

# Public Document Pack

## WASTE BOARD CONSTITUTION

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**SOMERSET  
WASTE BOARD**

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**CONSTITUTION**

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## CONTENTS

### Paragraph Subject matter

1. DEFINITIONS AND INTERPRETATION
2. FUNCTIONS AND ACTIVITIES TO BE UNDERTAKEN BY THE BOARD ON BEHALF OF THE PARTNER AUTHORITIES
3. COMMENCEMENT AND DURATION OF THE BOARD
4. COMPOSITION OF THE BOARD
5. ROLE OF SWB MEMBERS
6. MEETINGS OF THE BOARD
7. RESPONSIBILITIES OF THE CHAIRMAN AND VICE-CHAIRMAN
8. DELEGATION TO SUB-COMMITTEES AND OFFICERS
9. STRATEGIC MANAGEMENT GROUP
10. BUSINESS PLAN
11. ANNUAL BUDGET
12. AMENDMENTS TO THE CONSTITUTION
13. SCRUTINY ARRANGEMENTS
14. CONDUCT AND EXPENSES OF SWB MEMBERS
15. LIABILITY OF BOARD MEMBERS
16. CESSATION OF MEMBERSHIP OR DISSOLUTION OF THE BOARD
17. THE SUPERVISION AND MONITORING OF THE ADMINISTERING AUTHORITY AND THE SINGLE CLIENT GROUP

APPENDIX 1 Statutory functions and Activities Delegated to the Board

APPENDIX 2 Aims and Objectives of the Somerset Waste Board

APPENDIX 3 Provisions governing the Conduct of Meetings of the Board

APPENDIX 4 Roles and duties of the Administering Authority, the Single Client Group and the Strategic Management Board

APPENDIX 5 SWB Scrutiny Arrangements

## CONSTITUTION

**THE SOMERSET WASTE BOARD** is a Joint Committee of local authorities in the County of Somerset established pursuant to sections 101(5) and 102 of the Local Government Act 1972 and all other relevant enabling legislation by the following Partner Authorities:

- (1) SOMERSET COUNTY COUNCIL of County Hall, Taunton, Somerset TA1 4DY (the "**County Council**"); and
- (2) MENDIP DISTRICT COUNCIL of Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT ("**Mendip**"); and
- (3) SEDGEMOOR DISTRICT COUNCIL of Bridgwater House, King Square, Bridgwater, Somerset TA6 3AR ("**Sedgemoor**"); and
- (4) SOUTH SOMERSET DISTRICT COUNCIL of PO Box 25, The Council Offices, Brympton Way, Yeovil, Somerset BA20 2DS ("South Somerset"); and
- (5) SOMERSET WEST AND TAUNTON COUNCIL of The Deane House, Belvedere Road, Taunton, Somerset, TA1 1HE ("Somerset West and Taunton").

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**"2000 Act"**

means the Local Government Act 2000;

**"2000 Regulations"**

means the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000 No. 2851) as amended by the Local Authorities (Avoided Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001 (S.I. 2001 No. 3961);

**"Administering Authority"**

means the authority appointed pursuant to clause 5 of the Inter Authority Agreement;

**"Aims and Objectives"**

means the aims and objectives set out in **Appendix 2**;

**"Annual Business Plan"**

means the Business Plan approved by the Board in accordance with paragraph 10. The Business Plan shall include an action plan and a risk register;

**"Annual Budget"**

means the annual budget for a Financial Year referred to in **paragraph 11**;

**"Annual General Meeting"**

means the first meeting of the Board after 1 May in each year in accordance with paragraph 3 of Appendix 3;

**"Board"**

means the Joint Committee established pursuant to clause 3.1 of the Inter Authority Agreement and known as 'The Somerset Waste Board';

**"Business Day"**

means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

**"Chairman"**

means the chairman from time to time of the Board elected in accordance with **paragraph 1.1 or 3 of Appendix 3**;

**"Chief Executive"**

means the Chief Executive or the head of paid service of the relevant Partner Authority (ies);

**"Clerk of the Board" or "Clerk"**

means the clerk of the Board appointed pursuant to clause 4.1.1 of the Inter Authority Agreement;

**"Collection Contract"**

means the contract for the collection and recycling of household waste for the County of Somerset entered into by the Administering Authority on behalf of the Board on 12<sup>th</sup> October 2007 and subsequently extended by Deed of Variation dated 19<sup>th</sup> October 2012 until 1<sup>st</sup> October 2021;

**"Commencement Date"**

means 30 September 2007;

**"Constitution"**

means this constitution and its appendices;

**"Disposal Contracts"**

means together the following contracts:

- (a) the core services contract;
- (b) the NWTF contract;
- (c) the tonnage agreement; and
- (d) the strategic partnering agreement,

entered into by the County Council and Viridor Waste Management Limited and dated 13 May 2006;

**"Executive or Cabinet"**

means the executive body of a Partner Authority appointed pursuant to the 2000 Regulations;

**"Financial Year"**

means a calendar year commencing on 1 April in any year;

**"Inter Authority Agreement"**

means an agreement of even date entered into by the County Council, Mendip, Sedgemoor, South Somerset and Somerset West and Taunton in relation to the formation and operation of the Somerset Waste Board as may be amended from time to time;

**“Joint Scrutiny Panel”**

Means an informal advisory scrutiny panel as defined in paragraph 13.2 and Appendix 5 paragraph 1.17

**"LGA 1972"**

means the Local Government Act 1972;

**"Managing Director"**

means the head of the Single Client Group appointed in accordance with **paragraph 17.2**;

**"Material Change"**

means a change proposed to the approved Business Plan (including the Annual Action Plan) or to this Constitution in accordance with **paragraphs 10 and 12** which a Partner Authority (acting reasonably) considers to be a material change to the nature or operation of the Board (including a change which has a material impact on service design or the cost of the services provided under the Principal Contracts) and which it considers must be subject to approval by elected members of the Partner Authority;

**"Monitoring Officer"**

means the monitoring officer for the Board appointed pursuant to clause 4.1.3 of the Inter Authority Agreement;

**"Partner Authority"**

means any one of the County Council, Mendip, Sedgemoor, South Somerset and Somerset West and Taunton whilst ever they remain as Partner Authorities and such other local authorities which from time to time become Partner Authorities in accordance with **paragraph 16.8** of this Constitution and clause 14.5 of the Inter Authority Agreement;

