

Warwickshire Waste Partnership – 9 December 2008

Joint Committee - Progress Update

Report of the Strategic Director of Performance and Development

Summary

The report provides an update on the Heads of Terms for the Waste Joint Committee in light of several developments in the last two months.

Recommendation

That the Partnership recommends the proposals in the revised Heads of Terms for adoption by its constituent authorities with effect from 1st April 2009.

1. Background

- 1.1 The detailed terms of a Waste Joint Committee have been under development for a year, most recently with input from legal officers representing the partner authorities. Their comments were incorporated into the draft Heads of Terms but it has been necessary to make other changes in light of recent developments.
- 1.2 The main concerns of your legal officers were to avoid the possibility of partner authorities being exposed to contractual or financial liabilities without their consent. At the same time, the County Council could not agree to carry all risks as the lead authority. This presented some drafting challenges.
- 1.3 Some of the recent developments flow from the worsening financial climate. Funding is not available at the present time to employ a Partnership Manager and it is not possible to make any specific commitment as to the availability of waste minimisation project funding for the next financial year. In consequence, the budget for next financial year comprises only a Core Budget of some £7000.
- 1.4 This means that in its first year of operation the Joint Committee would concentrate on developing its own procedures and working arrangements and agreeing or being consulted upon waste management policies and projects. Its most important task will be to review the Joint Municipal Waste Management Strategy.

- 1.5 This remains a meaningful and significant role and will provide a platform for the development of closer joint working. The limits on funding means that any joint projects will have to be negotiated consensually on a case by case basis. This has the advantage of allowing trust and know how to develop through practical experience. If you wish to enhance the resources and responsibilities of the Joint Committee at some later date, general rules about awarding and managing contracts and budgets can be agreed in light of that case by case experience and know how.
- 1.6 The other recent development is the proposal of a Memorandum of Understanding which is considered elsewhere on your agenda. The Partnership Agreement and Constitution will need to sit alongside this and appropriate cross-references have been introduced to make the Joint Committee the vehicle for discussing, monitoring, implementing and reviewing the Memorandum.

2. The Main Changes

- 2.1 The changes are highlighted in the copy of the Heads of Terms appended to this report. Although these Heads of Terms incorporate changes in response to comments from your legal officers the drafting has not at the time of writing this report been agreed by your legal officers.
- 2.2 A definition section has been introduced at the beginning. Although it is a lengthy insert, it is drafting detail and does not alter the substance of anything in the Heads of Terms.
- 2.3 Several paragraphs have been added to section 4 of the Partnership Agreement in order that the powers of the Joint Committee and the safeguards placed upon those powers can be set out clearly in one place. These powers and safeguards were laced into the original Heads of Terms or implicit in the general law but in light of various comments it was thought that it would be better to spell them out in plain terms. Section 4 promises partner authorities that they will not be committed to contractual or financial obligations without their express consent and that they will have an effective veto over Part B Decisions. Part B Decisions are those decisions which you wanted to be made only if they were unanimously supported. The veto takes the form of a block on implementing any non-unanimous decisions.
- 2.4 This veto is mirrored (as double indemnity) by provisions in the Constitution which let any partner authority withdraw authority for any attempt to make a non-unanimous Part B decision. Paragraphs 2.3 and 2.4 of the Constitution overcome the difficulty presented by the legal rule that requires all Joint Committee decisions to be by a simple majority. This is achieved by giving any member of the Joint Committee the right to have a decision deferred if the Committee seems to be moving towards a non-unanimous decision. This is coupled with a power for any partner authority to withdraw its delegation to the Joint Committee so far as it relates to the proposed decision. This provides a mechanism whereby each authority can ensure that no non-unanimous decision is imposed upon it. It is a little ungainly but that does not matter since the process would almost certainly never have to be followed. The fact that it is

there is sufficient to ensure that the Joint Committee does not attempt to depart from the intentions of its creators.

