

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>3 November 2016</b>
<b>Title of report:</b>	<b>Revised governance arrangements for West Mercia Energy</b>
<b>Report by:</b>	<b>Cabinet member corporate strategy and finance</b>

## **Classification**

Open

## **Key decision**

This is not a key decision.

## **Wards affected**

County wide

## **Purpose**

To approve the revised, joint agreement following consultation with Shropshire Council, the Borough of Telford and Wrekin and Worcestershire County Council.

## **Recommendations**

**THAT:**

- a) **the revised joint agreement at appendix 1 setting out the role, functions and terms of reference for the joint executive committee overseeing the strategy and direction of West Mercia Energy (WME) joint purchasing operation be approved; and**
- b) **the assistant director communities be authorised to agree with the other constituent authorities any further amendments to the Joint Agreement required, following consultation with the cabinet member, prior to completion and to complete the necessary deeds of variation on behalf of the council.**

## **Alternative options**

- 1 Cabinet could decide not to approve the revised governance documents but this

would carry the risk that decision-making was not conducted in accordance with constitutional and statutory requirements.

- 2 The joint purchasing operation could be established under different governance arrangements, such as a legal entity in its own right. Whilst the advantages and disadvantages of such an option are being explored and will be subject to a decision in the future, there remains a need to ensure that existing governance arrangements are robust and fit for purpose.

## Reasons for recommendations

- 3 The WME joint committee has discussed the need for revising and updating the governance arrangements. Since February 2016 Shropshire Council legal services, on behalf of WME, have conducted a review of the joint agreement between the member authorities as well as internal documents for the joint committee such as the financial regulations, standing orders, and scheme of delegation. The joint agreement has been subject to consultation with the relevant officers and a joint agreed recommended approach.

## Key considerations

- 4 WME offers energy procurement and management on behalf of its four partner councils (Herefordshire Council, Shropshire Council, Borough of Telford & Wrekin Council and Worcestershire County Council). The contracts cover electricity, natural gas, petroleum fuels and liquid petroleum gas. West Mercia Energy is overseen by a joint executive committee with representation from the four owning authorities.
- 5 WME comprises a small, specialist energy buying team which purchases gas and electricity on behalf of the councils and gives assurance on price by giving a yearly capped rate. Additional benefits include passing on in-year savings where possible, validation checking of meter readings to ensure the council is not overcharged and computerised access to all the individual energy bills.
- 6 WME is able to trade with other public bodies as defined by the Local Authorities (Goods and Services) Act 1970, and when a financial surplus is generated from those activities it is shared amongst the four owning authorities annually.
- 7 The attached joint agreement shows tracked changes to the agreement previously entered into. The changes seek to clarify the working governance arrangements.
- 8 The key governance changes proposed to the main agreement are;
  - To move from a fixed-term joint agreement (extendable at regular intervals) to an ongoing commitment, with a restricted ability for a constituent authority to terminate their participation and withdraw from WME.
  - Greater clarity on access to information provisions to ensure the due circulation of reports and minutes.
  - Confirms that meetings of the WME joint committee will comply with the regulations applicable to executive decision making.
  - The WME joint committee will adopt Strategic Policies necessary for the proper operation of WME.
  - Confirms that decisions of the joint committee will be subject to scrutiny by the constituent authorities and its decisions can also be called-in within each

constituent authority, using their own respective mechanisms. Any call-in is dealt with by the constituent authority following its own Scrutiny processes.

- The constituent authorities may jointly and unanimously agree to discontinue WME and its assets shall be distributed fairly and reasonably between them.
- No authority can withdraw from WME during the term of any Key Contract with a Utility Supplier. Otherwise, an authority can give at least 12 months' notice to withdraw but withdrawal will only take place on the expiry of any agreements with Utility Suppliers to which that authority is a party. The exiting authority will remain liable for an equal share of liabilities incurred up to the point of termination and would receive any net share of the WME assets once the assets and liabilities of WME had been assessed and allocated.

## Community impact

- 9 Clear and effective governance arrangements ensure that the council can comply with its code of corporate governance which states the council aims to:
- Provide the best possible service to the people of Herefordshire.
  - Define the roles of members and officers, ensure that they work together constructively, and improve their effectiveness.
  - Require high standards of conduct.
  - Take sound decisions on the basis of good information.
  - Be transparent and open: responsive to Herefordshire's needs and accountable to its people.

## Equality duty

- 10 The [equality duty](#) is in section 149 of the Equality Act 2010. It ensures that public bodies consider the needs of all individuals in shaping policy, in delivering services, and in relation to employees. The duty requires that when exercising public functions, public service providers must have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Act
  - Advance equality of opportunity between people who share a protected characteristic and people who do not share it
  - Foster good relations between people who share a protected characteristic and people who do not share it.

In relation to the recommendation of this report there are no identified negative impact on protected characteristic with this report and its implications relating to governance process and arrangements.

## Financial implications

- 11 There are no financial implications identified from the changes proposed to the existing governance arrangements.

## **Legal implications**

- 12 Cabinet can (because the purchase of energy is an executive function) arrange for this function to be discharged jointly with other local authorities in accordance with s.101 Local Government Act 1972, s9EB Local Government Act 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.
- 13 The revised joint agreement clarifies the operating arrangements and complies with the law.

## **Risk management**

- 14 If cabinet did not agree the revision to the governance documents it would not be possible for WME to operate effectively and would leave the council at risk of challenge to decisions taken by the joint committee.

## **Consultees**

- 15 None

## **Appendices**

- 16 Appendix 1 - Revised joint agreement

## **Background papers**

- 17 None identified.