**"Principal Contracts"**

means the Collection Contract and the Disposal Contracts and any contracts replacing such contracts and such other contracts as the Board may administer from time to time on behalf of the Partner Authorities;

**"Scheme of Delegation"**

means the scheme of delegation adopted by the Board from time to time by which the Board will authorise its sub-committees and officers of the Administrative Authority to exercise certain of its powers and duties;

**"Scrutiny Arrangements"**



means the arrangements made by each Partner Authority for the scrutiny of its decisions in accordance with Section 21 of the 2000 Act;

**"Scrutiny Committee"**

means the committee of each Partner Authority responsible for Scrutiny Arrangements;

**"Single Client Group"**

means the group of officers employed by the Administering Authority on behalf of all the Partner Authorities to carry out the roles and functions set out in clause 8 of the Inter Authority Agreement;

**"Standing Orders and Rules of Procedure"**

means the standing orders and rules of procedure for meetings of the Board and its sub-committees together with the financial regulations and contract procedure rules for the Board (which shall be those of the Administering Authority), subject to such amendments or additions as the Board sees fit except amendments to the financial regulations and contract standing orders which shall be those of the Administering Authority;

**"Strategic Management Group" or "SMG"**

means the board comprising the Director or Senior Manager from the Partner Authorities with responsibility for Environmental Services and/or Commissioning and having the role and responsibilities set out in clause 10 of the Inter Authority Agreement;

**"Substitute Member"**

means a person nominated by a SWB Member to attend a meeting of the Board in his place in accordance with **paragraph 4.8**;

**"SWB Member(s)"**

means a member of the Board appointed by a Partner Authority in accordance with **paragraph 4.1**;

**"SWB Scrutiny Arrangements"**

means the arrangements set out in **Appendix 5**;

**"Treasurer"**

means the appropriately qualified financial officer appointed pursuant to clause 4.1.2 of the Inter Authority Agreement;

**"Vice-Chairman"**

means the vice-chairman for the time being of the Board elected in accordance with **paragraph 1.1 or 3 of Appendix 3**.

## 1.2 Interpretation

- 1.2.1 In this Constitution (unless the context requires otherwise):
- 1.2.2 references to paragraphs and appendices are to the paragraphs and appendices of this Constitution. Any reference to a sub-paragraph is to the relevant sub-paragraph of the paragraph in which it appears;
- 1.2.3 the table of contents and headings are not part of this Constitution and are not to be taken into account in the interpretation of this Constitution;
- 1.2.4 the use of the masculine gender alone includes the feminine and neuter genders and the singular includes the plural and vice versa;
- 1.2.5 references to legislation (including subsidiary legislation), regulations, determinations, and directions include all amendments, replacements, or re-enactments thereof and all regulations, determinations, directions and statutory guidance made or given under them save that the treatment under this Constitution of any such amendment or modification that imposes any new or extended obligation or liability adversely affecting the parties or any of them shall be determined by the Board after consultation with the Partner Authorities, provided that where any Partner Authority (acting reasonably) considers such amendment or modification would result in a Material Change, the amendment or modification shall require the approval of the Partner Authority;
- 1.2.6 the terms "including" and "in particular" are illustrative only and are not intended and shall not limit the meaning of the relevant words that precede them;
- 1.2.7 the term "persons" means individuals, companies, industrial and provident societies, limited liability partnerships, statutory bodies, or other bodies with a legal personality and includes H.M. Government, government departments, and the European Union and its constituent parts.
- 1.3 The appendices to this Constitution are to have effect as if set out in full in the body of this Constitution and references to this Constitution include the appendices.

## 2. FUNCTIONS AND ACTIVITIES TO BE UNDERTAKEN BY THE BOARD ON BEHALF OF THE PARTNER AUTHORITIES

- 2.1 The Partner Authorities have each agreed and resolved to form the Board with effect from the Commencement Date.
- 2.2 The Partner Authorities have each agreed and resolved that the Board should discharge their respective statutory functions with respect to waste disposal, waste collection and recycling of waste which statutory functions are set out in **part I of Appendix 1**.
- 2.3 The Partner Authorities acknowledge that the Disposal Contracts have been entered into in furtherance of the Aims and Objectives and they further acknowledge that the Board shall endorse and adopt the Principal Contracts.
- 2.4 In the performance of the statutory functions delegated to the Board, the Partner

Authorities hereby agree that the Board shall undertake on behalf of the Partner Authorities the activities set out in **part II of Appendix 1**.

- 2.5 The Board shall not make any decisions the effect of which would be to put any Partner Authority in breach of any contract (including the Principal Contracts).
- 2.6 The Partner Authorities acknowledge that any decision taken by the Administering Authority that puts a Partner Authority in breach of any contract (including the Principal Contracts) shall not be implemented and any costs or losses incurred by a Partner Authority arising from any such decision shall be apportioned equally between the Partner Authorities in accordance with the cost sharing principles in schedule 5 of the Inter Authority Agreement.

### **3. COMMENCEMENT AND DURATION OF THE BOARD**

The Board has been established in accordance with the resolutions of the Partner Authorities referred to in **paragraph 2.1** with effect from the Commencement Date and shall continue in existence unless and until dissolved by resolution of a majority of the Partner Authorities in accordance with **paragraph 16.6**.

### **4. COMPOSITION OF THE BOARD**

- 4.1 Each Partner Authority shall appoint two of its elected members to be its representatives on the Board.
- 4.2 The SWB Members shall be appointed by each Partner Authority in accordance with the Partner Authority's constitution.
- 4.3 For each Partner Authority, one SWB Member shall be the portfolio holder for waste and/or the environment.
- 4.4 All such appointments of SWB Members shall be made in accordance with the relevant statutory provisions of sections 101 and 102 of the LGA 1972 and of the 2000 Regulations, as they may from time to time be applicable to each of the Partner Authorities.
- 4.5 Each SWB Member shall have one vote at meetings of the Board.
- 4.6 Each SWB Member shall remain in office until removed or replaced by his appointing Partner Authority, or in the case of a SWB Member who is a member of an Executive until he ceases to be a member of the Executive of his appointing Partner Authority. Notice of the removal or replacement of a SWB Member shall be given to the Clerk.
- 4.7 The proceedings of the Board shall not be invalidated by any vacancy or any defect or purported defect in the appointment of any SWB Member.
- 4.8 Any SWB Member may, by giving written notice thereof to the Clerk, nominate a Substitute Member to attend a meeting of the Board in his place.
- 4.9 Except where permitted under 4.9A below, where a Substitute Member takes the

place of a SWB Member who is a member of his appointing Partner Authority's Executive then such Substitute Member must also be a member of his appointing Partner Authority's Executive.