- 2.5 The unanimity principle is thus given effect (a) in the Constitution by giving partner authorities the ability to withdraw power from the Joint Committee if it proposes to breach the principle and (b) in the Partnership Agreement by blocking implementation of a non-unanimous decision. The unanimity principle does not apply to all decisions but only those which you considered most sensitive.
- 2.6 Section 4 also confirms that the Joint Committee cannot impose waste collection arrangements on a partner authority. This was never amongst the powers of the Joint Committee but it was thought that it would be helpful to set it out as a positive statement.
- 2.7 The Partnership Agreement no longer tries to lay down general rules for contracts and how liabilities (e.g. for breaches or cost overruns) will be distributed. If two or more partner authorities want to work together on a project, and this involves contractual commitments, arrangements will be devised that suit that contract and those partners. Paragraph 5.1.19 adds the common-sense requirement that contracts should contain clauses which allow them to be transferred if the lead partner changes and should contain an exit route if the partnership comes to an end. The rules and guidelines about partnership working and accountability in effect in partner authorities, which may contain similar provisions, will also apply in the usual way.
- 2.8 A brief Core Budget and Business Plan for 2009-10 are appended at the end of the Heads of Terms. The most significant item in the Business Plan is a review of the Municipal Joint Waste Management Strategy. Because the Strategy is part of the Warwickshire Waste Strategy Framework, altering or replacing it is a responsibility delegated to the Joint Committee in Part B of Annex 2. This means that the Joint Committee can take the final decision on a new Strategy without referring to the partner authorities for formal approval provided that the decision to do so is unanimous.
- 2.9 The appointment of a Partnership Manager is no longer a commitment but merely a possibility to be considered as part of the Business Plan.
- 2.10 Responsibilities in relation to the Memorandum of Understanding have been added to the Partnership Objectives in Annex 1 and paragraph 4.9 of the Partnership Agreement explains that the Memorandum wins if there is a conflict between the two.
- 2.11 Paragraphs 4.10, 5.1.3 and 5.1.18 of the Partnership Agreement confirm that County Council officers will advise on propriety and alert monitoring officers and chief finance officers in the other partner authorities if there is something they need to investigate. However, monitoring officer and chief finance officer responsibilities will rest with the existing officers in the partner authorities.
- 2.12 The Partnership Agreement already allowed for the possibility that a district or borough might undertake one but not all of the general functions of the lead

partner, e.g. all finance work. A new paragraph 5.10 in the Partnership Agreement also makes it clear that one of the districts or boroughs might be chosen to act as the lead partner in respect of any particular project.

- 2.13 Paragraph 21.2 of the Partnership Agreement adds the possibility that the Joint Committee may require a partner authority to resign if it does not prove possible to resolve a fundamental dispute by other means.
- 2.14 Paragraph 24.15 adds a (perhaps obvious) requirement that the powers of the Joint Committee should not be increased unless the Partnership Agreement and Constitution have been reviewed. For example, if powers of veto are removed or funding commitments are increased, partner authorities may wish to reconsider voting arrangements.
- 2.15 A requirement has been added the Constitution that draft reports should be circulated to each partner authority for comment at least five working days before they are due to be published, to allow time for internal consultation.
- 2.16 A suggestion was made that the Joint Committee should meet at different venues around the county. This would add to the administrative burdens of the County Council as lead partner. However your views are sought.
- 2.17 Paragraph 8.1 of the Constitution allows the Joint Committee to delegate its functions not only to a sub-committee (as before) but also to an officer of any partner authority. However, Part B Decisions are excluded from the power to delegate in order to protect the principle of unanimity.
- 2.18 The list of statutory powers upon which the Joint Committee can draw in order to carry out its responsibilities in Annex 3 has been substantially edited to concentrate only on those which are most likely to be used in practice. This list is not comprehensive.

3. The Responsibilities of the Joint Committee

- 3.1 Annex 2 to the Partnership Agreement and Constitution list the types of actions and decisions which are delegated to the Joint Committee, dividing them into those requiring unanimity and those which can be settled by a simple majority. You may want to take the opportunity to review this Annex to ensure that it still reflects your intentions.
- 3.2 Your attention is drawn to one apparent anomaly, which is that proposing a framework contract requires unanimity but awarding one does not. A framework contract is one that partner authorities can take advantage of if they wish (e.g. standard terms for buying recycling boxes) but are not obliged to use.
- 3.3 Generally, you may wish to look at what is allowed in relation to contracts given the safeguard that no partner authority can be committed to a contract without its consent.

Enquiries: about this report should be made to Ian Marriott, Community and Environment Legal Service Manager on 01926 412018 or at ianmarriott@warwickshire.gov.uk

Background Papers

Comments of legal officers

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Strategic Director of Performance and Development
Shire Hall
Warwick

2 December 2008

Warwickshire Waste Partnership

Partnership Agreement and Constitution

Between:

- (1) Nuneaton and Bedworth Borough Council
- (2) North Warwickshire Borough Council
- (3) Rugby Borough Council
- (4) Stratford-on-Avon District Council
- (5) Warwick District Council
- (6) Warwickshire County Council

HEADS OF TERMS

November 2008

1 DEFINITIONS

1.1 In this Agreement:

“Budget” means a budget prepared in accordance with this Agreement and “approved Budget” means the Budget approved annually by the Partners together with any subsequent variation duly approved by the Partners affected by the variation

“Business Plan” means a business plan prepared in accordance with this Agreement

“the Constitution” means the constitution appended to this Agreement

“Core Budget” means a core budget prepared in accordance with this Agreement and “approved Core Budget” means the Core Budget approved annually by the Partners together with any subsequent variation duly approved by the Partners affected by the variation

“the County” means Warwickshire County Council

“the Memorandum” means the Memorandum of Understanding between the Partners setting out a framework for the management and disposal of waste

“Monitoring Officer” means an officer appointed by a Partner as a monitoring officer under section 5 of the Local Government and Housing Act 1989

“Part B Decision” means a decision exercising a function in Part B of Annex 2 to the Constitution

“Partner” means a party to this Agreement

“the Partnership” means the joint committee established by this Agreement

“the Partnership Objectives” means the objectives in Annex 1 to the Constitution

“the Partnership Responsibilities” means the functions in Annex 2 to the Constitution

“Project” means an initiative included in the approved Projects Budget

“Projects Budget” means a projects budget prepared in accordance with this Agreement and “approved Projects Budget” means the Projects Budget approved annually by the Partners together with any subsequent variation duly approved by the Partners affected by the variation

“Section 151 Officer” means an officer appointed by a Partner to administer its financial affairs under section 151 of the Local Government Act 1972

“the Warwickshire Waste Strategy Framework” means the Warwickshire Joint Municipal Waste Strategy, the Memorandum, the Warwickshire Waste Minimisation Strategy and any other policy for the management of waste approved by the Partnership.

