

**AGENDA MANAGEMENT SHEET**

<b>Name of Committee</b>	<b>Leader</b>
<b>Date of Committee</b>	<b>25 June 2010</b>
<b>Report Title</b>	<b>Appointments and Delegations Required to Proceed with the Inter Authority Agreement for the W2R Energy from Waste Programme led by Staffordshire County Council</b>
<b>Summary</b>	This report outlines the various appointments and delegations required to proceed with the Inter Authority Agreement, which the Council is required to enter into in order to proceed to the next stage of PFI procurement process, i.e. commercial and financial close. Approval to enter into the Inter Authority Agreement was given by Cabinet on 27 May 2010.
<b>For further information please contact</b>	David Whitehouse Project Manager Tel. 01926 412961 Davidwhitehouse@warwickshire.gov.uk
<b>Would the recommended decision be contrary to the Budget and Policy Framework?</b>	Yes/No
<b>Background Papers</b>	Inter Authority Agreement (IAA) Schedule 2 and Schedule 3.

**CONSULTATION ALREADY UNDERTAKEN:-**

*Details to be specified*

Other Committees

- Report to Cabinet of 31 July 2008 entitled "Partnership Working with Staffordshire County Council Project W2R – Affordability and Procurement"
- Report to Cabinet of 30 July 2009 entitled "Review of Affordability Position of W2R Energy from Waste Programme led by Staffordshire County Council"
- Report to Cabinet of 28 January 2010 entitled "Approval to proceed with an Inter Authority Agreement for the W2R Energy from Waste Programme led by Staffordshire County Council"
- Report to Cabinet of 27 May 2010 entitled "W2R Energy from Waste PFI Project – project affordability, and arrangements for contract closure and execution".

Local Member(s)  
(With brief comments, if appropriate)

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Other Elected Members

- Councillor M Doody } for information
- Councillor R Sweet }
- Councillor J Whitehouse }

Cabinet Member  
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)

- Councillor A Cockburn
- Councillor A Farnell

Chief Executive

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Legal

- S Burrell } comments incorporated
- M Meeraus }
- J Pollard }

Finance

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Other Chief Officers

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District Councils

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Health Authority

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Police

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Other Bodies/Individuals

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**FINAL DECISION**

**YES/NO** (If 'No' complete Suggested Next Steps)

**SUGGESTED NEXT STEPS :**

*Details to be specified*

- Further consideration by this Committee  .....
- To Council  .....
- To Cabinet  .....
- To an O & S Committee  .....
- To an Area Committee  .....
- Further Consultation  .....

**Leader – 25 June 2010**

**Appointments and Delegations Required to Proceed with the  
Inter Authority Agreement for the W2R Energy from Waste  
Programme led by Staffordshire County Council**

**Report of the Strategic Director for  
Environment and Economy**

**Recommendation**

That the Leader: -

1. Delegates to Staffordshire County Council the power to appoint an Authority Representative to take the decisions detailed in Schedule 3 of the Inter Authority Agreement on behalf of Warwickshire County Council.
2. Appoints the Lead Portfolio Holder Environment and Economy as Warwickshire's Elected Member on the Contract Management Board and from time to time any other Lead/Support Portfolio Holder to act as his deputy in the event the Lead Portfolio Holder Environment and Economy is unavailable.
3. Appoints the Strategic Director of Environment & Economy or his nominee to act as Warwickshire's Officer Representative on the Contract Management Board and delegates to the Strategic Director Environment or his nominee to appoint an Officer to act as his deputy in the event the Strategic Director of Environment and Economy or his nominee is unavailable.
4. Delegates to the Lead Portfolio Holder Environment and Economy and any other Lead/Support Portfolio Holder who may from time to time act as his deputy, Strategic Director of Environment & Economy and Officers appointed to the Contract Management Board the powers to take the decisions detailed in Schedule 3 of the Inter Authority Agreement on behalf of Warwickshire.