- 4.9A If both SWB Members representing one authority are Members of that Partner Authority's Executive and wish to nominate a Substitute Member in accordance with paragraph 4.8 above, then either one (but not both) of the two SWB Members may nominate a Substitute who is not a member of the Executive.
- 4.10 A Substitute Member shall have the same rights of speaking and voting at meetings of the Board as the SWB Member for whom he is substituting.
- 4.11 Members of the SMG and the Single Client Group, together with the Treasurer, Monitoring Officer and the Clerk, shall be entitled to attend meetings of the Board to advise the Board on matters relevant to the functions and activities of the Board but shall have no voting rights.
- 4.12 Each Partner Authority may send any of its officers (as it considers to be appropriate) to meetings of the Board, or any sub-committee thereof, to support its SWB Members.

## **5. ROLE OF SWB MEMBERS**

- 5.1 The responsibilities of a SWB Member shall be as follows:
- 5.1.1 to act in the interests of the Board as a whole except where this would result in a breach of statutory or other duty to their Partner Authority or would be in breach of their Partner Authority's adopted code of conduct for elected members;
- 5.1.2 to be committed to, and act as a champion for, the achievement of the Aims and Objectives;
- 5.1.3 to be a good ambassador for the Board;
- 5.1.4 to attend Board meetings regularly, vote on items of business and make a positive contribution to the achievement of the Aims and Objectives;
- 5.1.5 to remain acquainted with emerging technologies and processes in the area of waste management; and
- 5.1.6 to act as an advocate for the Board in seeking any necessary approval from their Partner Authority to the draft Business Plan, the Annual Action Plan and decisions of the Board requiring ratification from their Partner Authority (provided always that the SWB Member approves the relevant document or decision subject to ratification).

## **6. MEETINGS OF THE BOARD**

The provisions of **Appendix 3** shall apply to the conduct of meetings of the

Board and its sub- committees. In addition part I of Schedule 12 of the LGA 1972 (in so far as not contrary to the provisions of **Appendix 3**) shall apply to meetings of the Board.

## **7. RESPONSIBILITIES OF THE CHAIRMAN AND VICE-CHAIRMAN**

7.1 The responsibilities of the Chairman are as follows:

- 7.1.1 to act as an ambassador for the Board and to represent the views of the Board to the general public and other organisations;
- 7.1.2 to ensure that the meetings of the Board are conducted efficiently and in accordance with the Standing Orders and Rules of Procedure;
- 7.1.3 to encourage the Board to delegate sufficient authority to the Managing Director and to other officers of the Single Client Group or the Administering Authority to enable the Board's functions and activities to be carried out efficiently between meetings of the Board;
- 7.1.4 together with the SMG to monitor and appraise the performance of the Managing Director;
- 7.1.5 to establish a constructive working relationship with, and to provide support for any sub- committees and to the Single Client Group or to the Administering Authority or any other officers to whom the Board have delegated any of its powers and functions;
- 7.1.6 to ensure that the Board monitors and controls the use of delegated powers; and
- 7.1.7 to liaise with the Administering Authority regarding the Board's meetings and the conduct of its business.

7.2 The role of the Vice-Chairman is to deputise for the Chairman during any period of the Chairman's absence or at other times as appropriate and his responsibilities shall be the same as those of the Chairman.

7.3 Except as provided by this Constitution, neither the Chairman nor the Vice-Chairman has any authority or powers beyond those of any other SWB Member.

## **8. DELEGATION TO SUB-COMMITTEES AND OFFICERS**

8.1 The Board may arrange for any of its functions to be discharged in accordance with the provisions of the Scheme of Delegation.

8.2 The Board may appoint working groups consisting of SWB Members, officers from the Administering Authority (including of the Single Client Group) and officers of any of the Partner Authorities to consider specific matters and report back to the Board or any sub-committee with recommendations.

## **9. STRATEGIC MANAGEMENT GROUP**

The roles and responsibilities of the SMG are set out in clause 10 of the Inter

## 10. BUSINESS PLAN

- 10.1 No later than 30 September in each year the Managing Director shall, having consulted with SMG, submit an outline draft Annual Business Plan to the Board in respect of the next ensuing five Financial Years (covering the next Financial Year and the following four Financial Years). The outline draft will indicate key changes and actions that might be undertaken in the period and included in the Annual Business Plan, so far as can be reasonably proposed at the time, and seek the views of the Board on these and any other potential areas of focus as may be proposed by members of the Board or Partner Authorities.
- 10.2 Subject to having considered any comments or suggested amendments from the Board, SMG and the Joint Scrutiny Panel and, having regard to the timetable in paragraph 10.3 below, the Managing Director shall submit to the Board the draft Business Plan in respect of the next ensuing five Financial Years (covering that Financial Year and the following four Financial Years) .
- 10.3 No later than 24 December in each year the Board shall consider the suitability of the draft Business Plan for the performance during the next five Financial Years of the functions and activities delegated to it by the Partner Authorities (together with the contractual commitments of the Partner Authorities under any relevant contracts including the Principal Contracts) in accordance with the Aims and Objectives and shall use its reasonable endeavours to approve the draft Business Plan (subject to such amendments as the Board may require) for consultation with the Partner Authorities.
- 10.4 No later than the first Friday in the February of each Financial Year each Partner Authority will submit a report to its elected members to obtain approval for the draft Annual Business Plan. In addition, each Partner Authority will provide any comments or proposed amendments to the draft Annual Business Plan to the Board.
- 10.5 No later than 28 February in each financial year the Board, having taken into consideration any comments or proposed amendments by the Partner Authorities, and subject to such further amendments as the Board may require, shall use its best endeavours to adopt the draft Business Plan as its approved Annual Business plan.
- 10.6 The Board shall perform the statutory functions delegated to it by the Partner Authorities and the activities referred to in **paragraph 2** in conformity with the approved Business Plan.
- 10.7 At any time within a Financial Year the Board may agree by a majority vote of the SWB Members a proposal to amend the Business Plan for that Financial Year to accommodate any unforeseen circumstances and to assist the Board in achieving the Aims and Objectives.