“Waste Collection Authority” means a Partner other than the County

“waste management” includes minimising, collecting, transporting, transferring, sorting, treating, recovering, re-using, recycling and disposing of waste

2 RECITALS

The Partners have agreed to enter into this Agreement and to establish a joint committee named the Warwickshire Waste Partnership with effect from 1 April 2009 in order to formalise and enhance joint working.

3. COMMITMENT TO THE PARTNERSHIP

The Partners confirm that they:

- 3.1 have authority to enter this Agreement
- 3.2 shall co-operate in good faith with each other
- 3.3 subscribe to the Partnership Objectives.

4. JOINT COMMITTEE, POWERS AND LIMITATIONS

- 4.1 The Partners agree that the Partnership shall be established from 1 April 2009 for the purpose of carrying out the Responsibilities of the Partnership in accordance with the Partnership Objectives, this Agreement, the Constitution, the Memorandum and the approved Budget.

- 4.2 For this purpose the Partners:
- 4.2.1 agree the Constitution and the delegations in it;
 - 4.2.2 authorise the Lead Authority to carry out its functions on their behalf and on behalf of the Partnership;
 - 4.2.3 undertake to fund the costs of the Partnership and the Lead Partner;
- subject to the following limitations.
- 4.3 The Partnership shall adhere to the approved Budget.
- 4.4 A Partner shall pay to the Lead Partner the amount allocated to it in the approved Core Budget.
- 4.5 A Partner shall be liable under this Agreement to fund expenditure which is not in the Core Budget only if it is urgent expenditure, in respect of a Project or payable under an indemnity¹ in this Agreement.
- 4.6 Urgent expenditure is expenditure which the Lead Partner (following such consultation with other Partners as is practicable in the circumstances) reasonably considers it necessary to incur before variations to the approved Budget can be agreed in order to protect the interests of the Partnership or any Partner or to ensure the legality and propriety of its actions.
- 4.7 A Partner shall fund urgent expenditure in such proportions as the Partners agree (or in the absence of agreement in such proportions as the Lead Partner determines) are fair and reasonable.
- 4.8 A Project (including any cost overrun) shall be funded in the manner agreed between the Partners participating in it.
- 4.9 Where more than one Partner is liable under an indemnity in this Agreement the liable Partners shall discharge the indemnity in such proportions as they may agree or in the absence of agreement in such proportions as are fair and reasonable.
- 4.10 No Partner shall be required by any decision of the Partnership to adopt or continue any particular waste collection arrangements.
- 4.11 The Lead Partner may not enter any legally binding arrangement on behalf of another Partner unless its representative voted in favour of such action at a meeting of the Partnership or it has expressly agreed to such action.

¹ See paragraphs 5.2 and 15.1 for indemnities.

- 4.12 No Partner shall be authorised and no Partner may be required take any step to implement a Part B Decision unless every Partner has either voted in favour of that decision or (if a Partner was not represented at the meeting making the decision) indicated its support in writing to the Lead Partner.
- 4.13 This Agreement shall be construed so far as it is capable of being so construed in a manner consistent with the Memorandum and in the event of conflict nothing in this Agreement authorises the Partnership or any Partner to act in a manner which would constitute a breach of the Memorandum.
- 4.14 Nothing in this Agreement is intended to create an agency in relation to the functions of a Monitoring Officer or a Section 151 Officer or relieve the officers of any Partner of such responsibilities.

5. LEAD PARTNER

- 5.1 The functions of the Lead Partner are as follows:
- 5.1.1 monitoring the operation and performance of the Partnership, preparing reports, providing secretarial and administrative support to the Partnership and the Officer Strategic Group and any other Partnership bodies and organising Partnership events;
 - 5.1.2 providing auditing services and any external audit arrangements;
 - 5.1.3 providing legal services to the Partnership (including advice on propriety) and to other Partners where required to perform their roles;
 - 5.1.4 negotiating, awarding and managing contracts with providers of goods, services or works on behalf of the Partnership and other Partners;
 - 5.1.5 holding and maintaining assets belonging to the Partnership;
 - 5.1.6 employing and managing any employee under the control of the Partnership;
 - 5.1.7 bidding for grants and entering and administering grant agreements on behalf of the Partnership and other Partners;

- 5.1.8 providing banking, accounting, insurance and other financial services including budget preparation and management;
- 5.1.9 providing such other ancillary professional services as are reasonably required for the Partnership to discharge its functions.

