

**MINUTES OF A MEETING OF THE
CORPORATE SERVICES OVERVIEW AND SCRUTINY PANEL
HELD ON THURSDAY 21 OCTOBER 2010 FROM 8.30PM TO 9.50PM**

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

Also present:-

Azhar Ghose, Senior Solicitor

Susanne Nelson Wehrmeyer, Head of Governance and Democratic Services

Madeleine Shopland, Senior Democratic Services Officer

PART I

24. MINUTES

The Minutes of the meeting of the Panel held on 7 October 2010 were confirmed as a correct record and signed by the Chairman.

25. APOLOGIES

An apology for absence was submitted from Councillor Bowring.

26. DECLARATIONS OF INTEREST

There were no declarations of interest.

27. PUBLIC QUESTION TIME

There were no public questions.

28. MEMBER QUESTION TIME

There were no Member questions.

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

The Chair reminded all present of the review's purpose and welcomed the witnesses to the meeting. The witnesses were informed that if they were unable to provide an answer at the meeting and wished to provide a written response later that would be acceptable.

Susanne Nelson Wehrmeyer, Head of Governance and Democratic Services provided information as the Council's Monitoring Officer and the lead Officer responsible for the Council's governance arrangements, Legal Services and Democratic Services. Azhar Ghose, Senior Solicitor also provided information. The Head of Governance and Democratic Services indicated that the Senior Solicitor had considerable private sector experience and experience of setting up companies, charities and social enterprises. Had the Council not the sufficient in house experience they would have had to have sought external advice, which would have potentially been costly. The Senior Solicitor was working on redrafting the establishment documentation. Whilst this documentation could be approved by the Trading and Enterprise Sub Committee (TESC) negotiations on the precise terms would need to take place with the company directors once they had been appointed. The Council was in the process of appointing a Chair and TESC would be appointing the company directors in the near future. The Legal Officers' role was to facilitate the Council's objectives and vision provided that these were by lawful means.

A Member commented that much of the documents relating to the company which the Panel had seen referred to in a briefing paper produced by the Senior Solicitor. She questioned what sources of information had been used for the briefing paper. The Senior Solicitor indicated that he had used his experience and the relevant legislation. The Companies Legislation was one of the largest legislations in the UK and had recently been amended. The Companies Act 2006 had come into force in stages, the last stage coming into effect in October 2009.

The Panel examined a diagram which illustrated the different types of relationships which would need to be managed. The Council was supplier, investor and client.

A long term aim had been for the Council to enter into a long term investment partnership with an external partner. Limited Liability Partnerships (LLP) were not an attractive option for institutional type investors. In addition the fact that the Council did not at that stage have an investment partner in place which meant that this model was less appropriate than a Local Authority limited Company.

Questions provided by the Panel prior to the meeting and their written answers are attached as an Appendix to the minutes.

A summary of additional questions asked by Members and the response to these questions are set out below:

- The Panel were informed that in October 2009 Officers had been asked to look at establishing a holding company and producing a business case for trading. The Council as a Local Authority could not make a profit. However, if business was in an arms length Local Authority Trading Company any profit could be put back into the Council's general funds. The Council could then decide how this money was spent. A shell holding company had been established on 26 November 2009. The holding company had been unable to commence trading until a business case had been produced and approved by the Executive. The opportunity to purchase Peach Place had arisen in March and the business case had been approved by the Executive on 4 May 2010. There had been a need to move quickly.
- The Head of Governance and Democratic Services explained what was meant by generation of profits. She also commented that the previous and present governments were encouraging councils to take more risks and to create new businesses and markets. Councils were being encouraged to make greater use of the Wellbeing Powers.
- The company had been established under the Wellbeing powers under the Local Government Act. The Panel were notified that the company would not be able to engage in any activity that was outside of the ordinary functions of a Local Authority. Due to legislative limitations WEL could undertake regeneration and redevelopment but only within the Wokingham borough as a general rule. However, it could invest outside the borough should it so wish. In response to a question regarding a potential Local Authority Trading company for Social Care the Senior Solicitor commented that if such a company were to be established in the future it was likely to be set up under different powers and subject to different legislative restrictions. Trading could occur outside the Wokingham area but this would depend on the circumstances. For example if there was a shortage of housing in the borough and WBC could demonstrate a clear benefit to the Wokingham area and residents of buying and developing housing in a different borough this could be a proper justification for doing so.

