

Decision maker:	Cabinet member corporate strategy and budget
Decision date:	Tuesday, 1 May 2019
Title of report:	Membership of The Marches Local Enterprise Partnership Limited
Report by:	Solicitor to the Council

Classification

Open

Decision type

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To approve that Herefordshire Council become a Public Sector Member of The Marches Local Enterprise Partnership Limited.

Following a national review, the government has issued a directive that all Local Enterprise Partnerships should have a legal personality. The Marches Local Enterprise Partnership (LEP) must incorporate as a company before any further local growth funding is released.

Herefordshire Council as a public sector body within the geographical area of the LEP has the right to become a Public Sector Member of the company. Doing so will confer the right to appoint a director to the board of the company to represent the council and participate in decision-making.

Recommendation(s)

That:

- (a) Herefordshire Council apply to become a Public Sector Member of The Marches Local Enterprise Partnership Limited;
- (b) subject to approval of recommendation a above the leader of the council shall nominate the appointment of the public sector member; and
- (c) the Marches Local Enterprise Partnership Limited be added to the council's register of strategic partnerships and list of outside bodies to which the council makes appointments.

Alternative options

1. The council could choose not to become a member of the company. This is not recommended as the council would not be able to nominate a director to be appointed by the board of the company and would lose the ability to directly influence decision making at the LEP.

Key considerations

2. The Marches Local Enterprise Partnership (LEP) covers the geographical area served by Herefordshire Council, Shropshire Council and Telford and Wrekin Council. In 2014, the three councils agreed to establish a joint committee to exercise executive functions in relation to the Marches LEP. The Marches Enterprise Joint Committee comprised one executive councillor from each council with the Marches LEP Board Chair as a non-voting member.
3. In July 2018 the Ministry of Housing, Communities and Local Government (MHCLG) published its report [Strengthened Local Enterprise Partnerships](#) which sets out the conclusions of its policy review into LEPs including changes to governance structures and measures to improve leadership and accountability.
4. All LEPs must now have a distinct legal personality. The Marches LEP has agreed with the government to become a company limited by guarantee with effect from 1 April 2019. It must then abide by the laws and regulations that apply to this form of legal entity.
5. The new [national assurance framework](#) for LEPs sets out that the LEP Board is the ultimate decision making authority. With the change in governance arrangements, the joint committee is no longer able to exercise the functions previously assigned to it. At its meeting of 19 March 2019 the members of the Marches Enterprise Joint Committee agreed to cease the joint committee with effect from 31 March 2019.
6. The national assurance framework also states, "The LEP should ensure that there are Local Authority representatives on the LEP Board to ensure democratic accountability and provide local intelligence". The articles of association of the new company set out that membership will include Public Sector Members.
7. It is proposed that Herefordshire Council become a Public Sector Member of The Marches Local Enterprise Partnership Limited. Membership will confer the right to appoint one director to the board of the company. The director will be able to represent Herefordshire

Council, and by extension the residents of Herefordshire, on the board and contribute to decision making. The quorum for the transaction of business at a meeting of directors of the company will be any seven Eligible Directors, which must include at least two Public Sector Directors.

8. In addition to the input of the appointed director, Herefordshire Council as a Public Sector Member would have rights of consultation and engagement as set out in the articles of association and accountability and assurance framework.
9. The change in structure will remove the ability of the three councils to determine proposals in key areas previously assigned to the Marches Enterprise Joint Committee. However the LEP board and management team have expressed their commitment to continue to work in close partnership and recognise that the three councils remain key strategic partners in the delivery of economic growth. The local [accountability and assurance framework](#), due to be approved by the LEP Board on 21 May 2019, sets out the strategic issues on which the three councils will be consulted prior to the board taking decisions. The views of the three councils will be included in reports put before the board.
10. The national assurance framework sets out that LEPs should participate in relevant scrutiny arrangements to guarantee the effective and appropriate democratic scrutiny of their investment decisions. All three councils in the Marches LEP area will be able to scrutinise its work through their individual scrutiny committees. For Herefordshire Council it is proposed that the LEP be invited to present its annual report and delivery plan to the General Overview and Scrutiny Committee.

Community impact

11. The Marches LEP is required by government to produce a Local Industrial Strategy setting out the area's key economic opportunities to deliver business growth. Becoming a member of the company and taking a seat on the board will allow the council to continue to represent the interests of the residents of Herefordshire in this work.
12. The corporate plan includes a priority to support the growth of our economy. Becoming a member of the company specifically fulfils the objective to continue to work with the LEP and government with focus on: employment creation and business support; skills; health transformation; transport; broadband; property and finance; and governance. Co-operation with the LEP is an important component in delivery of many of the council's economic objectives.
13. Good corporate governance encourages better informed longer-term decision making using resources efficiently, and being open to scrutiny with a view to improving performance and managing risk. In accordance with the adopted code of corporate governance the council is committed to ensuring that those making decisions and delivering services are accountable for them, and to ensuring stakeholders are able to understand and respond as the council plans and carries out its activities in a transparent manner. Having clear and transparent processes for establishing our partnership arrangements in respect of the LEP, and ensuring those processes are in accordance with our framework for partnerships' governance and our policy for appointments to outside bodies supports the council in meeting this objective.

Equality duty

14. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
15. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. There are no equality issues arising from this decision.
 16. The LEP has its own equality and diversity policy, which is set out as an appendix to its accountability and assurance framework. This policy sets out the LEPs commitment to equality and that the LEP will pay due regard to the Equality Act 2010 when making decisions.

Resource implications

17. The Marches LEP was provided with funds in the 2018/19 financial year from MHCLG to pay for the cost of setting up the new company, including preparing the Articles of Association.
18. There are no resource implications for the council arising from becoming a member of the company. Support for the appointed director will continue to be provided by council officers with relevant expertise as with the council's representative on the LEP Board at present.
19. The Marches LEP will continue to have its own independent secretariat, supported through LEP Core Funding, Growth Hub funding and contributions from the three Local Authorities and the University of Wolverhampton. Shropshire Council will continue to act as the Accountable Body for the LEP and will ensure that the usual local authority checks and balances are applied to awards of public funding directed by the LEP Board.

Legal implications

20. A company limited by guarantee provides a flexible and well recognised corporate structure. The operation of the company will be governed by the Companies Act 2006 and related legislation.
21. In accordance with the articles of association, the council, as a member, agrees to contribute a predetermined nominal sum of £1.00 to the liabilities of the company which become due in the event of the company being wound up.

22. The day to day management of the company will be the responsibility of the Board of Directors who have a legal duty to act in the best interests of the company, for the benefit of its members.
23. Under the council's constitution the nomination of a director will be an appointment to an outside body carrying out executive functions, so can be made by the leader.

Risk management

24. To ensure democratic accountability for the work of the LEP and its investment decisions the Articles of Association of the new LEP company include the requirement that the three councils in its area each have a seat on the board.
25. To ensure the three councils are given the opportunity to be consulted on strategic issues a clause is included in the Articles of Association for the new company regarding the rights of consultation and engagement reserved to Public Sector members of the company as set out in the assurance framework.
26. If the council chose not to become a member of the company it would not have the right to appoint a director to the board with the resulting risk that the interests and economic objectives of the council may have less prominence in decisions taken by the LEP board.

Consultees

27. Political groups have been consulted and no comments have been received.

Appendices

Appendix 1 – draft articles of association

Background papers

None