

**MINUTES OF A MEETING OF THE
CORPORATE SERVICES OVERVIEW AND SCRUTINY PANEL
HELD ON TUESDAY 9 NOVEMBER 2010 FROM 7PM TO 9.25PM**

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

Also present:-

Matt Deegan, Executive Member for Community Regeneration

Kevin Jacob, Principal Democratic Services Officer

Susan Law, Chief Executive

David Lee, Leader of the Council

Anthony Pollock, Executive Member for Finance

Madeleine Shopland, Senior Democratic Services Officer

PART I

30. MINUTES

The Minutes of the meeting of the Panel held on 21 October 2010 were confirmed as a correct record subject to the following changes and signed by the Chairman.

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 was amended to read Members were of the opinion that it was **essential** that firm reporting arrangements were put in place and that **all** Members were kept informed of developments.

31. APOLOGIES

Apologies for absence were submitted by Councillors Auty and Bowring.

32. DECLARATIONS OF INTEREST

There were no declarations of interest.

33. PUBLIC QUESTION TIME

There were no public questions.

34. MEMBER QUESTION TIME

There were no Member questions.

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

The Chair reminded the Panel and witnesses of the purpose of the review 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.

David Lee provided evidence as the Leader of the Council. A summary of the questions asked by Members and the response to these questions is detailed below:

- A vehicle had been required which would enable the regeneration of the Town Centre. Other future projects might also require the use of a company model to facilitate future business for the Council. A local authority trading company had been considered the most appropriate vehicle to achieve the desired outcomes.

Any profit could be distributed as dividends to the Council as shareholder. It was possible to bring in an external partner and therefore funding at a later stage. The Council as a Local Authority did not have the ability to make a profit.

- External and internal legal advice had been provided during the establishment of the company and David Lee was confident that the company had been set up legally.
- Members asked how the Council would hold the company to account. David Lee stated that the company was a separate stand alone entity. However, the Council was the sole shareholder and had certain rights as shareholder. A detailed governance structure was in place. A Shareholders Agreement would set out what the Council wished the company to do. Members were also informed that Articles of Association were required by companies' legislation. It was noted that the company was not able to enter into agreements above a certain level without consent.
- The Directors were accountable for the company's actions. They were required by law to act in the interests of the shareholder.
- Members questioned what the limits on the Council to hold the company to account were. They were informed that the company would be obliged to meet the Council's requirements as set out in its Remit Document and the Company's Strategic Business Plan. The Panel also asked how this differed from the Council's ability to hold Council officers to account. David Lee indicated that the Council as employer could ultimately remove officers from office. Equally if the Directors of the company did not act in the company's best interests, they could be removed.
- A Member asked whether it was appropriate for Members to sit on the Board. David Lee commented that if they acted within the relevant companies' legislation and in the interests of the shareholder, he felt that it would be difficult for them to be held liable. He believed that having Members on the Board offered another perspective. Nevertheless, he agreed that it was potentially an onerous task.
- The Trading and Enterprise Sub Committee (TESC) would act as an interface between the company and the Council. The Panel enquired how TESC would report back to the Executive on the activities of the company and how the Executive would report to Council on the company's activities. The Leader of the Council indicated that it was essential that the reporting structure was open and transparent but he was open to how this should be carried out. It was important that Council were aware of the controls in place. Equally the public would need to be aware that some information could not be in the public eye because of commercial sensitivity.
- In response to questions over what legal liabilities the Council held towards the company and what the financial risks were that the Council would be exposed, David Lee indicated that the Council had agreed to underwrite the company's losses. He was confident that Audit and the Audit Committee would assess risk on a regular basis.

Anthony Pollock, Executive Member for Finance provided information as the Executive Member with responsibility for the Finance and as a member of the Trading and Enterprises Sub Committee (TESC). A summary of the questions asked by Members and the response to these questions is set out below:

- Members asked what role TESC would play. Anthony Pollock stated that TESC would play a strategic role, gather information and check that the company was working within the appropriate guidelines.
- The Panel also asked what the limits were on the Council to hold the company to account. They were informed that the Council as sole shareholder would have strong abilities to hold the company to account through various means such as the

Articles of Association document and the fact that there would be Council officers and Members on the Board. Anthony Pollock commented that the calibre of candidates for the position of independent Board members had been high. The Council would work with these Board members to ensure that the company achieved its objectives. There would also be meetings between the Sub Committee and the Board, although the frequency of these meetings had yet to be decided. It was important that the Council were able to demonstrate to the public that the company was doing its job correctly.

