

**MINUTES OF A MEETING OF THE
CORPORATE SERVICES OVERVIEW AND SCRUTINY PANEL
HELD ON THURSDAY 7 OCTOBER 2010 FROM 7PM TO 8PM**

*Present:- Norman Jorgensen (Chairman), Michael Firmager (Vice-Chairman),
Alistair Auty and Stuart Munro*

Also present:-

Graham Ebers, General Manager Business Services

Kevin Jacob, Principal Democratic Services Officer

Susan Law, Chief Executive

Andrew Moulton, Director of Transformation

Madeleine Shopland, Senior Democratic Services Officer

Heather Thwaites, General Manager Policy and Partnerships

PART I

18. MINUTES

The Minutes of the meeting of the Panel held on 1 September 2010 were confirmed as a correct record and signed by the Chairman.

19. APOLOGIES

Apologies for absence were submitted from Councillors Bowring and Lissaman.

20. DECLARATIONS OF INTEREST

There were no declarations of interest.

21. PUBLIC QUESTION TIME

There were no public questions.

22. MEMBER QUESTION TIME

There were no Member questions.

23. GOVERNANCE ARRANGEMENTS OF LOCAL AUTHORITY COMPANIES AND THE EXECUTIVE TRADING AND ENTERPRISE SUB-COMMITTEE

The Chair outlined the purpose of the review and welcomed the witnesses to the meeting. He emphasised that the Panel were looking to gather information to assist them in the review and did not wish to put anyone on the spot. If Officers were unable to provide an answer at the meeting and wished to provide a written response later that would also be acceptable.

Graham Ebers, General Manager Business Services provided information as the lead Officer responsible for Council budgets and Chief Finance Officer. A summary of the questions asked by Members and the response to these questions is set out below:

- Members asked what the value of the Councils investment in Wokingham Enterprises Ltd (WEL) was and if the loans to the company secured on the properties. They were informed that the Council had lent the company approximately £9.7m on specific terms. There was a first charge on the properties. This first charge could be invoked if the company defaulted on the loan.
- The General Manager Business Services was asked on what basis the loans to the company were made and whether they were time limited. He commented that the loan

would be repaid to the Council on the same basis the Council incurred its financing charges (i.e. cost neutral) (4% principle repayment). The loan was on the balance of a reducing balance and would be substantially repaid after 25 years.

- The Panel asked how the Council would cancel the loans made to WEL, should it wish to. The General Manager Business Services commented that the first charge on the properties could be invoked if the company defaulted. Also the Council as the sole shareholder could decide to cease the company.
- In response to a question regarding potential financial risks that the Council would be exposed to in relation to the company, the General Manager Business Services reminded Members that the Council was the sole shareholder and would act as guarantor for the losses and liabilities of the company. Non repayment of the loan made to the company was a potential risk. Other potential risks, financial and otherwise were detailed in Appendix 2 of the May Executive report.
- The Panel questioned who had the authority to transfer all or some of the Council's shares in the company. The General Manager Business Services stated that it would ultimately be the Council as sole shareholder. This would be set out in the Share Holder Agreement and other documents to be considered by the Trading and Enterprise Sub Committee in the near future. It was suggested that this was also a governance issue and that the Panel may wish to also ask the question of the Head of Governance and Democratic Services, who would be providing information at the next Panel meeting.
- Members enquired whether the company was subject to the External/internal either internally or via the Council's own arrangements and how the company would appear on the Council's accounts. As the Council was the sole shareholder in the company it would appear of the Council's consolidated end of year statement of accounts. It would also be referred to in specific notes to the accounts. The accounts would be examined by the Council's External Audit provider. The General Manager Business Services commented that he believed that the External Audit provider would look for assurance from Internal Audit in undertaking their External Audit duties. Revenue monitoring would be undertaken through TESC rather than the Executive.
- Whilst there were currently no limits on acquiring other companies, restrictions might be put in place through the forthcoming shareholders agreement.
- The Panel questioned where accountability for loans to the company rest. The General Manager Business Services stated that the Directors were at the heart of the commercial proposition. There were two types of profit involved; rental income and capital appreciation through land as the town centre was regenerated. It was expected that the Council would receive a divided payment back, particularly through the rental income stream.
- The company was as tax efficient as a private company could be. There are two vehicles appropriate for undertaking this commercial activity with an investment partner; Local Authority Trading Company and Limited Liability Partnership. There were advantages and disadvantages to both types of vehicle. Whilst a local authority trading company did not enjoy the same tax benefits as a limited liability partnership a local authority trading company was a more tried and tested vehicle. There had been a need to move quickly as the opportunity to purchase Peach Place had arisen.
- The General Manager Business Services was requested to explain his involvement in setting up WEL as a Local Authority Trading Company. He emphasised that a shell umbrella company had first been established, of which he had been a director. In this role he was best placed to ensure that the company remained dormant at that time. When it became WEL his main role was to assist in the handover and to ensure that they had support in the business case for the purchase of Peach Place.