- The Senior Solicitor emphasised that the Articles of Association were being firmed up as the Council's requirements were becoming clearer.
- It was noted that the Shareholder Liaison Board was now named the Joint Board and would be the interface between the company and the Council. It would also be a means of overseeing the strategic financial and performance management of WEL. The Board was likely to be comprised of TESC members, the Chief Executive and supporting Officers and Members along with four representatives of WEL. It would meet in private. Members were reminded that the Council would not have any influence over the internal organisation of the company as it was a separate legal entity.
- The company's audit arrangements were briefly discussed. Members were informed that this would be a matter for negotiation. The Council as sole shareholder could access the company's accounts. The company would have the choice in future about whether to purchase services from the Council or not. It was anticipated that initially the company would rely primarily on Council purchased services.
- The Panel noted that TESC had as yet been unable to meet. TESC was made up of three Members and the quorum was three. The Head of Governance and Democratic Services stated that it had been recommended that TESC have a fourth member. It was anticipated that a fourth member would be added by the end of the month.
- Members were informed that it had originally been envisaged that the company Board would be made up of three individuals. It was now envisaged that it would be made up of six individuals – two Members, two Officers and two independents. The Senior Solicitor stressed that the documentation did not specify who the Directors would be. The Panel expressed concern at the idea of Members sitting on the Board and questioned whether there would be a conflict of interest. The Head of Governance and Democratic Services indicated that the potential for conflicts of interest had been identified at the set up stage. She also pointed out that because of legislative restrictions Members could not be remunerated for this role other than at the same rates as with the Council in performance of similar duties. The Panel agreed that it was important that any Member who sat on the Board was fully aware of the potential risks and liabilities that they might face.
- A Member asked who would represent the Council at the company's AGM. This was unclear at present and it was acknowledged that the Council does need to nominate a Shareholder representative.
- The Panel questioned whether the Directors could be compelled to appear before the TESC and/or Scrutiny. They were informed that they could be requested to attend but not compelled. There were contractual provisions drafted to oblige company officers to attend meetings at the Council's request. However, these were still subject to agreement. Members agreed that it would be useful to have a provision in future contracts which stipulated that Officers of the company could be asked to attend Council meetings. It was felt that this would give Members more confidence that the company was being held accountable. The Head of Governance and Democratic Services indicated that she believed as the company was a local authority one, external appointees were likely to have an expectation of the need to cooperate with the local authority.
- The TESC and Executive would determine how often the TESC would report to the Executive. The Panel also discussed how the Executive would report to Council on the company's activities. Normally committee chairmen were asked to provide an annual written report to Council on the committee's activities. Also Executive Members had a standing item at Council which enabled them to verbally report on activities which fell under their remit. Members were of the opinion that it was

important that firm reporting arrangements were put in place and that Members were kept informed of developments.

- WEL was currently trading, albeit on a very minimal basis.
- The Panel examined the role that Council officers would play in relation to the company. It was noted that whilst there were currently some officers acting as nominal officers of the company this would shortly change and external appointments would be made. The Senior Solicitor was currently acting as the company secretary. An as yet unidentified officer would be nominated to be the authorised officer in the various agreements for official purposes.
- A Member questioned whether contractors would be happy to do business with WEL. The Senior Solicitor commented that whilst the company did not have a lengthy history it did have the backing of the Council and would be subject to market conditions.

It was agreed that Councillor David Lee, Leader of the Council and Councillor Anthony Pollock, Executive Member for Council Budgets and member of TESC would be asked to provide information at the next Panel meeting on 9 November 2010. The Chief Executive, Susan Law and Matt Deegan, Executive Member for Community Regeneration, would also be providing information at this information gathering session.

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

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Susanne Nelson Wehrmeyer/ Azhar Ghose:

Answers provided in response to the Panel's questions in preparation for the 21 October meeting.

Background Information and Rationale:

Can you provide a brief overview of your involvement in setting up Wokingham Enterprises Ltd as a Local Authority Trading Company?

I am the Head of Governance and Democratic Services and Monitoring Officer, Part of my remit covers legal services and I was asked to organise the setting up, initially, of a holding company, as there were a number of projects coming up which looked likely to require the use of a company model to facilitate future business for the Council. At the time we set up the company (an umbrella company), it looked as though we would be developing various businesses eg a local housing company, a social care company and a town centre regeneration company. No precise details had been worked up at the initial stages. Any operational company was dependent on having executive approval of the business case and a business plan as required by the (legislation). WEL developed as a direct consequence of Peach Place coming to our attention.