In carrying out these functions the Lead Partner shall:

- 5.1.10 represent the Partnership and the Partners in dealings with other persons
- 5.1.11 carry out any procurement or employment in accordance with legal requirements and its own constitution and so as to make the most efficient use of resources
- 5.1.12 report regularly to the Partnership on a basis to be agreed by the Partnership
- 5.1.13 act on behalf of and under the direction and oversight of the Partnership
- 5.1.14 advise the Partnership generally as to the resources and arrangements required for the effective operation of the Partnership
- 5.1.15 monitor compliance with this Agreement and advise the Partnership promptly of any actual or potential breach
- 5.1.16 monitor the Budget and the Business Plan and advise the Partnership of actual or potential overspend and any important issue affecting the operation of the Partnership or the achievement of the Partnership Objectives
- 5.1.17 maintain an inventory of assets, contracts and staff held or employed on behalf of the Partnership
- 5.1.18 provide reasonable assistance to the Monitoring Officers and the Section 151 Officers and notify them of any matters requiring consideration or action by them
- 5.1.19 ensure so far as reasonably practicable that contracts awarded on behalf of the Partnership or other Partners contain provisions for novation and exit arrangements in the event of a change of Lead Partner or dissolution of the Partnership.

- 5.2 Each Partner shall indemnify the Lead Partner and pay a reasonable and proportionate share of any liabilities, losses, claims, costs and expenses incurred or suffered by the Lead Partner (other than those for which provision is already made in the approved Budget) in or as result of carrying out its functions in accordance with this Agreement unless they result from gross negligence, gross misconduct or a breach of the law or proper local government practice on the part of the Lead Partner.
- 5.3 The Lead Partner shall not be liable to any Partner for any act or omission on the part of the Partnership.
- 5.4 The Lead Partner may resign from any or all of its functions by giving at least six months' notice expiring at the end of any financial year and must so resign if given such notice by all the other Partners.
- 5.5 The Partnership may require the Lead Partner to resign from any or all of its functions if there has been negligence, misconduct or a persistent breach of the law or proper local government practice or this Agreement on its part.
- 5.6 If the Lead Partner resigns the Partnership shall choose a Partner to replace it provided that no Partner may be required to act as a Lead Partner without its consent.
- 5.7 Following a resignation the Lead Partner shall:
 - 5.7.1 co-operate with any replacement to assist it in carrying out its functions as Lead Partner
 - 5.7.2 transfer any assets and contractual rights and obligations held on behalf of the Partnership and necessary for the discharge of the functions of Lead Partner
 - 5.7.3 keep any accrued claims and liabilities arising before the resignation.
- 5.8 If the Partnership cannot appoint a replacement for the Lead Partner following its resignation the Lead Partner may be required by the Partnership to continue in any or all of its functions as Lead Partner for the purpose of administering the dissolution of the Partnership.
- 5.9 The County shall act as Lead Partner in respect of all the functions of the Lead Partner unless:
 - 5.9.1 it resigns from any or all such functions;

5.9.2 the Partners participating in a project agree that another Partner will act as the Lead Partner in respect of that project.

5.10 In the event that the functions of Lead Partner are discharged by more than one Partner any provision of this Agreement which refers to the Lead Partner shall be taken as referring to the Lead Partner carrying out the relevant function.

6. ASSETS

6.1 Assets (including intellectual property) held by the Lead Partner are held in trust in behalf of the Partners.

7. OFFICER STRATEGY GROUP

7.1 The Officer Strategy Group will support the work of the Committee and will comprise one lead officer with responsibility for waste management at a strategic level from each of the Partner Authorities.

7.2 The Chair of the Group shall be the lead officer from the County or such other member as a majority of the Group may choose from time to time.

7.3 The role of the Group shall be to:

7.3.1 prepare reports and recommendations for consideration by the Partnership

7.3.2 set up and oversee “task and finish” groups

7.3.3 assist the Lead Partner to draft proposed Business Plans and Budgets

7.3.4 direct, monitor and control the progress of the Business Plan and Budget

7.3.5 advise the Partnership on progress in delivering the Business Plan and Budget

7.3.6 express views on waste management issues to government and other agencies

7.3.7 ensure that all Partners are making sufficient progress to meet their respective obligations

7.3.8 identify remedial action where this is not the case

7.3.9 produce an annual performance report and accounts

- 7.3.10 make recommendations for improving the operation and effectiveness of the Partnership.

