



Section B: Board Constitution

March 2019



BOARD CONSTITUTION

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1. The Governance Framework may be amended by the Board at any time under the decision-making processes set out in this Constitution.

Definitions

2. In this document:
 - a. "Unitary Authorities" refers to the local authority members of the SWLEP, Swindon Borough Council and Wiltshire Council;
 - b. "stakeholders" means any person or organisation likely to be directly affected by or interested in the activities of the SWLEP, including in particular the Unitary Authorities and employers, businesses, enterprises and other persons or organisations operating or likely to operate within or otherwise concerned with the economy in the LEP area;
 - c. "external resource" means resources (including human resource) other than the resources within the SWLEP Board and Secretariat.
 - d. "The SWLEP" means the SWLEP Board plus the operation of its activities through the Secretariat.
 - e. "core policy" is a policy approved by the relevant Unitary Authority as part of its Policy Framework.

Roles and responsibilities

3. The Board is responsible for the SWLEP's performance in accordance with its Role and Governance Principles (Section A). In particular the Board shall:
 - a. produce strategic economic plans in line with government guidance;
 - b. produce an annual report reviewing progress against delivery of the SEP including a financial statement regarding funds within SWLEP's direction or control; the total amounts committed to external organisations; total amounts committed to suppliers to purchase goods, works or services; and the total amounts incurred in running the partnership;
 - c. produce an annual delivery plan and setting out priority actions for the forthcoming year; and
 - d. ensure that the SWLEP complies with its Governance Framework and the terms of the Assurance Procedures.

4. Make decisions as to actions to be undertaken by the SWLEP and the allocation of funding and other resources to activities and projects.
5. The LEP's annual report shall be agreed by the Board by 31 July each year. Prior to agreeing the work plan the Board shall carry out appropriate consultation with stakeholders and the Secretariat with regard to proposed activities and associated resource implications. SWLEP's annual delivery plan will be agreed by the Board by 31 March each year.
6. The Board shall provide information and co-operation as reasonably requested by the Unitary Authorities to enable them to carry out appropriate review and scrutiny activities in respect of matters relating to the SWLEP.
7. The Board is responsible for the allocation of the core SWLEP budget, comprising of contributions from central government, in kind and financial resources from the two Unitary Authorities and other sources of funding, with a view to ensuring efficient and effective use of those resources to manage the administration and operation of the SWLEP. Before taking decisions on the use of core financial resources, including any decision to delegate activities to the SWLEP Chief Executive Officer (SWLEP CEO) or direct the SWLEP CEO to commission external resources, the Board must consider the availability of resources and skills within the SWLEP and the likely cost and availability of external resources and skills.
8. The Board is also responsible for agreeing the allocation of external financial resources allocated to the SWLEP, such as but not limited to Growth Deal funding in line with its Assurance Procedures (Section F); its Scheme of Delegation (Section D). and its Finance and Commissioning Policy (Section E)
9. The role of a Board member is to use their skills, knowledge and experience for the benefit of the SWLEP to assist it in fulfilling its role as set out under Role and Governance Principles (Section A). In accepting their appointment, a Board member agrees to act in accordance with this Governance Framework and, in particular, to comply with the Conflict of Interest policy and the requirements of Company Law.
10. The Chair is additionally responsible for providing leadership for the Board and the SWLEP and facilitating collective decision-making by the Board as set out in her/his job description. S/He shall act with the aims of:
 - a. ensuring that the Board operates efficiently and effectively;

b. being an effective ambassador for the SWLEP both regionally and nationally.

11. The Secretariat of the SWLEP is the human resource which is clearly committed to the work of the partnership on an ongoing basis. As such it comprises:

- a. individuals engaged to carry out a role which solely involves working for or on behalf of the SWLEP, including but not limited to the SWLEP CEO;
- b. the Head of Strategic Growth and Place (or equivalent post-holder) at Swindon Borough Council and the Director, Economy, and Planning (or equivalent post-holder) at Wiltshire Council, to the extent that their working time is clearly allocated to work for and on behalf of the SWLEP through a written statement specifying the amount of time allocated to work for the LEP and the nature of the activities to be carried out or prioritised during that time. This is known as the 'Executive Group' of the Secretariat; and
- c. any other individuals whose working time is partly allocated to work for or on behalf of the SWLEP, to the extent that the time of those individuals is clearly allocated to working by or on behalf of the LEP through a secondment agreement or other written statement specifying the amount of time allocated to work for the LEP and the nature of the activities to be carried out or prioritised during that time;

and those individuals shall all be regarded as members of the Secretariat working together for the SWLEP regardless of the identity of the organisation(s) with which those individuals have contracts of employment and the proportion of their time allocated to working on behalf of the SWLEP.