What other vehicles were considered?

Only a basic company structure was created. This was to facilitate new models as and when appropriate and depending on their business cases. No particular vehicle was excluded. The basic model company created was generic, so that it could be tailored at a later stage, or different types of company created underneath as appropriate.

What other options were considered i.e. Limited Liability Partnership, Council, Social Enterprise?

The options which were considered (should) appear in the background papers to the executive report dated the 16th November 2009 and those included briefly looking at the comparative merits of Companies limited by guarantee versus , those limited by shares and briefly touching upon Limited Liability Partnerships.

What is the advantage of a company versus other vehicles? What are the disadvantages?

Some Advantages

- 1. allows a local authority the ability to trade*
- 2. profits can be distributed as dividends to the Council as shareholder*
- 3. flexibility to bring in a private sector partner & therefore funding at a later stage.*
- 4. And potential stamp duty savings if transferring assets through shares.*

Disadvantages

- 1. Corporation tax liability*
- 2. less control*

APPENDIX

Other Vehicles could include an LLP which retains the tax advantage of the Council however; it poses difficulties in finding future investors

What assurance does the Executive have that the company was set up legally?
The 'legalities' appear in the background papers to the Executive report dated the 26 November 2009...It has been possible since 1989 to set up Local authority controlled companies (Local Government and Housing Act)

1. To ensure that any companies established by WBC have robust, transparent audit and governance in place

How will the Council hold the Company to account?

The Company is 100% council owned. The Council owns 100 % of the shareholding value of the company. These relationships will be governed by various documents /agreements with the company that establish mechanisms such as the Shareholder General meetings and the Joint Board that will make the company Director's accountable to the Council.

Who appoints and removes the directors of the company? How much involvement do they have?

The Council does, through the TESC and executive members of that executive sub committee. The TESC members will have an oversight role for the various businesses we anticipate setting up in the future, (see their terms of reference).

What is the Shareholder Liaison Board and who sits on it?

The Shareholder Liaison Board was the original description for what is now named the Joint Board principally comprised of TESC members, the Chief Executive and supporting officers and members along with 4 representatives of WEL.

What powers does it have?

The Joint Board will have no powers of its own although it is an interface between the Council and WEL and will be a means of overseeing the strategic financial and performance management of WEL.

Does it meet in public or private?

The Joint Board will be meeting in private.

Does the Council have any influence over the internal organisation of the company?

No. The company is a separate legal entity and will manage its own operations through its executive officers (managing director).

Who is accountable for the actions of the company?

The directors of the company.

Is the company subject to the External/Internal Audit either internally or via the Council's own arrangements?

Yes. The specifics of how audit is conducted may be a matter of negotiation, but as a 100% Council owned company, we are able to require it to be audited on our terms. The Council can also ask for information from the Company for the purposes of auditing and accounts.

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What are the limits to the company's ability to trade?

Whilst it is 100% council owned, it can regenerate, develop and manage property within the Borough's boundaries and it could also seek investment opportunities outside the borough boundaries. The company will not be able to engage in any activity that is outside the ordinary functions of a Local Authority.

- 2. To ensure that the best interests of WBC and its residents are represented within the management structure of companies established by the Council and that democratic accountability and transparency is maintained**

What legal powers does the Council have over the company?

There are statutory powers arising by virtue of the Company being a Local Authority Controlled Company and those implied by Companies legislation benefitting shareholders of a company.

Are there any conflicts of interest as a result of the company? Do you foresee any conflicts arising?

There may well be conflicts of interest between the Council and the company although we have sought to minimize the possibilities by wording in the articles of association and in the various governance documents (still to be negotiated). Member involvement can also give rise to conflicts of interest eg any contractual dealings with the Council have the potential for conflict of interests as Members also have duties to the Council, however the non conflicted Directors would have to either exclude the conflicted Director from the decision making process or else agree to include the member in that decision making process regardless of the conflict.

Are the company directors required by law to act in the interests of the company and not the Council?

Yes. This is a separate legal entity and directors are governed by the Companies Act 2006. The other governance arrangements we put in place with the company also have a degree of control/influence in terms of what we expect to happen, and financial limitations.

Will the Council have any say on the pay of directors?

Yes. As Shareholder the Articles provide that the Directors remuneration and financial benefits have to be approved by a special resolution at a general meeting of the shareholders. Any Members who become Directors of the company shall not be entitled to any remuneration or reimbursement of expenses greater than what they would be entitled to receive from the Council if they were carrying out similar duties for the Council.