- The company currently collected rents on the properties it owned. The activities of the company would change slightly as the redevelopment and refurbishment of the Town Centre progressed. The Panel were reminded that the redevelopment of the Town Centre would have to be taken through the planning process.
- Members questioned how TESC would report to the Executive. Anthony Pollock stated that these arrangements had not yet been finalised. It was likely that the Executive would approve the minutes of TESC and would be able to ask questions on these minutes. How the Executive reported to Council would also need to be finalised. Updates could be provided through Executive member statements given at Council meetings. The Panel asked whether updates would be provided on a regular basis. The Executive Member for Finance commented that whilst he appreciated that the establishment of a local authority trading company was a new venture, WEL was a property development company and as such activity could be slower paced in comparison to other types of companies. Updates should be provided at times of activity by the company.
- The Council had lent the company approximately £9-10million. The company had then purchased the asset. This loan would be a long term liability and would appear on the accounts. Members enquired how the company would appear on the Council's accounts. The Panel were referred to an investment the Council had made in Berkshire Connexions which had appeared in the Council's consolidated end of year statement of accounts. It had also been referred to in specific notes to the accounts. The Executive Member for Finance would expect the company to appear in the Council's accounts in a similar manner.
- The Panel asked how profits would be generated and passed to the Council. Anthony Pollock commented that profits could be distributed as dividends to the Council as shareholder. He reminded the Panel that the company would be subject to corporation tax and that there would potentially be a management charge if the Council provided services to the company.
- The company would be as tax efficient as a private company could be. The Executive Member for Finance indicated that he would not anticipate a large capital gain and that in the short run he would expect the property rents to cover interest. He did not expect corporation tax to be high.
- In a response to a question regarding the financial risks the Council was exposed to in relation to the company Anthony Pollock stated that the bottom falling out of the property market was a potential risk.

Susan Law provided information as the Chief Executive. A summary of the questions asked by Members and the response to these questions is set out below:

- The Chief Executive explained that in 2008 the proposed regeneration of the Town Centre became particularly focused on Peach Place and a developer. The Executive at the time had indicated that it was desirable for the Council to have some control over the regeneration and a financial interest. It had been proposed that a holding company be established to hold the asset.

- Other vehicles had been taken into consideration. An inhouse team had not been an appropriate vehicle because the Council did not have the specialist expertise required. Also the Council would have had to have operated as a Local Authority and not as a commercial vehicle. Whilst a limited liability partnership had not been considered appropriate for the regeneration of the Town Centre it may be an appropriate model for future projects. A company limited by a guarantee had not been appropriate because the Council had wanted to attract an investment partner in the future. Advantages of a local authority trading company included the fact that a company could trade and make a profit and could operate on the same terms as developers. Possible disadvantages included the fact that the Council would have arms length control over the company and that the company may initially face problems of perception when it was initially floated onto the open market. However, the Chief Executive believed that these disadvantages would be manageable.
- The Chief Executive confirmed that she had not received any comments from members of the public regarding the establishment of WEL.
- Members asked what role Council officers would play in relation to the company and were informed that there would be two officers on the non executive Board. They would play a very important role. It was not known at this stage who these officers would be. It was anticipated that they would be appointed last, after the Members and independents on the Board and would fill any outstanding skills gaps.
- Officers would also work with the company particularly during the preparation of the plans of the Town Centre for planning approval. Some separation between roles would be ensured.
- The company potentially buying services from the Council was briefly discussed. The Chairman asked what size unit the company would have. The Chief Executive responded that in the early stages it was expected that WEL would be very small and may initially be the Chair responding to the relationship document. The company would potentially grow if it moved to acquire further properties or invest. The TUPE of staff in the future was possible. The Council would require all its property development resources when it came to the planning stage of the regeneration.
- The Chief Executive was asked if the Council had any influence over the internal organisation of the company. The Council's influence was essentially one stage removed. It would be able to influence the governance of the company i.e. through documents such as the scheme of delegation.
- There would be seven Directors – two Council officers, 2 Members and three independents (including the Chair). The Directors would be accountable for the company's actions and were required by law to act in the interests of the company. A Member asked the Chief Executive for her view on Members acting as Directors. The Chief Executive stated that the Council had been received legal advice that it would be inappropriate for members of the Executive to be Directors as there would be too much conflict of interest in the decision making process. It was thought that this conflict of interest would be less for back bench Members. Any conflicts could be managed by way of declarations of interest and removal from decision making if necessary. Members could add a local perspective.
- The TESC would oversee the activities of the company, ensuring that the Council's interests were being met.
- The company would be held to account through the governance arrangements. Members were reminded that the Council had a majority on the company Board. The Chief Executive commented that the documentation produced around the relationship between the Council and the company and the company's activities