12. The role of the Secretariat is to support the Board in performing the SWLEP's activities in compliance with its Governance Framework. This includes planning and co-ordination of the SWLEP's activities, engagement with stakeholders, administration and commissioning and management of external resource.

13. The SWLEP CEO shall be accountable directly to the Chair (on behalf of the Board) for their performance. Reporting and accountability arrangements for staff within paragraph 11.c above shall be agreed in advance with the Board and specified in the written agreement specifying the allocation of their time to the SWLEP.

14. The SWLEP has a Board of a minimum of 14¹ and maximum of 20 Members and is constituted in such a way as to ensure that it is business-led, with its Chair and at least 70% of all Members representing the business community who will be appointed on a 3 year basis (which can be extended in accordance with the company's articles of association). The Leaders of the two Unitary Authorities. are permanent members of the SWLEP Board. In addition a Board Member representing the education sector and a Board Member representing the Military will be appointed on a 3 year basis (which can be extended in accordance with the company's articles of association). The composition of the Board and the selection, appointment and tenure period for the Chair and Vice Chair Board Member are set out in full in the SWLEP Assurance Procedures. The Senior Whitehall Sponsor, the BEIS² Minister who acts as the SWLEP champion and the BEIS Relationship Manager will be invited to join SWLEP Board meetings as guests but will not be able to vote.
15. In the event of a Board Member having been found to have been in breach of the Conflict of Interest Policy by the Independent Review Panel the Board has the power to remove or suspend.
16. The Commissioning Group oversees strategy development and the forward work plan of the Board; maintains strategic oversight of the delivery and financial performance of SWLEP schemes; and ensures compliance with the legal and financial terms of the Assurance Procedures. It comprises the SWLEP Chair, the SWLEP Vice-Chair, the Leaders of Unitary Authorities, the Chief Executive of Swindon Borough Council, and the Corporate Director of Wiltshire Council, supported by the SWLEP Executive Group. The Commissioning Group will:
- a) Ensure that the arrangements put in place conform to legal requirements with regard to freedom of information, equalities, the environment and other matters.
 - b) Advise the SWLEP Board on the appropriate use of SWLEP funds.
 - c) Ensure that there is independence between scheme promoter and the decision making body in order to avoid conflict of interest.
 - d) Ensure that official records of proceedings relating to the investment decisions are maintained.

¹ During periods of Board Member recruitment the number of Board Members may fall below this lower limit temporarily.

² Department for Business Energy and Industrial Strategy (BEIS)

- e) Ensure that regular progress reports and updates are scheduled with appropriate Government teams.

Board meetings

- 17. The Board shall meet not less than five times per year.
- 18. A minimum of four weeks advance public notice will usually be given of Board meetings. However meetings may be convened at shorter notice where there is a need for decisions to be taken before the next scheduled Board meeting which will be publicised as soon as possible after the meeting date is confirmed.
- 19. The Board will usually meet in person but it may meet and take decisions virtually (by video conference, telephone conference or exchange of emails) where there is a need for decisions to be taken before the next scheduled Board meeting and it is not practicable for the Board to meet in person within the relevant timescales. Where virtual meetings take place they must be quorate in accordance with paragraph 22.a. Decision-making by email exchange will be regarded as quorate where at least six Board members have participated in the email exchange and expressed a clear view on the decision.
- 20. The Board will conduct its business in an open and transparent manner, comparable to the two Unitary Authorities, which will enable interested stakeholders and members of the public to scrutinise and participate in SWLEP processes unless there are specific reasons for such discussion to be restricted from the public as set out in the Assurance Procedures, Appendix B. This includes holding meetings in public; how individuals can submit questions to the Board and the publication of the Board agenda papers and minutes. Agenda and papers for the Board will be published on the SWLEP website a minimum of five clear working days prior to the relevant meeting unless there is an extraordinary meeting called with less than five days notice.
- 21. The content and quality of the written materials and oral reports provided to the Board shall be sufficient to enable the Board to appropriately monitor and plan the SWLEP's activities and performance and to fully consider, discuss and reach informed decisions on any proposals or recommendations put to the Board for decision. In particular, the papers prepared for each Board meeting shall:
 - a. specify clearly the purpose of the document i.e. is it for approval, discussion, for information and whether it is commercially sensitive.

- b. identify any recommendations or proposals put forward for decision and the reasons why a proposal or recommendation is made;
- c. in the case of any expenditure or grant of funding proposed for agreement by the Board:
 - confirm that appropriate advice has been sought from the relevant Unitary Authority, in its capacity as accountable body for that expenditure or funding, as to whether the expenditure or funding is within the scope of any conditions which apply to the use of that funding and as to any onward conditions or requirements which should be attached to the expenditure or funding; and
 - attach or summarise any such advice received unless there are specific reasons for such information to be restricted from the public as set out in the Assurance Procedures, Appendix B.
- d. include appropriate reports on:
 - the activities of, Board sub-groups and any other Board groups as appropriate; and
 - other delegated or commissioned activities.