- 3. To ensure that the Trading Enterprises Sub-Committee is able to competently undertake its function of oversight and performance management of companies established by the Council and that it exercises that function transparency and openly.**

What role will the Trading Enterprises Sub-Committee play?

Oversight of the various companies set up by the Council. See the Terms of Reference.

Will company directors be compelled to appear before the TESC and Scrutiny?

No. They can be requested to appear but not compelled. The joint board that is proposed to be set up will be the appropriate vehicle to engage the directors, members and senior officers of the council. There are contractual provisions drafted to oblige company officers to attend meetings at the Council's request but these still are subject to agreement.

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How often will TESC meet? (Supp) How much business will be considered in public?

This is down to TESC to determine. The Access to Information Regulations applies to all committees of the Council, so whether its business is conducted in public or in private will depend on the content of the agenda at the relevant time. Clearly if business concerns individuals or commercially sensitive information then that part of the meeting will be properly conducted in private.

What are the limits on the Council to hold the company to account?

Ultimately the Council as 100% shareholder has the ability to remove directors and wind up the company where the company is still solvent and the Directors make a declaration of solvency.

How does this differ from Councils ability to hold officers of the Council to account?

Senior Officers can be compelled to attend scrutiny meetings to discuss decision making and process. As employees, officers can be subjected to employment processes and ultimately dismissed if found to have engaged in behaviour which warrants that sanction.

Who is the authorised representative and how is that person empowered? (Supp) What are the limits to their power?

This has not yet been determined and the TESC will make this decision. Their powers will be defined within the Strategic Relationship Agreement.

- 4. To ensure that all Members are informed of significant matters relating to Local Authority Companies established by WBC that would affect the interests of the Council and residents.**

How is the TESC informed of key developments in the company?

TESC will be kept informed through the Joint Board to which they have been included as the representatives for the Council.

How does the Trading Enterprises Sub-Committee report to the Executive?

Like any other sub committee of the Council. It can submit regular formal reports with recommendations or provide information to note. This is down to the Executive and the TESC to determine

How does the Executive report to Council on the activities of the Company?

In the same way as per the previous question. Usually chairmen of various committees are asked to provide an annual written report to Council about their activities. Executive Members also have a standing item at Council which enables them to verbally report to Council on activities within their remit.

- 5. To ensure that the Council has visibility of and protect its interests in arrangements entered into by Local Authority Trading Companies where these arrangements have the potential to affect the risk profile or financial viability of the Council.**

What legal liabilities does the Council hold towards the company?

As shareholder the Council has already paid up £3000 as part of the Share capital which is the extent of the financial liability as shareholder.

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On the 24 November 2005 the Executive decided that the Council would indemnify members and officers against losses and damages arising from their appointment to outside bodies when acting on behalf of the Council.

On the 4th May 2010 the Council decided that whilst Wokingham Enterprises Ltd remains a wholly owned company the Council would act as a guarantor for any losses and liabilities in respect of the company.

What role will officers of the Council play in relation of the company?

Currently some officers are acting as nominal officers of the company. This will change as external appointments will soon be made. Officers, including the chief executive will form part of the Joint Board, Democratic support to the TESC and to the Joint Board is also likely. An officer will be nominated to be the authorised officer in the various agreements for official purposes.

Where does accountability for loans to the company rest?

With the company. The Council has provided the money for the purchase of Peach Place by means of a secured loan and the company is obliged to repay the loan to the council at a commercial rate of interest.

What are the financial risks the council is exposed to in relation of the company?

This is a limited liability company. If the company fails financially as shareholder the Council's financial liability is limited to the sum of £3000 which has already been paid up. As a secured creditor there is a low risk of the financial loan to the Council not being repaid.

What other non financial risks will the Council be exposed to?

If the company fails, then the Council will bear the reputational risks of failure and this may affect any other companies the council sets up in the future. As a consequence the council could become more risk averse in all its business activities. The bigger risk lies in the inability for the Council to retrieve any land holdings with the company, so although a liquidator may pay out the council to satisfy any outstanding loans, the council would not automatically re-acquire any of the land holdings of the company at the time of it going into administration.

How will these risks be managed?

Through the monitoring of the strategic KPI's as set out in the agreements and through regular liaison and oversight of the company's annual plan.

Who has the authority to transfer ownership of some or all of the Council's shares?

The executive or the TESC if so authorised by the executive.

What limits are there on acquiring other companies?

None so far as is known.