

Bristol City Council Cabinet
25th September 2008

**STRENGTHENING GOVERNANCE
OF THE WEST OF ENGLAND PARTNERSHIP**

**VIEWS OF SUSTAINABLE DEVELOPMENT
AND TRANSPORT SCRUTINY COMMISSION**

A. PREPARATION OF THE PROPOSALS

1. Joint Scrutiny has received presentations, not proper reports.

An initial presentation was made in July; further details were presented on 1st September and the Cabinet report was considered by SD&T Scrutiny in Bristol on 18th September and Joint Scrutiny on 23rd September. The Constitutions attached to the Cabinet report were finalised on the dispatch day for Cabinet and further modifications to the Constitutions will be presented to Cabinet on 25th September.

2. An oral briefing by Bristol Officers (prior to Council considering the call-in of the Joint Waste Strategy) unintentionally gave an account of proposed indemnity arrangements between the authorities that was inconsistent with a later presentation to Joint Scrutiny and the Cabinet report.

This is regrettable. At the time of the briefing by Bristol Officers, their Legal, Finance and Technical/Service Managers were still involved in negotiating the indemnity arrangements. In fact the Joint Working Agreements containing the indemnity clauses are still not finalised.

3. Call-in of the Joint Waste Strategy unintentionally gave an account of proposed indemnity arrangements between the authorities that was inconsistent with a later presentation to Joint Scrutiny and the Cabinet report.

To repeat: the indemnity arrangements are not yet finalised. This was made clear in the briefings. Unfortunately, the fact that negotiations were continuing has caused some confusion.

4. There has been a failure to provide timely and clear information on these proposed governance arrangements.

It is unfortunate that the finalisation of governance arrangements has taken so much time. But they are complex documents which have involved considerable time consuming and delicate negotiations. There has been input from many Officers of all the Councils, as well as input from two firms of solicitors. This is the first Joint Committee of this nature and significance that the West of English Partnership is seeking to establish and it, in retrospect, is no surprise that agreement will only be achieved after considerable time and thought. Information has been provided when it has been available

5. The constitutional arrangements should be considered by full Council.

The responsibility for determining executive arrangements belongs to the Executive, i.e. it is not and cannot be a full Council function to determine the Constitution and governance arrangements of an executive joint committee.

C. GOVERNANCE PROVISIONS

6. Why must transport infrastructure projects in an area be promoted and implemented by the Executive Member for the area, and not waste projects? (Para 19, first bullet)

This is a judgement and please note there is more flexibility in determining Transport Projects than in making provision through major procurement arrangements for meeting Government objectives for improved Waste Management arrangements (as well as avoiding increasingly punitive penalties).

7. The Constitution is silent on the engagement of social, economic and environmental partners.

The arrangements for both the Joint Committees and Joint Scrutiny require the engagement of social, economic and environmental partners. This is described in the diagram appended to the report to the Cabinet.

8. Bristol Council meeting decided it doesn't want an incinerator. Subsequently if Bristol wants to withdraw it would face penalties through the proposed indemnities, because Bristol has only one vote in the constitutional arrangements.

Reference should be made to the precise wording of the resolution of full Council on the 18th September. The governance

arrangements around indemnities have yet to be finalised. It is excessively simplistic to reduce a joint working arrangement and the appropriateness of indemnity arrangements in the manner set out above.

Work on developing a Waste Management Strategy has been underway since 2006. The Strategy has now been adopted by the four Councils with Bath & North East Somerset deciding not to proceed with Phase 3 of the Strategy.

It is proper for indemnities to be developed in order to ensure protection to each of the participating councils. The precise working of the indemnities will be set out in the Joint Working Agreement. The indemnities must be fair, clear and enable certainty.

E. JOINT WORKING AGREEMENTS

9. The Joint Working Agreements will need to be scrutinised.

The Joint Working Agreement will be made available for Scrutiny as soon as they are available.

10. When do the indemnities take effect? Give the timescales. The indemnities are a blank cheque.

Work is almost complete on the joint arrangements and these detail the indemnity proposals. When these are available then they will be made available for Scrutiny.

It is in the interest of each of the Councils that indemnities are in place. Bristol needs the security of an indemnity in the same way as the other Councils do.

There will be clarity as to costings and responsibility within the Joint Working Agreement. Some decisions have consequences, for example, entering into a contract; similarly entering into an indemnity has consequences. The advantage of indemnities is that they ensure certainty, clarity and responsibility.

11. The Commission wish to scrutinise the Joint Working Agreements before they are considered for approval by Leaders of Council.

The intention is that Scrutiny will have the opportunity to consider the joint working arrangements.

D. GOVERNANCE PROCEDURES

12. Annex A to the Constitution: it is wrong that the Executive Member can 'decline to answer and give his/her reasons'.

It is for Executive Members to decide how they wish to answer the question.

13. Use of urgency provisions removes the opportunity for the public to raise questions.

The rules concerning urgency are enshrined in local government law. The rules do not remove the opportunity for the public to raise questions.

14. Some of the procedural wording in the Constitution is difficult to follow and imprecise.

The wording has been examined by the Legal Offices in each authority and inevitably some wording is technical and hard to follow.

15. The provision for only one call-in of a decision can lead to recommendations that are a sham to avoid Call-in (Last sentence of Para 3.3) in the Waste Constitution.

It is normal for Call-in to be available once only on one decision. The procedural arrangements are consistent with the various arrangements in the four authorities. The solicitor coordinating the drafting of the Constitutions has made some changes to Para 3.3 to improve clarity.

16. There are serious concerns about the scrutiny of these procedural arrangements, in their creation and in the wording of Para 3.3.

No comment.

17. The wording of the arrangements for the appointment of a Vice Chair is in part stating the obvious.

And therefore of no great consequence.

B. COVERING REPORT TO CABINET

18. The reference to 'cross-party' Partnership Board and Joint Scrutiny is not wholly true. North Somerset make appointments based on proportionality. The statement is therefore misleading.

It is for each council to determine its appointments. Discussions previously have indicated a respect for the benefits of cross-party working.