were more prescriptive than similar documentation that she had dealt with at other local authorities.

- It was noted that whilst the Chief Executive had been appointed by TESC as the Council's Authorised Representative this may be subject to change in the future. The Authorised Representative would represent the Council at the company's AGM. Clear direction would need to be given to the representative to ensure that the wishes of the Council were conveyed.
- Panel members enquired how the TESC would be informed of key developments in the company and how the Executive would report to Council on the company's activities. They were informed that they would be informed through meetings of the Joint Board. This was principally comprised of TESC members, the Chief Executive and supporting officers and members and representatives of WEL. The frequency of these meetings was yet to be established.
- The Chief Executive stated that the minutes of TESC would be taken to the Executive. The Executive could ask the Chair of TESC for updates and reports on an ad hoc basis. A Member asked whether there would be a standing agenda item for updates from TESC on the company's activities. The Chief Executive commented that updates should be provided at times of activity by the company. TESC would assume a watching rather than an active brief whilst regeneration was undertaken.
- In a response to a question regarding the financial risks the Council was exposed to the Chief Executive indicated that the Council had lent the company approximately £9m on specific terms. The Council would underwrite any losses of the company. However, there was also a first charge on the properties and she expected that the value of the loan would be recovered.

Matt Deegan, Executive Member for Community Regeneration provided information as Executive Member for Community Regeneration and a member of TESC.

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 and additional information provided are set out below:

- The Limited Liability Partnership model had been considered a less appropriate model for the regeneration of the Town Centre than a Local Authority Trading Company. Whilst there were tax advantages to this model it did not offer the flexibility required.
- The Panel asked how the Council would hold the company to account. They were informed that this would be undertaken through various documents which would govern the company including the Strategic Business Plan and the Article of Association. Members were reminded that the Council was the sole shareholder and as such were able to set terms of governance.
- Directors would be appointed for a three year period and could be eligible for reappointment. If a Member or officer ceased to be part of the Council during their three year term they automatically ceased to be a Director. The Executive Member for Community Regeneration was asked for his views on Members being Directors. He believed that Executive Members should not be Directors due to the possibility of conflicts of interest. Backbench Members could bring a local knowledge and a new perspective on matters. However, it was essential that the individual Members had the relevant skills and received sufficient guidance. Whilst potentially there could be

conflicts of interest, these could be managed through declarations of interest. He commented that the calibre of applicants for the position of independent Chair and for the Board had been high. He also indicated that there would be several phases to the company and that the right Directors for the company at this stage may not be the same as at a future stage. Ensuring that the company Directors had the right skills at each phase of the company would be vital.