Heather Thwaites, General Manager Policy and Partnerships provided information as the lead Officer responsible for Wokingham Enterprise Ltd at the time it was established. A summary of the questions asked by Members and the response to these questions is set out below:

- The General Manager Policy and Partnerships had been the line manager of Clive Dove-Dixon, Head of Commercial Development, who had played an integral part in the establishment of the company, at the time that WEL was first established.
- The General Manager Policy and Partnerships was asked to provide a brief overview of her involvement in the setting up of Wokingham Enterprises Ltd as a Local Authority Trading Company. She commented that WEL had been established as a shell company in late 2009. Her direct involvement had begun when WEL had been mobilised as a company through which Peach Place would be purchased. The Executive had agreed that the company would purchase Peach Place. Peach Place was an essential part of the town centre regeneration. Property issues formed part of her remit. The business plan for Peach Place which had been considered by the Executive in May had been produced by herself and Bernie Pitch, Head of Strategic Capital and Asset Planning.
- Members asked what were the company's objectives and were informed that these were set out in the aforementioned report which was taken to the Executive in May. The Panel were reminded of WEL's objective of facilitating the finding of a long term investment partner. Members were reminded that a local authority could not trade or make a profit.
- A report by the Head of Governance and Democratic Services detailed the various vehicles which had been considered when WEL was being established.
- In response to a question regarding who was accountable for the actions of the company, the General Manager Policy and Partnership commented that the Chair and Directors would be accountable. The Trading and Enterprise Sub Committee (TESC) would be considering draft establishment documents at its next meeting.

Andrew Moulton, Director of Transformation provided information as the lead Officer responsible for the Transformation programme and establishment of local authority companies as a vehicle to deliver some of the programme. A summary of the questions asked by Members and the response to these questions is set out below:

- The Director of Transformation indicated that he had had direct involvement with WEL since May when the company was mobilised to trade. He had line manager responsibility for Clive Dove-Dixon. Prior to May 2010 he had been involved in a broad sense as trade and enterprise was a key theme of the Transformation Programme. The creation of a LATC was consistent with the Council's aspiration to shape and secure certain markets. The Council was looking to learn from the company's establishment. If the model was successful it could potentially be repeated.
- The Panel asked various questions regarding why a company model had been selected and what other vehicles had been considered. The Council had been advised by external legal advisers not to select a Limited Liability Partnership solely on the basis of its tax advantages if it were minded to establish future models.
- The company directors had particular obligations under the relevant companies legislation.
- It was noted that at present there were three officer directors of the company; Andrew Moulton, Clive Dove-Dixon and Steve George, Social Enterprise Development Manager. The Director of Transformation was currently the Managing Director. It was appreciated that as directors of the trading company and officers of the Council the

three Officer Directors were perceived to be to 'dual hatted.' The directors were mindful of the Council's objectives as shareholder in the company.

- WEL's Board would be made up of a number of external representatives, Members and Council Officers. TESC would appoint the external representatives.
- Members also asked the Director of Transformation whether the company was subject to the External/internal either internally or via the Council's own arrangements. The Director of Transformation commented that there had not been direct involvement from Internal Audit. However, Internal Audit had scheduled looking at how the company had been set up, into their audit programme.
- In response to a question relating to possible conflicts of interest, the Director of Transformation referred the Panel to the Appendix 2 of the May Executive report which included a comprehensive risk analysis. This summarised key delivery risks, their likely impact and mitigating actions. It was noted that Members and officers would be governed by the mandatory provisions of the model code of conduct.
- Company directors were required by law to act in the interests of the company and not the Council.

The Chief Executive provided clarification with regards to what vehicles had been considered and why a Local Authority Trading Company model had been selected. The Executive had provided a general direction. A holding company had been a preferred option as this provided the opportunity for the Council to make a profit. There were a series of areas, including the town centre regeneration, to which consideration to placing them under arms length companies, had been given. A shell holding company had been established.

Various options had been considered. Whilst a Limited Liability Partnership had been an attractive option with regards to tax the Council did not currently have an investment partner in place which meant that this vehicle was less appropriate for an investment company for the town centre regeneration. The opportunity to purchase Peach Place had arisen and the Council had had to move quickly. The decision had been taken to make the holding company the investment company for Peach Place.

These are the Minutes of a meeting of the Corporate Services Overview and Scrutiny Panel

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