8. BUDGET

- 8.1 The Partners will agree a level of funding enabling the Partnership to discharge the Partnership Responsibilities.
- 8.2 The Partnership will no later than 31st October each year (after 2008) propose a three year rolling Budget divided into a Core Budget and a Projects Budget.
- 8.3 The Core Budget shall make provision for the costs of the Lead Partner in carrying out the general administration of the Partnership and (if the Partners decide to employ a Partnership Manager) of employing a Partnership Manager.
- 8.4 The Projects Budget shall make provision for the cost of initiatives to be undertaken by the Partnership or one or more Partners under the leadership of the Partnership.
- 8.5 The Partners shall approve each Budget annually.
- 8.6 The Budget for 2009/10 shall be that attached to this Agreement.
- 8.7 Unless otherwise agreed by the Partners when approving the Budget, the County shall contribute 50% of the Core Budget and the Waste Collection Authorities shall each contribute 10% of the Core Budget.
- 8.8 The Partnership may vary the approved Budget at any time provided that any Partner required to make an altered financial contribution or suffer the loss of an anticipated benefit approves the variation.

9. BUSINESS PLAN

- 9.1 The Partnership shall prepare and the Partners shall approve a three year rolling Business Plan no later than 31st March each year (after 2009).
- 9.2 In addition to describing any actions and performance measures proposed for the Partnership the Plan shall include a statement of the actions intended to be taken by each Partner in its individual capacity which will further the Partnership Objectives.
- 9.3 The Plan shall allocate responsibility for delivery of actions to the Partnership or the Lead Partner or other Partners as the case may be.

9.4 The Business Plan for 2009/10 shall be that attached to this Agreement.

10. AUTHORITY TO ACT

10.1 Subject to the terms of this Agreement any Partner allocated functions pursuant to this Agreement or by any duly made decision of the Partnership is authorised to exercise any of the powers of the Partnership necessary, incidental or conducive to the exercise of those functions.

12. REPORTING

12.1 The Partnership shall provide an annual performance report and accounts to the Partners.

13. SUPPORT

13.1 Each Partner will provide such reports, consultation responses, information, facilities and professional advice and other support as might reasonably be required by the Partnership, the Lead Partner or the Officer Strategy Group.

13.2 A Partner shall provide such support at its own expense unless specific provision has been made for it in the approved Budget.

14. SCRUTINY

14.1 The Partnership will in due course consider the desirability of joint scrutiny arrangements.

14.2 Unless and until joint scrutiny arrangements are adopted the Partnership will be subject to the scrutiny arrangements operated by each Partner.

14.2 Each Partner will endeavour to meet requests for advice and information to assist a scrutiny exercise undertaken by another Partner but may decline to do so if such requests (alone or cumulatively) would place an unreasonable burden upon it.

15. GENERAL INDEMNITIES

15.1 A Partner which breaches this agreement seriously or persistently without good cause shall indemnify each other Partner against all consequent liabilities, losses, claims, costs and expenses incurred or suffered by that Partner in consequence of the breach.

16. INSURANCE

- 16.1 The Partners shall maintain adequate insurance cover to meet all potential liabilities arising from activities carried out under this Agreement or otherwise on behalf of the Partnership.

17. INTELLECTUAL PROPERTY

- 17.1 All intellectual property created by any of the staff, agents or contractors of a Partner at the expense of the Partnership or for the purposes of the Partnership shall vest in the Lead Authority as an asset held on trust for the Partners in equal shares.
- 17.2 The Lead Authority shall grant to each other Partner a non-exclusive perpetual free licence to use such intellectual property.
- 17.3 In the event of the termination of this Agreement the intellectual property shall continue to be owned beneficially by the Partners in equal shares.

18. CONFIDENTIALITY

- 18.1 Each Partner shall use reasonable endeavours to keep confidential information acquired (whether directly or indirectly) in consequence of this Agreement confidential and shall not use any such information other than for the purposes of the Partnership.
- 18.2 This restriction shall not apply to information once it is in the public domain or prevent use or disclosure which is required by law (including data protection and freedom of information legislation) or by an auditor or government department or which is in accordance with the consent of all persons entitled to the benefit of confidentiality.
- 18.3 These confidentiality obligations shall survive the termination of this Agreement until such time as the information ceases to be confidential.

19. DATA PROTECTION

- 19.1 The Partners will observe their obligations under the Data Protection Act 1998 and the Data Protection Principles.

20. FREEDOM OF INFORMATION

- 20.1 The Partners may be required to disclose information relating to the Partnership or to this Agreement to a person or to each other to comply with obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and

agree to consult with each other in the event that any or all of them receives such a request prior to making any disclosure.

21. DISPUTES

- 21.1. In the event of a failure to agree a Budget or any dispute or difference between the Partners which threatens the continued operation of the Partnership or is fundamental for any other reason the matter shall in the first instance be referred to a joint meeting of the Partnership and the Leaders and Chief Executives of the Partners for dispute resolution.
- 21.2 If such dispute resolution fails, the Partnership may require a Partner to resign.
- 21.3 If such dispute resolution fails or is not available, a Partner may refer any dispute or difference over the interpretation or application of this Agreement to arbitration.