- 10.8 Where the Board is to consider amendments to the Business Plan in accordance with **paragraph** 10.5 above, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of the proposed amendments. Each Partner Authority shall have a period of 20 Business Days from receipt of the proposed amendments in which to consider them and where a Partner Authority (acting reasonably) considers the proposed amendments to be a Material Change that Partner Authority shall forthwith (and in any event within five Business Days of expiry of the 20 Business Day notice period) notify the Managing Director that such amendments constitute a Material Change that requires the approval of the Partner Authority.
- 10.9 Where no Partner Authorities serve notice (in accordance with **paragraph** 10.6) on the Managing Director, the Board may implement such proposed amendments.
- 10.10 Where one or more of the Partner Authorities has notified the Managing Director that it considers the proposed amendments to be a Material Change, the Board shall not implement such proposed amendment unless and until the notifying Partner Authority has approved the proposed amendments and informed the Managing Director that it has approved such proposed amendments. Until such time as the proposed amendments have been approved, the current approved Business Plan (as may have been amended from time to time in accordance with this Constitution) shall apply. Partner authorities may make comments to the proposed amendments which do not constitute a material change and in these circumstances these comments will be considered by the Board.

## 11. ANNUAL BUDGET

- 11.1 The Board and the Partner Authorities will prepare the Annual Budget for each Financial Year in accordance with the following deadlines:
- 11.1.1 No later than 31 July in each Financial Year each Partner Authority will provide estimates of the additional number of residential properties included in the Council Tax base in its administrative area to the Treasurer, the Single Client Group and the Administering Authority;
- 11.1.2 No later than 30 September in each Financial Year the Treasurer will circulate to the Board and to the SMG member and s151 officer of each Partner Authority a draft Annual Budget in respect of the following Financial Year;
- 11.1.3 Subject to having considered any comments or suggested amendments from the Board, SMG, s151 officers and the Joint Scrutiny Panel, and any new information, the Treasurer shall, having regard to the timetable below, submit to the Board the draft Budget in respect of the following Financial Year.
- 11.1.4 No later than 24 December in each year the Board shall consider the suitability of the draft Budget and shall use its reasonable endeavours to approve the draft Budget (subject to such amendments as the Board may require) for consultation with the partner authorities.

- 11.1.5 No later than 1 December in each Financial Year each Partner Authority will provide confirmation of the actual number of additional residential properties included in the Council Tax base in its administrative area as at 1 December in that Financial Year to the Treasurer and the Single Client Group;
- 11.1.6 No later than the first Friday in the February of each Financial Year each Partner Authority will submit a report to its elected members to obtain approval for the draft Annual Budget and consider whether the draft Annual Budget should be included in its medium term financial plan. In addition, each Partner Authority will provide any comments or proposed amendments to the draft Annual Budget to the Board;
- 11.1.7 The Board shall use its best endeavours to approve the Annual Budget by no later than 28 February in each Financial Year.
- 11.2 If the Partner Authorities or the Board are unable to approve the draft Annual Budget for a Financial Year before 28 February in any year, the Board shall perform its delegated functions and activities set out in **paragraph 2** in conformity with the approved Annual Budget for the previous Financial Year subject to such adjustment for inflation, tax and prevalent demographic growth as required under the terms of the Principal Contracts and to meet any increased costs of employment of the existing Single Client Group, until such time as the Partner Authorities and Board can approve an Annual Budget.
- 11.3 At any time within a Financial Year the Board may agree by a majority vote amendments to the Annual Budget for that Financial Year to accommodate any unforeseen change in circumstances and/or to assist the Board in achieving the performance of its statutory functions and/or other activities in accordance with the Aims and Objectives.
- 11.4 Where the Board is to consider amendments in accordance with **paragraph 11.4** above, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of the proposed amendments to the Annual Budget. Each Partner Authority shall have a period of 20 Business Days from receipt of the proposed amendments in which to consider them and to notify the Managing Director that such amendments require the approval of the Partner Authority.
- 11.5 Where no Partner Authorities serve notice (in accordance with **paragraph 11.5**) on the Managing Director the Board may implement such proposed amendment.
- 11.6 Where one or more of the Partner Authorities has notified the Managing Director that it needs to approve the proposed amendments, the Board shall not implement such proposed amendments unless and until the notifying Partner



Authority has approved the proposed amendments and informed the Managing Director that it has approved such proposed amendments.

- 11.7 The Partner Authorities shall each pay their contribution of the Annual Budget to the Administering Authority in accordance with clause 13 and schedule 5 of the Inter Authority Agreement.

## 12. AMENDMENTS TO THE CONSTITUTION

- 12.1 The Board may at any time by a unanimous vote propose to amend the Constitution.
- 12.2 Any of the Partner Authorities may, if it considers it appropriate to do so, propose amendments to the Constitution and submit any such proposals to the Board.
- 12.3 Where the Board proposes amendments in accordance with **paragraph 12.1** above or has been notified of a proposed amendment by a Partner Authority in accordance with **paragraph 12.2**, the Managing Director shall forthwith notify the Chief Executive of each of the Partner Authorities of the proposed amendments.
- 12.4 Each Partner Authority shall have a period of 20 Business Days from receipt of the proposed amendments in which to consider them and where a Partner Authority (acting reasonably) considers that the proposed amendments constitute a Material Change that Partner Authority shall forthwith (and in any event within 5 Business Days of expiry of the 20 Business Day notice period) notify the Managing Director that such amendments constitute a Material Change that requires the approval of the Partner Authority. Partner authorities may make comments to the proposed amendments which do not constitute a material change and in these circumstances these comments will be considered by the Board.
- 12.5 Where no Partner Authorities serve notice (in accordance with **paragraph 12.4**) on the Managing Director the Board may implement such proposed amendments.
- 12.6 Where one or more of the Partner Authorities has notified the Managing Director that it considers the proposed amendments constitute a Material Change, the Board shall not implement such proposed amendment unless and until the notifying Partner Authority has approved the proposed amendments and informed the Managing Director that it has approved such proposed amendments.
- 12.7 Where an amendment of the Constitution is implemented in accordance with **paragraph 12.5** or **paragraph 12.6** the Clerk shall forthwith circulate to each of the SWB Members each Partner Authority and to the Treasurer, Monitoring Officer and Managing Director an amended Constitution incorporating such amendments.

## 13. SCRUTINY ARRANGEMENTS

- 13.1 The decisions, actions and activities of the Board shall be subject to the formal

Scrutiny Arrangements of each Partner Authority.

