

Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Executive
Date:	04 June 2019
Subject:	Water Resources East - LCC Membership of the Company
Decision Reference:	I018000
Key decision?	No

Summary:

To provide an update on the role of Water Resources East (WRE), its formation as an independent not for profit company and opportunities for Lincolnshire County Council (LCC) to influence outcomes, including decisions on Nationally Significant Water Infrastructure.

To seek Executive approval for LCC to become a member of the company, and to appoint an LCC Member to the WRE Board of Directors as an outside body, and to authorise the Executive Director - Place or an officer nominated by him to exercise the powers of the Council as member of the company.

Recommendation(s):

That the Executive:

1. Approves the Council taking up membership of the Water Resources East company
2. Approves the appointment of Councillor E J Poll as a Director of WRE
3. Authorises the Executive Director - Place (or any officer nominated by him), in consultation with the Executive Councillor for Economy and Place, to exercise the powers of the Council as a member of the Council whether in general meeting or otherwise
4. Approves the making by the council of in-kind contribution to the resourcing of the Company in lieu of a financial commitment
5. Approves the entering into by the council of any collateral agreements, for example any Shareholders or Members Agreements necessary to give effect to the council's membership of the company.
6. Delegates to the Executive Director – Place, in consultation with the Executive Councillor for Commercial and Environmental Management, the authority to approve the final form of the council's membership of the company, its in-kind contribution and any legal documentation.

Alternatives Considered:

1. That LCC do not become a member of the company. This would remove LCC from direct participation in the company. This could significantly reduce LCC's influence in determining future strategic infrastructure provision for water management across southern Lincolnshire. LCC would not be able to appoint an Executive Member to the WRE Board of Directors.

Reasons for Recommendation:

LCC Members have expressed a preference to be able to take part in the decision making processes and influence outcomes relating to future provision of nationally significant water infrastructure in Lincolnshire. Officers have contributed to the development of WRE in terms of its structure and governance. This has created the opportunity for LCC to become a member of the company, thereby influencing the development of the regional Water Resource Management Plan and long term decisions on water management across the Anglian region. LCC membership of the company will also allow a senior LCC Member to occupy a position on the WRE Board of Directors. The recommended approvals will enable officers to complete this process.

1. Background

Water Resources East (WRE) as a strategic initiative was created by Anglian Water in response to Defra guidance that water companies should collaborate with local water stakeholders to deliver wider local benefits and add value from water infrastructure investments where possible. In its early stages LCC's Members and officers were not supportive of LCC playing an active role in WRE because the proposed structure and governance was too heavily invested in the water companies and therefore might not enable LCC to genuinely influence outcomes within the county. LCC has actively worked with WRE and Anglian Water to improve this position. Current proposals are now significantly more positive and offer improved opportunities for achieving additional benefits for Lincolnshire through the delivery of Nationally Significant Water Infrastructure (NSWI).

Recent developments

During 2018 water companies produced their draft Water Resource Management Plans, which included the early stages of preparation for initiatives such as Water Resources East. Defra and the other water regulators found these plans lacked inclusivity with respect to local water stakeholders and to have failed to integrate effectively with other water companies, regionally and nationally.

As a consequence Defra has directed water companies across England to work in partnership with other water stakeholders to create independent bodies that would be responsible for producing Regional Water Resource Management Plans. These will take precedence over the plans of individual water companies, and are intended to provide a co-ordinating strategic framework guiding lower level water

company plans. In essence, the Regional Plans will identify options to create resilient public water supplies on a regional and national basis.

In eastern England – the Anglian Region - WRE will become responsible for producing the Regional Water Resource Management Plan. This significantly increases the level of impact WRE will have on nationally significant water infrastructure, and hence increases the value for local authorities in participating in the company.

Current position

LCC has worked closely with Anglian Water and WRE to influence its structure and governance, thereby ensuring that it is truly independent with no single organisation or sector having a controlling interest. In response, current proposals for the composition of the WRE board include a minority of water company directors and at least three seats for directors representing Local Authorities. All Executive Directors making up the Board will have equal voting rights.

