

WARRINGTON BOROUGH COUNCIL
RECORD OF DECISION TAKEN BY AN OFFICER

DECISION TITLE: Energy Company Investment

Cabinet Decision No and/or Forward Plan No (Executive decisions only)	CAB 65 and CAB 73 - 9 September 2019 FP No 020/19
Directorate Ref No (Non Executive decisions only) If applicable	N/A
Decision detail	<p>At the Cabinet meeting of 9 September 2019, approval was obtained for:</p> <ul style="list-style-type: none"> (i) s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services) to proceed with agreeing the final acquisition terms in respect of the Council’s acquisition of a 50% equity share in Together Energy Limited; (ii) s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services) to proceed with agreeing the final terms of the Council’s loan to Together Energy Limited; (iii) Noting the proposed governance arrangements and for the s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services) to appoint the Council’s directors; (iv) Establishing insurance for the provision of indemnity cover for any decisions made by Council officers when acting as Board Directors and that the Council indemnifies officers; (v) The Monitoring Officer (Head of Legal and Democratic Services) entering into all necessary documents to complete all aspects of the matter. <p>All of the delegated authorities were subject to:</p> <ul style="list-style-type: none"> - A Risk Workshop taking place and - Consultation with the Deputy Leader and Cabinet Member for Environment and Public Protection. <p>That Risk Workshop took place on 16 September 2019 whereby members of Cabinet, Treasury Management Board and Renewable Energy Task Group; appropriate officers from Senior Management Team, Finance, Audit, Legal, Energy and Business Support; as well as the Council’s external auditor and all external advisors were in attendance and considered and challenged the matter in greater detail.</p> <p>Pursuant to the instruction of the Deputy Leader and Cabinet Member for Environment and Public Protection, and in compliance with the Cabinet delegation, the s.151 Officer</p>

(Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services) have agreed the acquisition and loan terms - the key terms of each being as set out in the Part 2 report, Section 10 – Terms of the Investment Agreement.

Furthermore in support of the instruction and decision to proceed the legal Due Diligence carried out by DAC Beachcroft is set out in **Appendix 1**; the key legal risks are set out **Appendix 2** and the key financial risks and investment case are set out at **Appendix 3**.

Appendix 1, 2 and 3 are confidential and exempt for publication virtue of categories 3 and 5, Local Government Act 1972, schedule 12A.

Cabinet also delegated the authority to s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services) (after consultation with the Deputy Leader and Cabinet Member, Corporate Resources and the Cabinet Member for Environment and Public Protection), to appoint the Council's directors to the board of Together.

The s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services), in consultation with the Deputy Leader and Cabinet Member, Corporate Resources and the Cabinet Member for Environment and Public Protection) agree to appoint Steven Broomhead (Chief Executive and Head of Paid Service) as the Council's initial director. Steven Broomhead is a director of a number of existing companies and has a proven track record as acting as a director and he has confirmed that he is willing and able to act as a director and will also sign a Letter of Willingness to act as a Director. The s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services) therefore agree that Steven Broomhead's appointment is suitable.

It should be noted that the Council has the ability to appoint two further directors, however until such a time as they are appointed, Steven Broomhead will have three votes on the board of the Company, ensuring that the Council has parity. The decision to appoint the further directors will be kept under consideration and will be subject to a further decision.

In order to complete the acquisition the Monitoring Officer will enter into the following documents:

1. Subscription Letter
2. Investment Agreement
3. Disclosure Letter
4. Facility Agreement
5. Assingation in Security of Bank Account (replacing the original charge over bank account)
6. Persons of Significant Control letter

Finally as part of the acquisition and loan Together are required to pay the costs as set

	out in Appendix 4.
Reason for decision	<p>The Cabinet delegated the approval of the acquisition and loan terms, as well as the appointment of the Council's directors to the s.151 Officer (Director of Corporate Services) and Monitoring Officer (Head of Legal and Democratic Services), in consultation with Deputy Leader and Cabinet Member for Environment and Public Protection, subject to the outcome of the Risk Workshop and the mitigation and/or resolution of the identified risks.</p> <p>Furthermore it approved the Monitoring Officer (Head of Legal and Democratic Services) entering into the relevant documents.</p> <p>This record confirms the decisions have been taken by the relevant officers in line with the Cabinet delegation and upon the instruction of the relevant members.</p>
Decision Maker/Responsible Officer	<p>Lynton Green – s.151 Officer - Director of Corporate Services</p> <p>Matthew Cumberbatch – Monitoring Officer - Head of Legal and Democratic Services</p>
Directorate	Corporate Services
Lead Executive Board Members consulted (if applicable)	<p>Cllr Cathy Mitchell – Deputy Leader and Cabinet Member, Corporate Resources</p> <p>Cllr Judith Guthrie – Cabinet Member, Environment and Public Protection.</p>
Decision Date	9 October 2019
Date Decision was published / notified (normally within 2 clear working days of decision being made)	5 December 2019
Summary of options considered	A full range of the options considered are set out at Section 8 – Options Appraisal of the Part 2 Cabinet Report.
Interests declared	None
Background Papers (if applicable) <i>(period expires after 4 years from date of decision)</i>	Part 1 Executive Board Report

Confidential / exempt information Category (if applicable)	Part 2 Executive Board Report - exempt by virtue of categories 3, Local Government Act 1972, schedule 12A. Appendix 1 – DACB Legal Due Diligence Appendix 2 – Summary of Legal Risks Appendix 3 – Summary of Financial Risks and Investment Case
--	---

NB. This form expires after 6 years.