- 13.2 Subject to paragraph 13.1 the Joint Scrutiny Panel may make recommendations to the Board or to individual partner authorities so far as they concern matters associated with the function or activities delegated to the Board.

#### **14. CONDUCT AND EXPENSES OF SWB MEMBERS**

- 14.1 SWB Members shall be subject to the code of conduct for elected members adopted by the Partner Authority that nominated them to be a SWB Member.
- 14.2 SWB Members shall be entitled to receive payment of their attendance expenses as a SWB Member in accordance with the LGA 1972 and their Partner Authority shall be responsible for such payments.

#### **15. LIABILITY OF BOARD MEMBERS**

A SWB Member shall have the same responsibilities and liabilities as those that apply when sitting on other committees and bodies as an appointed representative of his nominating Partner Authority.

#### **16. CESSATION OF MEMBERSHIP OR DISSOLUTION OF THE BOARD**

- 16.1 Any of the Partner Authorities may, on giving 12 months' written notice to the Managing Director, withdraw from membership of the Board.
- 16.2 Where any of the Partner Authorities does serve notice to withdraw from membership of the Board, the Partner Authorities shall cooperate and seek to agree the arrangements regarding the relevant Partner Authority's exit from the Board.
- 16.3 In the event of withdrawal from the membership of the Board by a Partner Authority the provisions of clause 14 of the Inter Authority Agreement shall apply.
- 16.4 If two or more Partner Authorities give notice of withdrawal from membership of the Board in accordance with **paragraph** 16.1 in the same Financial Year, the Board shall consider whether or not it is economic or practicable for the Board to continue to operate on behalf of the remaining Partner Authorities and shall make appropriate recommendations to the remaining Partner Authorities whether or not the Board should continue in operation and if so make recommendations as to any appropriate amendments required to the Constitution and the arrangements for the performance of the functions and activities of the Board.
- 16.5 In the event that the County Council ceases to be a member of the Board, the remaining Partner Authorities shall amend the Constitution or reconstitute the Board as necessary to give effect to the withdrawal of the County Council as a waste disposal authority.
- 16.6 A majority of the Partner Authorities may at any time (whether as a result of the

Board's recommendations under **paragraph** 16.4 or otherwise) agree (by formal resolutions by each of them) that the Board should be dissolved on a date not less than six months from the date of the decision to dissolve the Board.

16.7 In the event of a decision by the Partner Authorities to dissolve the Board the provisions of clause 15 of the Inter Authority Agreement shall apply.

16.8 If it is agreed by all of the Partner Authorities that another local authority should be permitted to join the Board, then pursuant to Regulation 11(2)(c) of the 2000 Regulations, the Board shall be dissolved with a view to a new board being established and a replacement constitution on similar terms to this Constitution (as varied by agreement of the proposed Partner Authorities) being completed.

## **17. THE SUPERVISION AND MONITORING OF THE ADMINISTERING AUTHORITY AND THE SINGLE CLIENT GROUP**

17.1 The duties of the Administering Authority and the Single Client Group pursuant to clauses 5 and 8 of the Inter Authority Agreement are set out in **Appendix 4**.

17.2 The Board shall appoint the Managing Director through an appointment panel made up of SWB Members as agreed by the Board.

17.3 The Board shall receive regular reports from the Managing Director on the activities and performance of the Administering Authority (including the Single Client Group) in relation to their duties set out in clauses 5 and 8 of the Inter Authority Agreement. In addition, the SMG shall receive regular reports from the Managing Director on the activities and performance of the Single Client Group.

17.4 The Board shall also receive regular reports from the Treasurer and the Managing Director on the financial performance of the Board.

17.5 Copies of such reports and the decisions of the Board thereon shall be circulated to each of the Partner Authorities.

## APPENDIX 1

### Statutory functions and activities delegated to the Board Part I

The Board's functions shall comprise the statutory functions of each of the Partner Authorities under each of the following enactments (which for the avoidance of doubt shall include all subordinate legislation made under the relevant enactment):

1. Environmental Protection Act 1990 Part II s. 34, s34A, s.45, s45A, s.46A, s46B, s46C, s46D, s.47, s47ZA, s47ZB, s.48, s.51, s. 52, s.55, s59, s63A, s71, s73A;
2. Waste and Emissions Trading Act 2003 s.9, s.12,s.31; s.32;
3. Environment Act 1995 s.108, 108A, 109;
4. Refuse Disposal (Amenity) Act 1978 section 2(1)(b)
5. Local Government Act 1972 s.111, in so far as its use is calculated to facilitate or is incidental or conducive to the discharge of any of the functions referred to in paragraphs (a) to (h) of this Appendix;
6. Local Government Act 2000 s.2, in so far as its use relates to the promotion or improvement of the economic, social and/or environmental well-being of the whole of the County of Somerset or any part thereof in respect of matters directly related to the management or recycling of waste; and
7. Localism Act 2011 s.1, in so far as the use of the general power set out therein is calculated to facilitate the discharge of any of the functions referred to in Part II of this Appendix

### Part II

In performance of the statutory functions referred to in Part I the Board shall also undertake the following activities on behalf of the Partner Authorities:

1. manage the Principal Contracts for the delivery of an integrated waste management service across the County of Somerset in so far as such service relates to all or any of the areas of the Partner Authorities through the Single Client Group;
2. supervise and monitor the Managing Director and the Administering Authority (including the Single Client Group) in the performance of their duties and functions under this Constitution;
3. approve and implement the Business Plan;
4. approve and implement the Annual Budget;
5. seek to influence and advise central government on waste and recycling policies;