22. Board meetings shall be conducted in accordance with the following provisions:

- a. The quorum for a Board meeting shall be 6, of whom at least one must be a member representing Swindon Borough Council and one must be a member representing Wiltshire Council. "Member representing" shall be interpreted in accordance with paragraph c.
- b. To support democratic accountability, Board members representing a Unitary Authority may be accompanied at Board meetings by one other elected Member of that Authority as an "Observer" who will be entitled to participate in discussions on the same basis as the Board member but will not be entitled to vote and are not counted as an attending Board member for the purposes of determining whether the meeting is quorate.
- c. Where a Board member representing a Unitary Authority is unable to attend a Board meeting s/he may nominate either the deputy leader or a member of the relevant Authority's cabinet as their representative to attend in their place to

maintain this level of Members with democratic accountability responsibilities on the Board. In this circumstance, the alternate representative will be entitled to participate in discussions and vote as if s/he were a Board member.

- d. Where any other Board member is unable to attend a Board meeting s/he may nominate another Board member to comment on any matters on their behalf and exercise their vote if required.
- e. Any nominations under paragraphs c or d should be notified to the Chair and the SWLEP CEO in advance of the meeting and must be minuted.
- f. The Chief Executive of Swindon Borough Council and the Corporate Director of Wiltshire Council shall have the status of Advisors to the Board. Advisors shall not be counted when determining whether the meeting is quorate and shall not be entitled to vote. However Advisors shall be entitled to receive notice of Board meetings, receive copies of Board papers and to attend Board meetings as if they were Board members. Advisors shall be entitled to participate in discussions at Board meetings, subject only to the exercise of the Chair's general discretion as to the conduct of Board meetings.
- g. Individuals other than Board members may attend Board meetings to the extent that the Board considers that their attendance will assist the Board:
 - in the conduct of the business to be conducted at that meeting;
 - in the ongoing management of the SWLEP's activities;
 - in the maintenance or development of relationships with stakeholders; or
 - to the extent that the Board otherwise considers it appropriate in the interests of transparency and maximising understanding of the SWLEP's role.

Such individuals shall be referred to as "in attendance", and may include (but are not limited to) members of the Secretariat, employees or members of the Unitary Authorities who are not Board members, professional advisers or others able to provide information or expertise to the Board. Individuals in attendance shall not be counted when determining whether the meeting is quorate and shall not be entitled to vote. Participation by individuals in attendance in discussions at Board meetings shall be at the discretion of the Chair.

- h. At the start of each Board meeting the Chair shall remind Board members of the need to declare any conflicts of interest or potential conflicts of interest in relation to specific agenda items. Board members must declare any such conflicts or potential conflicts prior to the start of discussion on the relevant agenda item, and any declaration of interest will be included in the minutes of the Board meeting and the on the relevant member's register of interest. Such declarations shall be considered and actioned in accordance with the Conflict of Interest Policy (Section C).
- i. The SWLEP Board will aim to make decisions on the basis of consensus which is set out in more detail in section four of the SWLEP Assurance Procedures. Where consensus does not emerge from the first full discussion of any issue or proposal, subject to paragraph j and unless a decision is required urgently (such that it cannot be delayed without prejudicing the position of the SWLEP or its stakeholders) the Board will usually delay decision-making on that matter until a later date to allow for further consideration and discussion, including collation and consideration of any additional information or advice which the Board considers may be of assistance.
- j. If either Unitary Authority expresses a concern that a proposal would, if accepted, result in a risk of one or both Unitary Authorities breaching regulatory or accounting requirements, contravening a core policy of the Authority or being subject to legal challenge:
- the Board shall delay decision-making on that proposal to allow for further consideration and discussion and to obtain appropriate advice;
 - Board members shall have due regard to the views of the Unitary Authorities, any legal or other professional advice obtained or provided to it and all other relevant factors in reaching a final view on the proposal.
- k. Where the Board has not been able to reach consensus even after it has proceeded in accordance with paragraphs i and j, or if a decision is required urgently and cannot be delayed beyond the first full discussion without prejudicing the position of the SWLEP or its stakeholders, the Board shall take a decision on the basis of a vote. Except where paragraph l applies, each Board member shall have a single vote and a proposal shall be agreed as a decision of the Board if a majority of members present and voting cast their votes in favour of the proposal.

I. Where the Board is considering a proposal to agree its annual business plan pursuant to paragraph 5 and a vote is required because consensus has not been achieved under paragraphs i and j, the plan shall not be regarded as agreed unless:

- at least 50% of the other Board members present and voting cast their votes in favour of accepting the plan.

