

## **Wiltshire Council**

### **Overview and Scrutiny Management Committee**

**17 March 2020**

---

#### **Future scrutiny of the Swindon and Wiltshire Local Enterprise Partnership**

##### **Purpose of report**

1. The report is seeking endorsement from the committee:
  - a) Of the proposed future scrutiny arrangements between Wiltshire Council and the Swindon and Wiltshire Local Enterprise Partnership (SWLEP), including the proposed Terms of Reference;
  - b) To close down the existing SWLEP task group.
2. The report also provides information on the SWLEP's current governance arrangements.

##### **Background**

3. In 2014 the SWLEP adopted an Assurance Framework which included provision for joint scrutiny arrangements between Wiltshire Council and Swindon Borough Council. This led to the creation of a Joint SWLEP Scrutiny Task Group containing membership from Swindon Borough and Wiltshire non-executive councillors. The objectives of the joint task group were to act as a "critical friend" and develop an overview of strategies and plans, and to provide independent scrutiny of the work of the LEP Board and Joint Strategic Economic Committee (JSEC).
4. The JSEC was a joint committee of Swindon Borough Council and Wiltshire Council comprising members of and delegated authority from each Executive. It was established to provide local democratic and financial accountability for the Strategic Economic Plan and use of Local Growth Fund and other funding streams by the SWLEP.
5. At the time of the JSEC being constituted the SWLEP Board did not meet in public. However, this changed in 2015 and the SWLEP Board has been meeting in public since then.
6. The SWLEP was incorporated as a company limited by guarantee in January 2019. This change of legal status changed the nature of the relationship between the SWLEP, Wiltshire Council as the Accountable Body, and Swindon Borough Council and necessitated a review of the governance framework between these parties, which was the subject of a report to Wiltshire Council's Cabinet on 26 March 2019.
7. In accordance with Part 7 of the Constitution, Cabinet Procedure Rules, the Leader of the Council may amend the Scheme of Delegation relating to cabinet

functions at any time during the year by informing the Proper Officer. This would then be reported to the next ordinary meeting of the council. As a result of the changes to the governance framework supporting the SWLEP, therefore, it is anticipated that the Leader will report to Full Council on 9 July that the JSEC is dissolved and its terms of reference removed from the Constitution.

8. With the dissolution of the JSEC and the SWLEP's change to an incorporated business status an opportunity has arisen to revise the way in which democratic scrutiny of the SWLEP is carried out.

## **Governance of the SWLEP**

### *Company limited by guarantee*

9. In July 2018, Government published a review which recommended that LEPs should be legal entities and have a secretariat independent of local authorities and other organisations that are answerable to the Board.
10. The SWLEP Board took the decision in September 2018 to incorporate as a private company limited by guarantee This was finalised on 14 January 2019.

### *Accountable body*

11. Wiltshire Council is the Accountable Body for the SWLEP. One of the primary roles of the Accountable Body is to hold devolved funding on behalf of the SWLEP and make payments to scheme promoters as per the grant agreements in place for each project or programme. It also ensures that SWLEP:
  - Decisions and activities conform to legal requirements
  - Uses funds appropriately
  - Adheres to its Assurance Procedures
  - Maintains appropriate official records
  - Has advice on legal decisions
  - Has arrangements for local audit

### *Governance Framework*

12. The SWLEP updated its Governance Framework in March 2019 to reflect the changes both to its incorporated status and in line with the latest Government requirements. The Governance Framework is an agreement between the LEP and central government that provides assurance on the SWLEP's decision-making process (further information is available on the [SWLEP's website](#)).

### *SWLEP Board*

13. The SWLEP has a Board of a minimum of 14 and maximum of 20 Members and is constituted to ensure that it is business-led, with its Chair and at least 70% of its Members representing the business community. Board members are appointed on a three-yearly basis (which can be extended in accordance with the articles of association).
14. A nominee from each of the Unitary Authorities is a permanent member of the SWLEP Board. The Chief Executive of Swindon Borough Council and the

Executive Director for Place of Wiltshire Council have the status of non-voting advisors to the Board.

15. The SWLEP Board is responsible for:
  - The development, review and refresh of the Local Industrial Strategy (LIS);
  - The successful and effective delivery of the City Deal, Strategic Economic Plan, the Growth Deal and projects resourced by the Growing Places Infrastructure Fund; and
  - The approval of scheme funding on the basis of recommendations from the relevant sub-groups.
16. There are five core sub-groups reflecting the SWLEP five strategic objectives:
  - Skills and Talent;
  - Transport Infrastructure;
  - Digital Capability;
  - Place-shaping;
  - Business Development.