6. commission research and associated public opinion surveys etc. on waste and recycling;
7. ensure that the legal and statutory functions delegated to it by the Partner Authorities are being discharged effectively;
8. liaise with the Managing Director to ensure that a strategic policy for waste and recycling across the County of Somerset is formulated and approved; and
9. assist the Partner Authorities in meeting their respective responsibilities (including but not limited to) under the:
  - (a) European Community Strategy for Waste Management 1989 (as reviewed in 1996);
  - (b) EU Directive 757 4427 EEC as amended by Directive 917 1567 EEC and adapted by Directive 967 3507 EEC on Waste (The Framework Directives on Waste);
  - (c) Environmental Protection Act 1990;
  - (d) Anti-Social Behaviour Act 2003;
  - (e) Clean Neighbourhoods and Environment Act 2005;
  - (f) Refuse Disposal (Amenity) Act 1978 (insofar as this relates to abandoned vehicles, public safety and amenity);
  - (g) Environmental Protection (Waste Recycling Payments) Regulations 1992 (as amended 1994);
  - (h) EU Landfill Directive (Council Directive 1993/317 EC);
  - (i) EU IPPC Directive (Council Directive 967 617 EC);
  - (j) Landfill Tax Regulations and the Finance Act 1996;
  - (k) Controlled Waste (England and Wales) Regulations 2012;
  - (l) Environmental Protection (Duty of Care) Regulations 1991;
  - (m) Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991;
  - (n) Environment Act 1995;
  - (o) Waste Emissions Trading Act 2003;
  - (p) Household Waste and Recycling Act 2003;
  - (q) EU Waste Electronic and Electrical Equipment Directive;
  - (r) Local Government Act 1999 (best value duty);
  - (s) Local Government Act 2003 (duties under the Code of Practice for Workforce Matters);
  - (t) Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Amendment) Regulations 1998, SI 605;
  - (u) End-of-Life Vehicles Regulations 2003, SI 2635;

- (v) End-of-Life Vehicles (Producer Responsibility) Regulations 2005, SI 263;
- (w) Environmental Protection (Duty of Care) (England) (Amendment) Regulations 2003, SI 63;
- (x) The Waste (England and Wales Regulations) 2011 as amended
  
- (aa) EU Regulation on the Supervision and Control of Shipments of Waste 259/1993;
- (bb) EU Regulation laying down Health Rules concerning Animal By-Products not intended for Human Consumption 1774/2002;
- (cc) Waste Electrical and Electronic Equipment Regulations 2006, SI 3289;
- (dd) Waste Electrical and Electronic Equipment (Waste Management Licensing) (England and Wales) Regulations 2006, SI 3315;
- (ee) Waste Incineration (England and Wales) Regulations 2002, SI 2980;
- (ff) Waste Management (England and Wales) Regulations 2006, SI 937;
- (gg) Waste Management Regulations 1996, SI 634; and
- (hh) Pollution Prevention and Control Act 1999.
- (ii) The Waste (England and Wales) Regulations 2011 (as amended)
- (jj) The Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- (kk) The Waste Electrical and Electronic Regulations 2013 (as amended)

## APPENDIX 2

### Aims and Objectives of the Somerset Waste Board

1. Each of the Partner Authorities recognise in particular the need to address central government and EU targets for recycling and recovery of waste and the promotion of sustainable development including the use of waste as a resource and waste minimisation.
2. Each of the Partner Authorities, in recognition of the need for delivering best value, promoting financial efficiency and effectiveness, and securing continuous improvement in the provision of waste management services, wish to:
  - 2.1 develop and deliver long term strategies in respect of the collection and disposal of waste;
  - 2.2 consider managing waste from outside Somerset if commensurate benefits accrue and such action has been approved by all of the Partner Authorities;
  - 2.3 be recognised as a leading provider of sustainable waste management services in the United Kingdom;
  - 2.4 procure services, facilities, assets and solutions to meet the current and future central government and European targets for recycling and recovery of waste;
  - 2.5 work together in a spirit of mutual trust, support and respect, and to ensure that when difficulties or differences of opinion arise they are addressed quickly, honestly and openly;
  - 2.6 share in a fair and equitable manner the costs and work included in achieving these Aims and Objectives;
  - 2.7 endeavour to fully engage all stakeholders and to maximise the benefits arising from the co- operation of the Partner Authorities through the Board and the contributions that each Partner Authority may be able to make through its participation in the Board; and
  - 2.8 provide a forum and mechanisms for ensuring that there is a coherent programme and organisational structure for waste management and for joint working.

## APPENDIX 3

### Provisions governing the conduct of meetings of the Board

1. At its AGM meeting the Board shall:
  - 1.1 elect from among the SWB Members the Chairman and Vice-Chairman for the next year by a simple majority of votes provided that if a deadlock occurs between two or more SWB Members a second secret ballot shall immediately be conducted for the election of the Chairman and Vice-Chairman;
  - 1.2 Review, as required, the Constitution, its Standing Orders, Rules of Procedure and Scheme of Delegation
  - 1.3 approve the schedule of meetings for the remainder of the year.
2. Subject to **paragraph** 5 of this Appendix 3 and paragraph 1.14 of Appendix 5 , and the need exceptionally to call additional meetings, the Board shall meet at least four times each year. The Chairman shall decide the venue, date and time of all meetings of the Board. Wherever practicable, at least 10 Business Days notice of such meetings shall be given to each SWB Member, the Managing Director, the Treasurer, the Monitoring Officer and to each of the Partner Authorities by the Clerk.
3. Meetings of the Board shall be open to the public and press except during consideration of items containing confidential or exempt information in accordance with the provisions of sections 100 to 100K of the LGA 1972; and reports to and the minutes of the Board shall (subject to the provisions of sections 100 to 100K of the LGA 1972) be available to the public and press as though they were the reports or minutes of a meeting of a Partner Authority.
4. Any SWB Member may requisition a meeting of the Board by giving notice of such requisition to the Chairman and to the Clerk. Immediately upon receipt of such requisition, the Chairman shall call a meeting of the Board in accordance with **paragraph** 2 of this Appendix 3 which shall be no later than 10 Business Days after the receipt by the Clerk of the notice of requisition.
5. The Standing Orders and Rules of Procedure shall be applicable to meetings of the Board. The Standing Orders and Rules of Procedure may only be amended or replaced if the amendment or replacement is agreed by not less than three-quarters of the SWB Members.
6. The quorum for a meeting of the Board shall be five SWB Members, which shall include at least one SWB Member appointed by each of three different Partner Authorities; no business may be transacted at a meeting of the Board unless a quorum is present.