- A Member asked how the Council had ensured that strong candidates had applied to become independent Chair. The Chief Executive commented that there had been a professional recruitment programme in place and that many of the candidates had been search candidates.
- It was noted that a fourth Member, Cllr Clark, was due to be appointed to TESC at Council on 18 November 2010.
- The Panel were reminded that the Council could appoint and remove Directors and could wind up the company should it consider it necessary.
- The Executive Member for Community Regeneration confirmed that Wokingham Town Council had been briefed regarding the regeneration of the Town Centre but had not been specifically briefed on Wokingham Enterprises Limited.
- The Panel asked whether others were using the local authority trading company model was well established. Matt Deegan stated that whilst the Local Authority Trading Company structure had been tried and tested the specific model the Council would be following with regards to the regeneration of the Town Centre was fairly unique. He anticipated that others would look to replicate the Council's model.
- Members were assured that both internal and external legal advice had been sought prior to the establishment of Wokingham Enterprises Limited. The Senior Solicitor had experience of setting up companies. He and the Head of Governance and Democratic Services had worked closely with Price Waterhouse Cooper.
- Members asked whether the company Directors could be compelled to appear before TESC and Scrutiny. Matt Deegan stated that they could not be compelled to attend and that he believed the correct environment was the Joint Board. The Executive Member for Community Regeneration was asked whether something should be written into major contracts which stated that officers would be required to attend Council meetings. He responded that this would hinder relations between the Council and the company and potentially discourage good applicants for the independent posts. The independent Chair was happy to talk to external partners in the community. The Chairman commented that Scrutiny could ask for internal and external input into scrutiny reviews but representatives from external organisations could not be compelled to participate.
- The company was required to be audited annually and to have an audit agreement. The Council as shareholder could view the company's accounts.
- TESC would monitor the company's activities. Members would be informed of these activities through TESC which would report to the Executive. The Executive Member for Community Regeneration explained that he would provide updates as part of his Executive Member statements to Council. It was noted that the company would also be required to produce an annual report.
- Matt Deegan explained that the frequency that TESC would meet was yet to be determined. He expected that over the next few months it would meet at least monthly. Quarterly meetings would possibly be more appropriate in the long term. He believed that updates should be needs based and that it not be a standard agenda item as there would be periods when there may be little to report. As much business as possible would be conducted in public. However, a significant proportion of documentation would be commercially sensitive and therefore could not be considered in public.

- The Chair enquired at what point people would be able to measure the success of the Local Authority Trading Company model. Matt Deegan suggested that a steady revenue stream by way of dividends would be a good indication of success. The company was being to fill the vacant tenancies.

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

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Matt Deegan

Below is a list of lines and enquiry and questions that the Panel would like to explore with you, but please bear in mind that the order set out below is not necessarily the order of which questions will be asked on the evening. The headings in bold relate to specific areas of the review's key objectives as set out in the Terms of Reference.

Background Information and Rationale

- **What is the objective of the company?**

The company is to manage our commercial assets across the borough and look for opportunities to diversify our risk. This also extends beyond our own borough, should the right opportunity to diversify our market exposure present and this can be done beyond our local economy.

- **Why a company?**

This can be answered in two parts. The first allows us to do several things! Operate a company for profit, attract long term investment partners in particular institutional investors, act more commercially with the ability to act quickly and appropriately without the process restraints WBC has. The second reason is it allows us to attract the right expertise to help us manage these assets. We have been very fortunate with the calibre of the candidates we have interviewed for non-executive posts.

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

Yes these were considered but didn't offer us the flexibility needed or were appropriate based upon how the Town Centre was to be developed. I am happy to expand on this.

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

Flexibility – particularly in the long term

Ability to trade and generate profit – deliver a dividend for the council

Against

Corporation tax (isn't afforded the same tax privileges as a local authority)

Loss of control

- **What assurance does the Executive have that the company was set up legally?**

It has been possible for a long time now for local authorities to set up companies (1989) these were set out in the executive papers last November.

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?**

*Through the various documentation which governs the running of the company;
Statement of Corporate Intent*

Annual Remit document – Strategic Business Plan

Service Level Agreement

Appendix

Strategic Management Agreement Article of Association

The council is 100% share holder and this allows us to set terms of governance, the joint board will monitor the performance of the company in line with the documents above and guide on future strategic plans.

- **Who appoints and remove the directors of the company? How much involvement do they have?**

The council ultimately does this through the executive and the TESC which has been delegated this task.

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

This is the joint board; four member of the WEL board and TESC members along with the CEO of WBC, who are supported by the relevant council officers.