**1. Introduction**

- 1.1 On 31 July 2009, Cabinet noted the updated affordability position and reaffirmed Warwickshire County Council's commitment to the W2R Energy from Waste Programme (Project W2R) led by Staffordshire County Council (SCC).
- 1.2 A 28 January 2010 report to Cabinet outlines the Inter Authority Agreement (IAA) between SCC and its partners: Warwickshire County Council, Sandwell Metropolitan Borough Council and Walsall Metropolitan Borough Council to be agreed in order to proceed to the next stage of the PFI procurement process i.e. final affordability approval (for Full Business Case).

- 1.3 On 27 May 2010, Cabinet approved the final affordability of the Project W2R Full Business Case and Warwickshire County Council's entry into the Inter Authority Agreement (IAA).
- 1.4 Finalisation and signing of the IAA is now imminent, hence this report to the Leader, referred to in both the 28 January and 27 May 2010 as a future requirement.

## **2. The Inter Authority Agreement**

- 2.1 The IAA is based on a Defra model and takes into account the constitutional requirements of all partner authorities. It is a legally binding agreement, in which the partners' cost and risk allocations, general liability and contract management arrangements are set out.
- 2.2 The IAA is drafted to mirror the Project Agreement, to be entered into by SCC with the contractor. It requires all partners to adhere to stated key principles and objectives, such as acting in the best interests of the project, knowledge sharing, co-operation and mutual assistance. The IAA will remain in force until the expiry or earlier termination of the Project Agreement.
- 2.3 The IAA provides for certainty in relation to decision-making and specifies who may take what decisions. For example, certain decisions are reserved to the partner authorities to take, whilst others are reserved to those appointed to the Contract Management Board established by the IAA, or to SCC or to the Authority Representative, who is to be appointed by SCC to liaise with the contractor on behalf of the partner authorities in regards to general contract management and monitoring.
- 2.4 As indicated above, the IAA establishes a Contract Management Board (CMB) with the purpose of overseeing and implementing the delivery of Project W2R. Schedule 2 of the IAA sets out the CMB's constitution, detailing its terms of references and functions.
- 2.5 Schedule 2 of the IAA provides that each partner authority shall appoint one Officer and one Elected Member to represent it on the CMB. Schedule 2 further provides that the Elected Member to be appointed should be the relevant portfolio holder, in this case Portfolio Holder Environment. The term of appointment is the term of office. Each partner authority is further entitled to appoint a Deputy to attend CMB meetings in the absence of his her corresponding principal. Schedule 2 requires the deputy Elected Member to be another Portfolio Holder.
- 2.6 This report does not explain how costs and risks are allocated between the partners pursuant to the IAA as these areas are explained in more detail in the reports to Cabinet of 28 January and 27 May 2010.
- 2.7 Staffordshire County Council is hoping to sign and seal the Project Agreement with the Project W2R preferred bidder, Veolia on 21 July. The IAA will need to be signed simultaneously or on the same date.

### **3. Required Appointments Approvals Delegations**

- 3.1 The following appointments approvals and delegations are required in relation to the IAA:
- 3.2 Delegation to Staffordshire County Council the power to appoint an Authority Representative to take the decisions detailed in Schedule 3 of the Inter Authority Agreement on behalf of Warwickshire (see Schedule 3 attached).
- 3.3 Appointment of the Lead Portfolio Holder Environment and Economy as Warwickshire's Elected Member on the Contract Management Board and from time to time any other Lead/Support Portfolio Holder to act as his deputy in the event the Lead Portfolio Holder Environment and Economy is unavailable.
- 3.4 Appointment of the Strategic Director of Environment and Economy or his nominee to act as Warwickshire's Officer Representative on the Contract Management Board and delegation to the Strategic Director Environment and Economy or his nominee the power to appoint an Officer to act as his deputy in the event the Strategic Director of Environment and Economy or his nominee is unavailable.
- 3.5 Delegates to the Lead Portfolio Holder Environment and Economy and any other Lead/Support Portfolio Holder who may from time to time act as his deputy, Strategic Director of Environment and Economy and Officers appointed to the Contract Management Board the powers to take the decisions detailed in Schedule 3 of the Inter Authority Agreement on behalf of Warwickshire.
- 3.6 The Contract Management Board can take decisions in relation to the following:-
  - (i) Issue of an Authority Change Notice (under Project Agreement).
  - (ii) Approval of a Contractor Change Notice (under Project Agreement).
  - (iii) Agreeing the consequences of a Qualifying Change in Law.
  - (iv) Any waiver of any breach by the Contractor of the Project Agreement.