22. DURATION AND TERMINATION

- 22.1 This Agreement shall come into effect on 1st April 2009 and continue until unanimously terminated by the Partners.
- 22.2 This Agreement shall not terminate until Partnership contracts have been or can be terminated without incurring a penalty on the part of any of the Partners.
- 22.3 If the Partnership decide to terminate this Agreement the Lead Partner shall prepare and the Partnership shall approve a scheme of dissolution providing for the:
 - 22.3.1. allocation or realisation of assets
 - 22.3.2 redundancy or redeployment of employees
 - 22.3.3 assignment or extinguishment of contractual rights and liabilities
 - 22.3.4 the contributions to be made by each Partner to continuing projects and commitments or to costs reasonably incurred by the Lead Partner as a result of the termination
 - 22.3.5 the payments to be made to each Partner in respect of income from the realisation of assets, dispersal of grant and savings from contributions previously made
 - 22.3.6 any other matters needing to be determined in order to achieve a fair and efficient winding up of the affairs of the Partnership.

- 22.4 When preparing a scheme of dissolution the Lead Partner shall have regard to the following principles:
- 22.4.1 any requirement for an asset or the benefit of a contract in order to assist a Partner in discharging any function falling to it as a result of the termination
 - 22.4.2 the scale of contributions made and benefits obtained by a Partner in connection with any activity of the Partnership
 - 22.4.3 the contributions promised by Partners for any continuing project or commitment
 - 22.4.4 the Lead Partner should not incur any additional costs as a result of its role and responsibilities as Lead Partner.
- 22.5 If the Partnership fails to agree a Scheme of Dissolution a Scheme shall be determined by an expert appointed by the President of the Law Society who shall be paid in equal shares by all the Partners.
- 22.6 Subject to any modification made as part of the scheme of dissolution termination of this Agreement shall not affect any rights or liabilities accrued before termination and shall not affect any other contracts entered into by the Partners.
- 22.7 The Lead Partner shall implement and the other Partners shall co-operate in the implementation of the approved Scheme of Dissolution.

23. RESIGNATION

- 23.1 A Partner may resign from the Partnership by giving no less than six months' written notice to the Lead Partner to take effect on the following 1st April (unless the Partnership allows a shorter period).
- 23.2 Following resignation a Partner may be held liable by the Partnership for:
- 23.2.1 any resources which it agreed to provide in the Budget or otherwise during the financial year in which its resignation takes effect

- 23.2.2 any redundancy or other consequential costs incurred by the Partnership or any other Partner in order to accommodate the operational and budgetary changes caused by the resignation.
- 23.3 Resignation shall not affect any contract entered into by or on behalf of the resigning Partner or any obligations and liabilities accruing during its membership of the Partnership.
- 23.4 A resigning Partner shall provide such information and documentation as is reasonably required by the Lead Partner or the Partnership to assist the continued operation of the Partnership.
- 23.5 The Partnership and the Lead Partner shall endeavour in good faith to assist a resigning Partner to withdraw consensually from obligations and liabilities entered into in connection with the Partnership.

24. GENERAL

- 24.1 This Agreement shall not fetter the exercise of statutory functions by Partners.
- 24.2 Except where the Lead Partner is authorised to do so no Partner shall represent itself as being an agent, partner, contractor or employee of any other Partner and this Agreement shall not create any such relationship.
- 24.3 This Agreement is personal to the Partners and cannot be alienated (unless as part of a statutory re-organisation).
- 24.4 This Agreement constitutes the entire agreement between the Partners.
- 24.5 The Partnership shall have no legal existence apart from that of the individual Partners and the mutual commitments between them under this Agreement and the Constitution.
- 24.6 Notices under this Agreement shall be in writing and given to the chief legal officer of the Lead Partner and copied to the other Partners.
- 24.7 Standard prevention of corruption and equal opportunity provisions shall apply.
- 24.8 Publicity shall comply with any statutory code of practice for local authority publicity and with any Publicity Code adopted by the Partnership.
- 24.9 Partners are not liable for force majeure.
- 24.10 Failure to enforce is no waiver.
- 24.11 Illegal or unenforceable terms shall be severed but if the term is fundamental the Partners shall agree suitable modifications.
- 24.12 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.
- 24.13 Each Partner to pay its own costs incurred in the preparation of this Agreement.
- 24.14 This Agreement shall be governed by English law.
- 24.15 The functions delegated to the Partnership shall not be increased by the Partners unless the provisions of this Agreement and the Constitution have been reviewed.

THE CONSTITUTION
of the
WARWICKSHIRE WASTE PARTNERSHIP

1. NAME AND LEGAL STATUS.

- 1.1 The Partnership is a joint committee constituted by the Partners under sections 101 and 102 of the Local Government Act 1972 and the Local Authorities (Arrangement for the Discharge of Functions) (England) (Amendment) Regulations 2001 made under section 20 of the Local Government Act 2000.
- 1.2 Its name is the Warwickshire Waste Partnership.
- 1.3 Meetings of the Partnership are subject to the provisions of the Local Government Act 1972 including the access to information requirements.
- 1.4 The area within which the Partnership is to exercise its authority is the administrative county of Warwickshire.