- **What powers does it have?**

This is a board that allows both WBC and WEL to discuss performance and future plans. Whilst the Joint board has no specific powers, it does allow WBC to give very specific input into the management of WEL. It also allows for WEL to discuss its long term plans and point out opportunities and risks to WBC.

- **Does it meet in public or private?**

Private

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

Not specifically, the company is a separate entity. Its own executive will manage the company in accordance with the documents already listed above.

- **Who is accountable for the actions of the company?**

WEL directors

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

The company is subject to the companies act and is obligated to be audited; we have stipulated in the Strategic Management Agreement page 13 point 10 our audit requirements. The company is not under our own audit team. We also have full access to the accounts.

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

This is a red herring, clearly the company has operational limits, the limits need to be set to allow the company to trade without the continual need to refer back to the council. What we have to be cute about are the limits on what it can and can't do regarding the assets. Too many members have mentioned the need to impose limits of £1m regarding the physical assets. This is where I have my concerns as to what does this actually mean.

For example WELtd currently hold assets of £9m a £1m limit is a significant %, however when the town centre regeneration project delivers assets to WELtd the total assets held will be approx £65m. Clearly a £1m limit is less important.

I would prefer to keep the company focused on its business plans for the short, medium and long term. Should the company need to do something with the assets which departs from what has already been agreed in the business plans then they would have to refer back to the council.

Not forgetting the company was set-up under the Wellbeing powers given to local authority to act in the Social and Economic interests of its residents the company is restricted to development and regeneration within the Borough. However, in line with my very first answer this does not stop it from investing outside our borough boundaries. These limitations could be reviewed in the future.

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?**

As 100% share holders company legislation does recognise our rights and also in accordance with WEL being a local authority company. The documents already listed above also contain the details of governance arrangements.

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

I fully expect at times that this may be an issue. The articles of association along with the strategic management agreement and the service level agreement seek to limit such opportunities. My main concern will be around member involvement and these would be dealt with much the same way we already deal with such matters.

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

Yes, absolutely. The companies act legislates for this.

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?**

We play several roles, principally to monitor performance and report to the Executive. We also sit on the joint board and provide guidance and scrutiny.

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

We have the ability to completely remove the directors and wind up the company.

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

Similar in as much as we can subject officers to an HR process and ultimately dismiss officers from our employment. We can't subject WEL to our own scrutiny procedures. Scrutiny would need to conduct such procedures on the Executive (TESC) and the CEO.

Appendix

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

Susan Law was appointed by TESC, as defined by the Strategic Management Agreement.

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

No, the correct environment is the Joint board, however, TESC can ask for directors to attend TESC meetings.

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

This is still to be determined, TESC members fully expect to monitor on a regular basis. Over the next few months I expect this to be very monthly at least. Longer term quarterly may be more appropriate. There will be no preset time table other than an expectation of an activity based upon business activity.

This will be agenda driven, clearly the list of documents already mentioned which are still to be finalised and subsequently negotiated with the WEL board before signing are good examples of Part II items. It would be irresponsible to place such documents in the public domain. Something I would expect all member of council and especially Scrutiny members to be aware of. Although from the letter in last week's Wokingham Times this appears to be beyond the comprehension of Phil Challis, which begs the question whether he has the intellect required to be a member of Scrutiny. I also believe this is the second time Liberal Democrat members have abused their position on Scrutiny in 12 months and calls into question their ability to grasp the responsibility of their position on Scrutiny.

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?**

As stated through the Joint board and the Strategic business plan

- **How are Members informed in relation to activities of the company?**

Via TESC and the Executive. I would also expect to raise activities as part of my executive member statements at full council.

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

As previously answered.

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?**

In November 2005 the executive decided that council would indemnify members and officers against losses and damages arising from appointments to outside bodies.

Appendix

- *What are the financial risks the council is exposed to in relation of the company? Not forgetting this is a limited liability company, should the company fail financially as shareholder the councils liability is limited to £3000 paid as part of the share capital already paid. As secured creditor there is a small risk of the loan not being repaid, but this loan is backed by the assets transferred.*