7. If a quorum is not present within 30 minutes of the time set for the commencement of a meeting of the Board (or a quorum ceases to be present during a meeting) the meeting shall be adjourned to the same time and venue five Business Days later or to such other date, time and venue as the Chairman (or other person who is chairing the meeting) shall determine.
8. The Chairman or Vice-Chairman may be removed by a majority vote of all of the SWB Members present at a meeting of the Board subject to the Chairman or the Vice-Chairman being given the opportunity to address the meeting before the vote is taken to put his case as to why he should not be removed.
9. If the Chairman or the Vice-Chairman is removed by a majority vote of the Board or resigns or is otherwise unable to continue as Chairman or Vice-Chairman he may be replaced by the election of an SWB Member as Chairman or Vice-Chairman as the case may be by a majority vote of the Board (in accordance with the provisions of **paragraph 3** of this Appendix 3).
10. The Chairman shall normally preside at all meetings of the Board. If the Chairman is not present within 15 minutes of the time for the commencement of a meeting, or being present does not wish to preside or is unable to do so, then the Vice-Chairman shall preside at that meeting. If (in the event of the absence or non-availability of the Chairman) the Vice-Chairman is not present within 15 minutes of the time for the commencement of the meeting or does not wish to preside or is unable to do so, the meeting shall appoint another SWB Member to chair the meeting.
11. In the event of an equality of votes in relation to an agenda item at the first Board Meeting at which that agenda item is discussed, the person chairing that meeting shall not have a second or casting vote, if a vote to defer that agenda item ("**Deferral Vote**") is passed by a majority of the SWB Members present. In the event of a Deferral Vote the agenda item shall be deferred for a period of not less than five Business Days ("**Deferral Period**") and the Board Meeting shall be adjourned to a date beyond the expiry of the Deferral Period as determined by the person chairing the meeting. During the Deferral Period the SWB Members shall be able to consult their Partner Authorities and discuss the agenda item with other SWB Members. At the adjourned Board meeting the agenda item shall be discussed again and any written views received from Partner Authorities shall be reported to the Board for consideration by the meeting. If at the adjourned meeting there is an equality of votes in relation to that agenda item the person chairing that meeting shall have a second or casting vote.

## APPENDIX 4

### Roles and duties of the Administering Authority, the Single Client Group and the Strategic Management Group

#### 1. THE ADMINISTERING AUTHORITY

- 1.1 The roles and duties of the Administering Authority as set out in clause 5 of the Inter Authority Agreement are to:
  - 1.1.1 arrange for the Single Client Group to discharge its roles and functions as set out in clause 8 of the Inter Authority Agreement;
  - 1.1.2 receive each Partner Authority's share of the Annual Budget calculated in accordance with the principles set out in Schedule 5 of the Inter Authority Agreement;
  - 1.1.3 make the payments due under the Principal Contracts;
  - 1.1.4 ensure that the Board operates in accordance with the Constitution and Standing Orders and Rules of Procedure including notifications for meetings of the Board;
  - 1.1.5 arrange for the Treasurer to promptly and diligently perform the role of accounting officer for all funds held on account of the Board and to make and provide all appropriate banking and accounting arrangements and services required for the due and proper receipt holding and application of such funds and to assist the Board in the discharge of its functions;
  - 1.1.6 arrange for the Monitoring Officer to promptly and diligently perform the role of monitoring officer in relation to the Board and to notify the monitoring officers of the other Partner Authorities should it appear to him at any time that any proposal decision or omission of the Board constitutes or may give rise to a contravention of any enactment or rule of law or maladministration under Part III of the Local Government Act 1974;
  - 1.1.7 subject to clause 4.4 of the Inter-Authority Agreement provide promptly and diligently such legal advice as requested by the Board from time to time;
  - 1.1.8 provide promptly and diligently such human resources advice and services as requested by the Board from time to time;
  - 1.1.9 provide promptly and diligently such additional administrative resources and office facilities that may be reasonably necessary to discharge the Board's functions;
  - 1.1.10 where agreed by the Board hold any capital assets in respect of the Principal Contracts and the Single Client Group on behalf of the Board and/or the Partner Authorities;
  - 1.1.11 be the contracting authority on behalf of the Board;
  - 1.1.12 to carry out any functions delegated to it by the Board; and
  - 1.1.13 instigate and defend legal proceedings on behalf of the Board, the other Partner Authorities (subject to obtaining the prior written consent of the relevant Partner

Authority(ies)) and itself as appropriate.

- 1.2 The Administering Authority shall be responsible for the appointment, employment and management of the staff of the Single Client Group (other than the Managing Director who shall be appointed by the Board in accordance with clause 5.5 of the Inter Authority Agreement) and for the payment of the salaries, wages, income tax, national insurance contributions, and all other payments and emoluments of such staff provided that such payments shall not, without the approval of the Board exceed the amount specified within the Annual Budget for such expenditure.
- 1.3 The Administering Authority shall provide such administrative resources and office facilities that may be reasonably necessary to enable the Single Client Group to carry out its functions and activities.
- 1.4 The Administering Authority shall be responsible for the employment of the Managing Director on such terms and conditions as agreed by the Board and the Administering Authority shall be responsible for the payment of the salary, wages, income tax, national insurance contributions, and all other payments and emoluments of the Managing Director provided that such payments shall not, without the approval of the Board exceed the amount specified within the Annual Budget for such expenditure.
- 1.5 The Administering Authority shall ensure that all contracts entered into by it on behalf of the Board shall contain provisions enabling them to be novated to all or any of the Partner Authorities, at no cost to the Partner Authorities other than reasonable legal costs incurred in completing such novations.

## **2. THE SINGLE CLIENT GROUP**

- 2.1 The roles and duties of the Single Client Group as set out in clause 8 of the Inter Authority Agreement are to:
  - 2.1.1 monitor and manage the performance of the Principal Contracts;
  - 2.1.2 in conjunction with support provided by the Administering Authority to prepare monitor and control the progress of the Business Plan, Annual Action Plans and the Annual Budget to ensure they continue to fulfil business needs;
  - 2.1.3 advise the Board generally on waste management initiatives (both local and national) and the progress in delivering the Aims and Objectives;
  - 2.1.4 prepare reports and recommendations for consideration by the Board, support the setting of the strategic direction of the Board and the context within which services are developed, managed and operated;
  - 2.1.5 ensure that where any information is received from or requested by a supplier or contractor, the dissemination, collation and provision of information is effected within a timescale which is compatible with any time provisions detailed in the Principal Contracts and in any event as soon as is reasonably practicable;
  - 2.1.6 refer any requests from the contractors for a consent or approval to appropriate officers, the Board or the Managing Director as appropriate and then

communicate any decision back to the contractors. Such communications shall be within a timescale which is compatible with any time provisions detailed in the Principal Contracts and in any event as soon as reasonably practicable;

- 2.1.7 prepare and make recommendations to the Board on waste management issues involving central government and other external agencies;
- 2.1.8 provide a full assessment of the short, medium and long term financial, resource, service, legal and contractual implications of the waste management service for the Board, the Administering Authority and each Partner Authority;
- 2.1.9 prepare and submit for approval by the Board an annual internal audit plan. Regularly report on the findings of any audits undertaken to the Board and to the section 151 officers of all of the Partner Authorities; and
- 2.1.10 prepare a strategic risk register relating to the functions of the Board and regularly submit this, together with details of any mitigation actions implemented, to the Board.