Initial proposals for WRE Directors put forward the notion that the ability of a body to nominate someone for Board membership would also carry an obligation to provide a defined level of financial support towards running the company (but not necessarily towards any schemes or programmes ultimately promoted through the company). This has now been renegotiated to include contributions in kind and LCC's ongoing provision of partnership working and officer support has been accepted as fully meeting this requirement. LCC will not financially support the running of WRE.

Opportunity to engage directly and influence outcomes

Anglian Water is now recruiting the WRE board of directors and has invited LCC to appoint a Director on the board of the independent company. The changes to the structure and governance of WRE, and WRE's role in producing the Regional Water Resources Management Plan, means that board membership will enable a senior LCC member to influence outcomes.

The Council is now able to determine whether it wishes to accept the invitation to appoint a senior elected Member on the WRE board of directors. Choosing to accept a Board position will provide a senior member of the Council with a greater degree of influence over the strategic direction that WRE takes, and therefore over additional benefits that might arise out of any NSWI that is ultimately put in place. While the Council could also choose not to engage at this level this would significantly reduce the level of influence that the Council's members would be able to exert with respect to NSWI decisions.

To appoint an LCC Exec Member to the WRE Board of Directors, the Council must join the company corporately, with appointment of the Director then proceeding as an appointment to an outside body. The relevant steps are outlined in the actions recommended for Executive approval.

The Council will need to authorise an individual to exercise its powers as a member of the company, and it is proposed that this authorisation is given to the

Executive Director of Place (or such other officer as is nominated by him) in consultation with the Executive Councillor for Economy and Place.

WRE will be a not for profit company. Its Business Plan and Articles of Association are attached at Appendices A and B respectively.

In terms of the Articles, the proposal is that LCC will become a Principal Funding Member of the company. Although this would normally require a direct cash contribution of 3% of running costs, the Board of Directors is able to accept a Principal Funding Member on the basis of in-kind contributions, and this has been agreed in relation to the Council.

The other main feature of the Articles of Association that should be noted is that, as long as a member of the company has paid up their contribution to the company, that member can withdraw from membership on the giving on not less than seven days' notice.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

An impact analysis has not been undertaken specifically in relation to the recommendations in this report. This relates to an outside body which will be accountable itself in this respect. Individual projects or programmes developed and managed through WRE will be subject to full environmental and equalities impact assessment as appropriate by the lead authority or body responsible for the project or programme.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The specific objectives of WRE include producing a Regional Water Resource Management Plan and the purpose of LCC membership of the company is to influence water infrastructure investments in Lincolnshire and opportunities to add value to them (potentially with LCC capital investment). When those options are appraised there will be a requirement for this analysis.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

There are not considered to be any impacts on crime and disorder.

3. Conclusion

Approval is sought for the Council to take up membership of Water Resources East as a Principal Funding Member, making an in-kind contribution to the costs of the company. Membership will allow the Council to appoint a senior member as a Director of the Company.

The Council will also need to authorise an individual to exercise its powers as a member of the company, and it is proposed that this authorisation is given to the Executive Director - Place (or such other officer as is nominated by him) in consultation with the Executive Councillor for Economy and Place.

4. Legal Comments:

The Council has power to take up membership of the company as proposed. The decision is consistent with the Policy Framework and within the remit of the Executive.

5. Resource Comments:

Accepting the recommendation in this report, to take up membership of the Water Resources East, should have no direct financial impact on the Council. Our contribution is in kind to aid the functioning of the Company. There is a small risk of a potential liability of up to £15k as identified under Appendix C and this will need to be found within existing budgets. However the risk mitigation as outlined should significantly reduce this risk to the Authority.

6. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

This proposal will be considered by the Environment and Economy Scrutiny Committee on 21 May 2019. Any comments of the Committee will be reported to the Executive.

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

Due to WRE being an outside organisation and the approval sought here being limited to membership of WRE, not specific projects that might emerge from it, the risks to LCC are limited as shown in the table at appendix C.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Water Resources East Business Case
Appendix B	Water Resources East Articles of Association
Appendix C	Risk Assessment

8. Background Papers

No Background Papers within the meaning of section 100D of the Local Government Act 1972 have been used in the preparation of this Report.

This report was written by Andrew Jee, who can be contacted on 01522 555215 or andrew.jee@lincolnshire.gov.uk .

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