### **Task group's consideration of future scrutiny of the SWLEP**

17. The task group's revision of the scrutiny engagement with the SWLEP focused on the first of the task group's terms of reference (first adopted at the 28 October 2014 joint task group meeting):

1. *Develop an overview and scrutiny framework and operational protocols which meet the requirements of democratic accountability for the use of public funds by a partnership body which is led by the business community under a mandate from the Secretary of State for Business, Innovation and Skills.*

18. The National Local Growth Assurance Framework 2019 for LEPs ([link](#)) states the following with regards to external scrutiny arrangements for LEPs:

*"LEPs should agree with their Accountable Body the appropriate scrutiny arrangements to ensure that decisions have the necessary independent and external scrutiny in place."*

*In addition to any agreed internal scrutiny arrangements **within** the LEP, the LEP should participate in relevant Local Authority scrutiny arrangements to guarantee the effective and appropriate democratic scrutiny of their investment decisions. LEPs should ensure this engagement by either:*

- *making an open offer to attend Local Authority Scrutiny Committees in their area and attending when requested; this will enable democratic scrutiny to take place when required and enable LEP decision makers to be held to account;*
- *creating a joint Local Authority Scrutiny Committee, comprised of all Local Authorities from the LEP area, who meet to scrutinise and examine LEP decisions; or*

- *creating a joint Scrutiny Committee which comprises of all Local Authorities from the LEP area and relevant representatives that can provide scrutiny from a business perspective, who meet to scrutinise and examine LEP decisions.”*
19. The Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities ([link](#)) makes the following reference to the scrutiny of LEPs:
- “Authorities should ensure they have appropriate arrangements in place to ensure the effective democratic scrutiny of Local Enterprise Partnerships’ investment decisions.”*
20. This guidance makes clear that different local authorities approach scrutiny in different ways and have different processes and procedures in place, and that what might work well for one authority might not work well in another. Therefore, it is ultimately down to both Wiltshire Council, Swindon Borough Council and SWLEP to agree what they consider to be the best approach for scrutiny of SWLEP’s activities, whilst assuring themselves that appropriate arrangements are in place.
21. The task group considered three options for the future scrutiny of the SWLEP:
- Option 1: Joint Scrutiny Task group with Swindon Borough Council;
  - Option 2: Joint Scrutiny Committee with Swindon Borough Council;
  - Option 3: Relevant Scrutiny Committees Receiving periodic SWLEP updates.

#### *Option 1 - Joint Scrutiny Task group with Swindon Borough Council*

22. This option would largely continue the current Overview and Scrutiny arrangements as they are currently. However, the task group could revise/update its current terms reference to reflect the new work arrangements and status of the SWLEP.
23. The task group format provides the benefits, compared to committee:
- a) smaller membership enabling more ad-hoc discussion;
  - b) less formal meetings enabling more extended dialogue with witnesses, which can provide a balanced and informed perspective;
  - c) an effective arena for looking at evidence in detail;
  - d) operating flexibly, taking any approach it considers necessary to inform their deliberations.
24. Although task group meetings are not typically open to the public, any reports produced by the task group, along with any executive responses, are considered in a public forum (except where they contain confidential or exempt information). Along with this the Joint SWLEP Task Group has also provided regular updates to their Overview and Scrutiny Management Committee.
25. Continuing a Joint Scrutiny Task Group would likely benefit from a comprehensive revision of the current terms of reference. This would allow the group to adapt to the SWLEP’s new status. Many aspects of a joint scrutiny committee which might be beneficial to the scrutiny of the SWLEP could be incorporated without being constrained by the implications of establishing a full joint scrutiny committee.

26. Revised terms of reference could include a provision for meetings of the task group to, by default, be open to public attendance unless the consideration of sensitive information required otherwise. Holding meetings in public would also require task group agendas and meeting notes to be published.
27. The task group's terms of reference could provide for the receipt of public questions and public participation, to further strengthen the scrutiny task group's public engagement.
28. The SWLEP is keen to include co-opted SWLEP business membership in future scrutiny engagement methods. Overview and Scrutiny task groups have provision which allows for co-opted members to be included onto their membership. These positions are appointed to individuals because of their specialist knowledge and/or expertise, which in this case would be their specific business knowledge.
29. A revision of the task group's terms of reference would allow for the following changes in the task group's way of working (listed as examples):
  - a) Holding task group meetings in public by default, with the option to hold meetings in private if necessary (for example: to allow the consideration of sensitive information).
  - b) Co-opting of non-SWLEP Board Members (i.e. members of the SWLEP who are not also on the membership of the SWLEP Board) onto the task group membership.
  - c) Establishing, maintaining, and publishing a forward plan for the task group's work including a timetable of meetings for the task group.
  - d) Rebranding the joint task group as a "Joint Standing Task Group" to reflect the interest in the continued scrutiny of the SWLEP.