### 3. THE STRATEGIC MANAGEMENT GROUP

- 3.1 The Partner Authorities agree that the SMG shall have the following role and responsibilities:
  - 3.1.1 to ensure that the legal duties and statutory functions of the Partner Authorities delegated to the Board in accordance with the Constitution are being discharged effectively in accordance with relevant legislation and with due economy, efficiency and effectiveness;
  - 3.1.2 to ensure that the duties of the Partner Authorities with respect to best value are complied with;
  - 3.1.3 to review each Business Plan and Annual Action Plan prepared by the Single Client Group and make recommendations for any changes it deems necessary (acting reasonably) in accordance with **paragraph 10** prior to submission to the Board for approval;
  - 3.1.4 to review the Annual Budget prepared by the Treasurer and where relevant make recommendations for any changes it deems necessary (acting reasonably) in accordance with **paragraph 11** before submission to the Board and each Partner Authority for approval;
  - 3.1.5 to consider the reports submitted by the Managing Director regarding the performance of the Board; and
  - 3.1.6 to review the effectiveness of the Board in:
    - (a) helping each Partner Authority to meet its statutory and local

targets; and

- (b) achieving efficiency savings on behalf of all of the Partner Authorities,

following which it shall report and, where appropriate, make recommendations to the Partner Authorities on the effectiveness of the Board and any changes or amendments necessary to improve the effectiveness of the Board.

#### **4. ROLES OF THE OFFICERS TO THE BOARD**

##### **Clerk**

The Partner Authorities agree that the role of the Clerk shall be to provide clerical and administrative support to the Board including, but not limited to, calling meetings of the Board, taking minutes at meetings and circulating agendas and minutes and other papers.

##### **Treasurer**

The Partner Authorities agree that the role of the Treasurer shall be to perform the role and functions as set out in the Inter Authority Agreement and in particular those duties set out in clauses 5.2.5, 16.1 to 16.4 of the Inter Authority Agreement.

## APPENDIX 5

### SWB Scrutiny Arrangements

- 1.1 The decisions made by the Board shall for the time being be subject to the Scrutiny Arrangements of each Partner Authority and each Partner Authority acknowledges the requirements in **paragraph** 1.8 below for cooperation between the respective Scrutiny Committees of each Partner Authority.  
The potential for the establishment of formal joint scrutiny arrangements once permissible under legislation will be investigated by the Clerk for consideration by the Board and adoption following consultation with the Partner Authorities.
- 1.2 Any decision of the Board, except those agreed as urgent in accordance with **paragraph** 1.3 of this Appendix, shall not be implemented until the Scrutiny Arrangements of the Partner Authority whose membership has called in the decision or action has been completed.
- 1.3 Where the Board decides that a decision must be implemented without delay and as a matter of urgency any subsequent 'call in' of that decision should normally relate only to the process leading to the decision and not to the decision itself.
- 1.4 A summary record of decisions made by the Board will be made available to the public via the website of the Administering Authority within two Business Days of the decision being made. At the same time the Administering Authority will notify the summary record of decisions to all Partner Authorities for them to make available to their members as they see fit. The summary record will indicate which of the decisions are subject to the urgency provision and therefore are not available to be 'called in' prior to implementation.
- 1.5 All decisions of the Board (unless urgency is specified in accordance with **paragraph** 1.3 of this Appendix) to be subject to call-in within five Business Days of publication. If not called in during that period any decision shall then be available for implementation.
- 1.6 A call in of a decision should only be permitted if the decision directly affects the Partner Authority whose membership wishes to call it in.
- 1.7 The SWB Members and the relevant officers from each Partner Authority (including the officers of the Single Client Group employed by the Administering Authority) shall fully co-operate with the relevant Scrutiny Committee of any of the Partner Authorities. The Managing Director may identify the appropriate officer(s) to attend a scrutiny meeting. The SWB Chairman may nominate the SWB Member(s).
- 1.8 Where a decision is called in by more than one Partner Authority, each of the Scrutiny Committees of each of the Partner Authorities calling in the decision will be invited to meet jointly to hear evidence, views, options considered, reasons for decision and to ask questions of appropriate SWB Member(s) and officers of the Administering Authority (including of the Single Client Group) and others invited to participate.

- 1.9 After these “hearings”, each relevant Scrutiny Committee will meet separately to decide on what comment, view or recommendations (if any) it wishes to make to the Board.
- 1.10 Where the account to be given to the Scrutiny Committee requires the production of a report, then the SWB Member or officer concerned will be given sufficient notice to prepare the documentation.
- 1.11 A SWB member who is also a member of a Scrutiny Committee or a sub-committee of such a committee should regard himself as having a personal and a prejudicial interest if a Scrutiny Committee consideration relates to a decision made, or action taken, by the Board or any sub committee of the Board.
- 1.12 Any other SWB Member attending a scrutiny meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action should declare a personal interest.
- 1.13 Once it has formed recommendations on a call-in (or proposals for development in accordance with **paragraph** 1.16 of this Appendix) a Scrutiny Committee shall prepare a formal report and submit it for consideration by the Board.
- 1.14 The Board shall consider the report of a Scrutiny Committee at its next suitable meeting and shall issue a formal response to such a report.
- 1.15 The Clerk shall monitor the operation of the provisions relating to call-in and urgency annually, and submit a report to the Board with proposals for review if necessary.
- 1.16 A Scrutiny Committee should notify one of the SWB Members for his Partner Authority if it includes in its work programme any aspect of policy development or review relating to the work or functions of the Board.
- 1.17 Subject to the above paragraphs the partners may, without compulsion, appoint up to two members to an informal Joint Waste Scrutiny Panel, for the purpose of reviewing the draft annual business plan and any topic requested by the partners. The Joint Scrutiny Panel is not a formal scrutiny body as defined in paragraph 13.1 or within this Appendix but it may make recommendations to the Board or to individual partner authorities so far as they concern matters associated with the function or activities delegated to the Board.

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