### **4. Conclusions**

- 4.1 As outlined in the Cabinet report of 30 July 2009, Defra and the Treasury's Projects Review Group (PRG) require partner authorities to demonstrate their commitment to the Project W2R operationally and financially by agreeing an IAA. All partner authorities have sought and obtained approval by their respective Cabinets to enter into the IAA. Given Warwickshire's constitutional arrangements, in addition to the reports to Cabinet of 28 January and 27 May of this year, we have dealt with the appointments and delegations required from the Leader in this report.

PAUL GALLAND  
Strategic Director for Environment and Economy  
Shire Hall  
Warwick

17 June 2010

# PROJECT W2R – INTER AUTHORITY AGREEMENT

## SCHEDULE 3

### REQUIRED APPROVALS

Nature of action / decision required	Category (as referred to in clause Error! Reference source not found.)
Appointment of the Authority's Representative	Staffordshire Matter
General contract management, assessment and implementation of KPIs, daily contract monitoring	Authority's Representative
Review and commenting on/approval of Submitted Items pursuant to the Review Procedure	Staffordshire Matter
Agreeing extensions of time, relief from obligations and/or compensation as a result of Compensation/Relief Events	<p>Staffordshire Matter, save that:</p> <p>(a) Staffordshire shall notify the Partners as soon as reasonably practicable upon becoming aware of any such matter; and</p> <p>(b) where one or more of the Partners considers that the matter in question should be referred to either the Contract Management Board or the Authorities, that Partner or those Partners shall notify the remaining Authorities within 10 Business Days of receipt of notification from Staffordshire and the matter shall be referred to the Contract Management Board or the Authorities (as appropriate) and the decision shall be taken as a Contract Management Board Matter or a Matter Reserved to the Authorities (as appropriate);</p>
Issue of an Authority Change Notice	Contract Management Board Matter

Nature of action / decision required	Category (as referred to in clause Error! Reference source not found.)
Approval of a Contractor Change Notice	Contract Management Board Matter
Agreeing the consequences of a Qualifying Change in Law	Contract Management Board Matter
Approval of insurers	Staffordshire Matter
Approval of any Reinstatement Plan	Staffordshire Matter
Uninsurability	Staffordshire Matter
Termination for Contractor Default pursuant to <b>clause 62</b> of the Project Agreement	Matter reserved to the Authorities
Termination for Force Majeure pursuant to <b>clause 64</b> of the Project Agreement	Matter reserved to the Authorities
Termination for Corrupt Gifts and Fraud pursuant to <b>clause 69</b> of the Project Agreement	Matter reserved to the Authorities
Voluntary Termination pursuant to <b>clause 70</b> of the Project Agreement	Matter reserved to the Authorities
Termination for breach of the Refinancing Provisions pursuant to <b>clause 72</b> of the Project Agreement	Matter reserved to the Authorities
Step-in pursuant to <b>clause 33</b> of the Project Agreement	Staffordshire Matter
Consent to assignment of the Project Agreement by the Contractor	Staffordshire Matter save that:  Staffordshire shall notify the Partners as soon as reasonably practicable upon becoming aware of any such matter.
Consent to sub-contract the Project Agreement by the Contractor	Staffordshire Matter save that:  Staffordshire shall notify the Partners as soon as reasonably practicable upon becoming aware of any such matter.



<b>Nature of action / decision required</b>	<b>Category (as referred to in clause Error! Reference source not found.)</b>
All actions and decisions relating to the Dispute Resolution Procedure under the Project Agreement	Staffordshire Matter
Any waiver of any breach by the Contractor of the Project Agreement	Contract Management Board Matter