#### Option 2 - Joint Scrutiny Committee with Swindon Borough Council

30. This approach would require both agreement from the Full Councils of Wiltshire Council and Swindon Borough Council to create a new formal joint scrutiny committee with non-executive councillor membership from both authorities.
31. The Local Government Act 1972 ([link](#)), Section 102, permits the establishment of joint committees of more than one authority. Sub-sections 2,3 and 5 cover the following topics:
  - a) That the number of members on committees is to be fixed by the appointing authorities.
  - b) That joint committees may include co-opted members
  - c) That members who lose their seat in elections also lose their seat on a committee.
32. The process for establishing the joint committee would be as follows:
  - a) The task group submit its preference to the lead Overview and Scrutiny Committees in Swindon and Wiltshire and recommend that they resolve to investigate the establishment of a Joint Swindon and Wiltshire LEP Select Committee.
  - b) The drafting of terms of reference to cover: purpose; roles, duties and responsibilities; scrutiny function; membership allocation; work

programme; reporting arrangements; agendas, reports and minutes; meeting frequency; election of chair procedure; quorum; voting; declarations of interest.

- c) The lead Overview and Scrutiny Committees to seek support from their respective Full Councils to establish the Joint SWLEP Committee.
33. Such a Joint SWLEP Committee could establish specific joint task groups or rapid scrutiny exercises as and when needed.
34. As referenced above the Local Government Act 1972 provides the ability to include co-opted members on the joint committee's membership. This could be extended to business owner membership in a non-voting role. However, it would need to be ensured that there is no conflict of interest from its membership, such as no relation with any SWLEP directors.
35. A committee structure may provide a more formal approach to scrutiny of the SWLEP, than the current task group approach.
36. Agreements would have to be sought between Wiltshire Council and Swindon Borough Council regarding the resourcing requirements of a formal joint committee. This would include adequate committee room provision, along with additional staffing resource for procedural advice and administrative support and a potential Special Responsibility Allowance (SRA) for the Chairing and Vice-Chairing of a full committee.

### Option 3: Relevant Scrutiny Committees at each Local Authority receives SWLEP Updates

37. Under this option the Joint SWLEP Task Group would be dissolved. The scrutiny engagement would be replaced through Swindon Borough Council and Wiltshire Council's respective Overview and Scrutiny Management Committees receiving scheduled updates from the SWLEP on their work and progress.
38. The task group agreed on their meeting of 13 June 2019 that this option should be removed from consideration as it was unlikely to provide the depth of scrutiny required and would also not include co-opted SWLEP business membership.

### **Conclusions**

39. The task group concluded that a task group format would be the better option for future scrutiny of the SWLEP as per the benefits listed in paragraph 23.
40. However, a joint task group, similar to the existing one, and set up in accordance with the Local Government Act 2000 would limit business members' input.
41. It is therefore suggested that a Joint Scrutiny Panel be set up by the SWLEP, with Local Authority members appointed by Wiltshire Council and Swindon Borough Council in the fashion of an outside body.

42. The Joint Scrutiny Panel would not fall under the banner of 'Overview and Scrutiny' as defined by the Local Government Act 2000, but would allow full input and voting rights for business members.
43. Following discussions between the task group and the SWLEP Director, the SWLEP board considered future scrutiny arrangements at its meeting on 26 September 2019 and made the following resolution:
  - a) To authorise the SWLEP Director to work with the relevant partners within the SWLEP to establish a Joint Scrutiny Panel which comprises three non-executive councillors from each of Swindon Borough Council and Wiltshire Council and three business leaders who are members of SWLEP Ltd but do not have representation on the Board of the SWLEP.
44. Proposed terms of reference for the Joint Scrutiny Panel were considered by the SWLEP board at its meeting on 27 November 2019 and are included with this report.
45. The SWLEP has asked the Overview and Scrutiny team at Wiltshire Council to service the Joint Scrutiny Panel and officers are working to agree a charged support arrangement in keeping with the commercialism ethos in the council's Business Plan.

## **Proposal**

46. To note the SWLEP current governance arrangements.
47. To close down the existing joint SWLEP task group.
48. To endorse the proposed future scrutiny arrangements between Wiltshire Council and the SWLEP, including the proposed Terms of Reference.
49. To notify Swindon Borough Council and the SWLEP of this committee's decision with regards to the existing joint SWLEP task group and the proposed future scrutiny arrangements between Wiltshire Council and the SWLEP, including the proposed Terms of Reference.
50. To delegate the appointing procedure for Wiltshire Council's representatives on the SWLEP Panel proposed to the Chairman and Vice-chairman of OS Management Committee.

---

Report author: Marie Gondlach, Senior Scrutiny Officer, 01225 713 597,  
[marie.gondlach@wiltshire.gov.uk](mailto:marie.gondlach@wiltshire.gov.uk)

## **Background papers**

None

## **Appendices**

DRAFT SWLEP Joint Scrutiny Panel – Terms of Reference