2. PURPOSE AND POWERS OF THE COMMITTEE

- 2.1 The purpose of the Partnership is to carry out the strategic, financial and operational functions (“the Partnership Responsibilities”) set out in Annex 1 in furtherance of the objectives set out in Annex 2 (“the Partnership Objectives”) and for those purposes the Partners have delegated (subject to the following limitations) to the Partnership such of their statutory powers and duties as are necessary, incidental or conducive to the discharge of those responsibilities including but not confined to those listed in Annex 3.
- 2.2 The Partnership shall exercise its functions in accordance with the Waste Partnership Agreement, this Constitution, the Partnership Objectives and the approved Budget.
- 2.3 The statutory powers and duties delegated to the Partnership are subject to the limitation that Part B Decisions shall not be made unless every Partner has either voted in favour of that decision or (if a Partner was not represented at the meeting making the decision) indicated its support in writing to the Lead Partner.
- 2.4 If the Partnership proposes or purports to make a Part B Decision otherwise than in accordance with the preceding paragraph any Member who opposes the decision may require that the decision be deferred to the next meeting of the Partnership and any Partner may in those circumstances revoke its delegation of duties and

powers to the Partnership so far as they relate to the proposed decision.

3. COMPOSITION OF THE COMMITTEE.

- 3.1 Each Partner will appoint one councillor to membership of the Partnership, who will be the councillor having the waste portfolio in that authority, together with another councillor to act as substitute.
- 3.2 A substitute will have the same rights and responsibilities as the main Member at any time when the main Member is absent or otherwise unable to act.
- 3.3 A Member will serve for whatever term is fixed by the nominating authority.
- 3.4 Partners may change their appointed Member or substitute at any time
- 3.5 Partners shall notify the Lead Partner in writing of any appointment of a Member or substitute such notification taking effect upon receipt.
- 3.6 The Partnership may co-opt non-voting Members.

4. ROLE OF MEMBERS

- 4.1 Each Member shall:
 - 4.1.1 attend all meetings of the Partnership or (in the case of a voting Member) ensure that if unable to do so a substitute does so
 - 4.1.2 act as advocate for the Partnership generally and in seeking any necessary approvals from their Partner
 - 4.1.3 be accountable on behalf of the Partnership to any scrutiny.

5. ADMINISTRATION OF THE COMMITTEE

- 5.1 The Lead Partner determined in accordance with the Waste Partnership Agreement shall be responsible for the administration of the Partnership.
- 5.2 The Chair and Vice-Chair shall be elected by the Partnership in the first meeting of each municipal year and either may be replaced at any time by a resolution of the Partnership.
- 5.3 The Lead Partner shall circulate draft reports to the responsible officer of each Partner for comment at least five working days in advance of the day on which they are published.

6. MEETINGS.

- 6.1 The Partnership shall have ordinary meetings quarterly on dates and at venues determined by the Partnership.
- 6.2 One meeting in each year shall be specified as the Annual General Meeting.
- 6.2 Any Member can require an extraordinary meeting to be held the date and venue for which will be determined by the chief legal officer of the Lead Partner in consultation with the Chair.
- 6.3 The Partnership shall adopt procedures for the convening and conduct of meetings based on the procedures in the constitution of the County and these shall be added to this Constitution as Annex 4.
- 6.4 The agenda for each meeting shall be determined by the chief legal officer of the Lead Partner in consultation with the Chair.
- 6.5 Any Member can add an item to the agenda provided that it is within the competence of the Partnership.
- 6.6 Any councillor of a Partner is entitled to attend a meeting as an observer and may be invited by the Chair to speak and to remain during private business.
- 6.7 The Chair may invite any person to attend a meeting to make a presentation or participate in discussion where that person possesses expertise which the Chair considers would be of assistance to the Partnership.
- 6.8 The quorum for a meeting is four voting Members.

7. DECISION-MAKING.

- 7.1 Only Members (or their substitutes) appointed by a Partner shall be entitled to vote.
- 7.2 Each voting Member shall have one vote and the Chair will have a casting vote.
- 7.3 The decisions of the Partnership will be notified to Partners by the Lead Authority within five working days of the relevant meeting.

8. DELEGATION.

- 8.1 The Partnership may delegate any of its functions other than a Part B Decision to a sub-committee or to an officer of a Partner.

8.2 The Partnership may appoint working groups comprising Members, officers or other persons to consider specific matters and report back to the Partnership.

9. CONDUCT AND EXPENSES OF MEMBERS.

9.1 All voting Members shall observe at all times the code of conduct adopted by their appointing Partner under section 51 of the Local Government Act 2000 and any co-opted Member shall observe the National Code of Local Government Conduct.

9.2 Each Partner shall be responsible for meeting any expenses to which any Member or substitute appointed by them is entitled.

10. LIABILITIES OF COMMITTEE MEMBERS.

10.1 Members have the same responsibilities and liabilities as those which apply when sitting on other committees and bodies as an appointed representative on behalf of their authority.

10.2 Where contractual arrangements are authorised by the Partnership, any liabilities arising under those arrangements will rest with the constituent Partners which are parties to those contractual arrangements.