23. Discussion and decisions at Board meetings shall be minuted and the draft minutes shall be published on the SWLEP's website no later than ten clear working days after the Board meeting with the Chair's approval, subject to any redactions or exclusions reasonably necessary on the grounds of confidentiality or commercial sensitivity.

Decision-making and delegation

24. The Board takes the decisions of the SWLEP, subject only to delegations made in accordance with this Governance Framework. Any decision or action which has not been made, approved or delegated by the Board in accordance with this Governance Framework shall not be regarded as a decision of the SWLEP.

25. The Board shall only take a final decision on any activity to be undertaken by or on behalf of the SWLEP on the basis of appropriate information regarding the resources (both staff and financial) required to carry out that activity and the availability of such resources to the SWLEP. In taking any such decision the Board shall specify the manner in which its decision is to be implemented, including any delegation of actions or decisions, the resources to be used and any finance or commissioning actions required.

26. Subject to paragraph 11, the Board may use the resources of the Secretariat and may delegate actions and decisions to the SWLEP CEO in accordance with the Scheme of Delegation. Where the Board delegates any specific actions to the SWLEP CEO, sub-group, or other Board group or authorises any external commissioning of work, the delegation shall include a clear statement of the expected outputs or deliverables for the work (including requirements as to timing of outputs). The SWLEP CEO shall report appropriately to each Board meeting in accordance with the SWLEP's Assurance Procedures on progress in respect of such delegations and commissioned work.

27. The Board may delegate decisions or actions to a sub-group or other Board working group only as provided for in the Scheme of Delegation. Any such sub-group or working group must report fully and in the manner requested to each Board meeting on actions and decisions taken under the delegation since the previous Board meeting,

including in particular any actions which commit or may commit the SWLEP to future actions or to use of its resources and submission of any bids or applications made on behalf of the SWLEP.

28. A Board working group is a group of Board members (minimum of two) and such other members as the Board considers appropriate. It is a time limited task and finish group to consider or progress a particular issue or activity.
29. The Board may establish one or more Board sub-groups to carry out particular actions or activities where it is satisfied that the following conditions are met:
 - a. The activities are within the SWLEP's Role and Governance Principles;
 - b. The activities are likely to facilitate delivery of the SWLEP's Strategic Economic Plan.
 - c. There is a clear statement of the proposed terms of reference, outputs and membership of the sub-group, and the scope of work proposed appears to be appropriate and reasonably practicable;
 - d. The resources required to enable the sub-group to fulfil its terms of reference have been clearly identified, including any associated costs, and those resources are available or can be secured;
 - e. It is appropriate to use the SWLEP staff and financial resources for this purpose having regard to the competing demands on the SWLEP's resources and the SWLEP's priorities as stated in its Role and Governance Principles and Strategic Economic Plan.

In this context "resources" includes both financial resources and the time of individuals (whether Board members, Secretariat staff or others). For the avoidance of doubt, the requirement in paragraph b above shall be complied with if the proposed activities are considered likely to improve the SWLEP's understanding of the needs of businesses or any particular type or category of business in the SWLEP area, or of the economic conditions affecting such businesses.

30. Any decision of the Board to establish a sub-group shall include a clear statement of the sub-group's terms of reference, membership and chairmanship.
31. The Board shall permit any sub-group to continue in operation only for as long as it continues to meet the conditions in paragraph 25.
32. The membership of a Board sub-group must include a minimum of one Board member who shall usually be the Chair of the sub-Group.

33. Each Board sub-group shall report to Board meetings as required on progress in delivering its terms of reference, including information about activities undertaken, use of resources and proposed further activities.
34. Where it is necessary to commission external resources in order to carry out the SWLEP's activities or implement decisions of the Board, this shall be done in accordance with the Finance and Commissioning Policy (Section E) and in accordance with para 7.

Financial responsibilities

35. Wiltshire Council shall act as the accountable body for funds paid or payable to the SWLEP and for expenditure, grants or other funding paid on behalf of the SWLEP as set out in the Accountable Body Agreement (Section G). The SWLEP shall provide Wiltshire Council with all information and documentation reasonably required to enable Wiltshire Council to perform the function of accountable body in accordance with all relevant legal and regulatory responsibilities and applicable guidance.
36. Subject to paragraph 35, the Board is responsible for the management and expenditure of funds available to the SWLEP. Decisions involving expenditure or grant of funds shall only be made in accordance with the Finance and Commissioning Policy (Section E).

Annual General Meeting

As a company limited by guarantee, SWLEP will hold an annual general meeting which will be open to its members as required by company law. There will be the opportunity for members to ask questions at this meeting.