for the benefit of the community and explaining how this will be achieved. The community interest statement must satisfy the regulator that a reasonable person would consider the CIC's activities will be carried on for the benefit of the community. The CIC must provide a report each year detailing how its activities have benefited the community for which it was set up and continue to meet the test throughout its life. Based on both Hewitsons and Bevan Brittan's assessments of the

CIC option, Visit Cambridge's activities are considered to satisfy the CIC community interest test.

- 3.23 Under the CIC option, company directors have the same decision-making role as in any limited company, but they also owe an obligation to the wider community that the CIC serves. This means that they should involve community stakeholders in activities or decisions where relevant. This added requirement is seen as a positive, given Visit Cambridge's city DMO function and the need for transparency in decision making.
- 3.24 As a CIC is a separate legal entity, it is able to enter into contracts, hold property and employ staff itself, rather than in the names of the individual directors or CIC members. Consequently, it is the CIC, rather than the directors, that would be primarily liable for any liabilities arising from such arrangements, except in certain cases, for example fraud, deliberate misconduct or where personal guarantees have been given. The liability of CIC members (in their capacity as owners of the CIC) is limited to the amount they have invested in the incorporated entity, which, for the Council, to date, is its £14K stake in the intangible assets of VCB.
- 3.25 The CIC regulations specify that a CIC cannot transfer its assets (including any profits or other surpluses generated by its activities) for less than market value, unless transferring them to another CIC or charity (that is either specified in its or articles or consented to by the Regulator); or if the transfer is for the benefit of the community it was set up to serve (known as the 'asset lock'). This asset lock is set out in the articles of association of the CIC. CICs must consider the asset lock when entering into commercial relationships and when deciding remuneration for any employees and directors. The asset lock protects the assets of the CIC and

ensures that the assets and profits of the CIC will be devoted to the benefit of the community and not for rewarding CIC owners and directors.

## **b) Board representation**

- 3.26 The Council was previously represented on the former VCB Board by the Executive Councillor for Climate Change, Environment and City Centre, who was nominated by the Council to sit as a company director on the VCB Board. To support the Council's elected representative and corporate continuity, the Council's Head of Environmental Services and senior officer lead for tourism, also participated in VCB Board meetings in a non-voting/ advisory only capacity.
- 3.27 Given VCB's liquidation, the Executive Councillor for Climate Change, Environment and City Centre and, though less likely, the Head of Environmental Services are both caught by section 216 of the Insolvency Act 1986. Based on Hewitsons and Bevan Brittans legal advice, section 216 of the Act catches any person who was a director or shadow director in the 12 months prior to VCB going into liquidation, given the name of the new company (Visit Cambridge) is so similar to the name of the company (VCB) which went into insolvent liquidation.
- 3.28 Based on the legal advice, if either the current Executive Councillor for Climate Change, Environment and City Centre or current Head of Environmental Services (if that officer were deemed to be a shadow director) were to stand as directors of Visit Cambridge or take part in the promotion, formation or management of the new company, they would risk committing a criminal offence under the Insolvency Act, which could result in imprisonment, penalties, disqualification and/or company liabilities, if found guilty. As a result, neither

will participate in the formal Committee decision making process relating to this paper and its recommendations.

3.29 To address this risk and enable either to sit as directors of the recommended Visit Cambridge CIC, both Hewitsons and Bevan Brittan recommend making an application to the court for leave to carry on the Visit Cambridge business in the way set out in the MoU (appendix A), including the appointment of former VCB directors/ shadow directors on to the CIC Board. Bevan Brittan has advised that in general terms the recommended court application process should be relatively low cost/ risk procedure; and could take 3-4 months to complete. Should the application to court not be pursued or fail, then the current Executive Councillor for Climate Change, Environment and City Centre and current Head of Environmental Services would not be able to stand as Visit Cambridge Directors.

3.30 Subject to the Council approving the incorporation of Visit Cambridge, the Council has the option, legally, of either nominating an elected Council Member or Officer to sit on the Visit Cambridge Board as a Company Director. Based on legal advice obtained, a Member or Officer appointed to act as a Director would be bound by all of the duties imposed on Directors. This would include the following legal duties (ref. Companies Act 2006):

- a) Act within powers ([section 171](#)) (see [Consequences of exceeding authority](#)).
- b) Promote the success of the company ([section 172](#)).
- c) Exercise independent judgement ([section 173](#)) (see [Duty to act for the company and risk of local authority becoming a shadow director](#)).
- d) Exercise reasonable skill, care and diligence ([section 174](#)) (see [Requirement for appropriate level of skill and](#)

[expertise](#)).

- e) Avoid conflicts of interest ([section 175](#)).
- f) Not accept benefits from third parties ([section 176](#)).
- g) Declare interest in a proposed transaction or arrangement with the company ([section 177](#)).

3.31 Given the personal legal risk and Visit Cambridge's predominantly operational management focus, ie. tourism project development and marketing activity, a Council Officer nominee to sit on the Visit Cambridge board is considered the preferred option.

3.32 That said, to address the CIC legal entity requirement to involve community stakeholders in organisational activities or decisions where relevant and to ensure the associated CIC 'community interest' test is met, the Visit Cambridge working group has committed to establish a community stakeholder advisory group. Legally, this group would not be able to have any formal decision-making powers in relation to Visit Cambridge but would instead be able to support the Board with any required strategy or policy development advice. As a key community stakeholder, the Council would be invited to be represented on the advisory group, both by a nominated elected Member and Officer(s).

## **4. Implications**

### **a) Financial implications**

The Council will use its available tourism budget, previously used to support VCB, to support the operation and activities of Visit Cambridge and other related tourism development needs and opportunities.

### **b) Staffing implications**

None

**c) Equality and poverty implications**

None

**d) Net Zero Carbon, Climate Change and Environment implications**

Given the sustainable tourism development principles which underpin Visit Cambridge's DMO function, as set out in its MoU (appendix A), the incorporated CIC will promote net zero carbon and associated climate change mitigation and adaptation principles in its project delivery and advocacy work. It will also work with partners to inform and shape policy which supports sustainable tourism development in the city. As such, using the Council Climate Change Rating assessment tool, Visit Cambridge will deliver an overall Net Medium Positive Climate Change Rating.

**e) Procurement implications**

None

**f) Community Safety implications**

None

**g) Consultation and communication considerations**

None

**5. Background papers**

None

## **6. Appendices**

Appendix A: Visit Cambridge DMO Memorandum of Understanding

## **7. Inspection of papers**

To inspect any named background papers or if you have a query on the report please contact:

Jane Wilson, Director of Neighbourhoods and Communities  
Tel: 01223 457860      Email: [jane.wilson@cambridge.gov.uk](mailto:jane.wilson@cambridge.gov.uk)