10.3 Indemnification for any liabilities is a matter between individual Members and the Partner which appointed them.

11. WHISTLEBLOWING POLICY

11.1 The “whistleblowing policy” of the County shall be adopted by the Partnership (with any necessary modifications) until the Partnership agrees and adopts a replacement for that policy.

Annex 1

Partnership Objectives

- Develop and oversee delivery of the Warwickshire Waste Strategy Framework.
- Discuss, monitor, implement and review the Memorandum
- Further the objectives of the National Waste Strategy in Warwickshire and its Sub-region and Region
- Achieve or exceed statutory, national and local targets relating to the management of waste and be accountable for them to the relevant Board under the Local Area Agreement arrangements.
- Identify, encourage and deliver or facilitate sustainable means of managing waste and movement up the waste hierarchy.
- Identify and promote best practice in waste management including the benefits of joint working and partnership.
- Improve the quality of waste management services and ensure that Best Value and the most efficient use of resources are obtained in those services.
- Inform the public and stakeholders about the principles and practice of sustainable waste management and win their support and co-operation.
- Increase knowledge and understanding of sustainable waste management and the measures required to achieve it.
- Secure a network of waste management facilities and markets for re-usable waste products able to meet long term needs for sustainable waste management.
- Give Warwickshire an effective voice in dialogue with Government and other agencies with the capacity to influence waste management.
- Establish arrangements between the Partners which most effectively incentivise and reward sustainable waste management practices and outcomes.
- Provide means by which the Partners and other stakeholders can work together towards common or complementary aims in an

atmosphere of trust and openness and in which there is mutual consultation on proposals of strategic significance.

- Secure the maximum amount of resources obtainable from bodies other than the Partners for use in achieving these Objectives.

Annex 2

Partnership Responsibilities

Part A: Functions Exerciseable by Ordinary Resolution

Co-ordinating, monitoring and reviewing the delivery of the Strategic Framework and achievement of Local Area Agreement and other relevant targets.

Co-ordinating, monitoring and annually reviewing the delivery of the Business Plan and Budget.

Identifying and delivering promotional activity (including public engagement, education, research and the provision of guidance and advice) in support of the Framework.

Awarding framework contracts.

Guiding and directing the Waste Minimisation Team (so long as they are made available by the County).

Managing a Partnership Manager (if one is appointed).

Acting as consultee on significant procurement proposals by Partners.

Awarding consultancy contracts.

Delivering any actions allocated by the Business Plan for delivery by the Partnership.

Speaking on behalf of the Partners in response to consultation from other bodies and generally promoting the interests of the Partnership, the Partners and sustainable waste management.

Bidding for new sources of grant funding.

Approving agreements for new sources of grant funding.

Co-opting non-voting Members.

Creating sub-committees.

Appointing working groups.

Delegating to officers.

Requiring the Lead Partner to resign on performance grounds.

Appointing a replacement Lead Partner.

Requiring a Partner to resign from the Partnership.

Any other managerial and administrative measures required for the proper and effective operation of the Partnership.

Part B: Functions Exercisable by Unanimous Resolution

Altering or replacing the Framework.

Developing proposals for waste management including recommendations as to which waste streams should be collected and as to the siting of household waste recycling centres, re-use schemes and transfer stations.

Proposing and leading on the development of framework contracts and other initiatives to achieve procurement efficiencies.

Proposing Business Plans and Budgets (and variations) for approval by Partners.

Holding and managing a pooled budget to pay for support services, the performance of delegated functions and any other actions allocated by the Business Plan for delivery by the Partnership.

Proposing arrangements to incentivise and reward landfill reduction and movement up the waste hierarchy and oversee their operation.

Adopting procedural rules for meetings.

Making any amendment to this Constitution.

Annex 3

Statutory Functions

Environmental Protection Act 1990 Part II (waste management powers);

Waste and Emissions Trading Act 2003 ss 12 and 32 (duties to supply information and prepare joint municipal waste management strategies);

Local Government Act 1972 s111 (incidental powers);

Local Government (Contracts) Act 1997 s1 (power to contract)

Local Government Act 2000 s 2 (well-being power);

Local Government Act 1999 Part I (best value).

Annex 4
Procedures for Meetings

[To be adopted by the Partnership]

2008/9 BUDGET AND BUSINESS PLAN

Core Budget

Amount	Funding Contributions
£7000	50% from the County and 10% from each other Partner

Business Plan

Task	Resources	Responsible Partners
Review Municipal Joint Waste Management Strategy	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
Consult on amendments to Municipal Joint Waste Management Strategy Municipal	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
Adopt amended Municipal Joint Waste Management Strategy	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
Adopt Standing Orders for Partnership	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
Adopt a whistleblowing policy	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
Propose Business Plan and Budget for 2009-11	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
Consider appointment of Partnership Manager	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group

Respond to consultation on Project Transform	The Core Budget and in kind contributions from Partners	All Partners with administration and co-ordination through the Lead Partner and the Officer Strategy Group
<u>Guide and monitor</u> work programme for Waste Minimisation Team	The Core Budget	The County