

# **WOKINGHAM BOROUGH COUNCIL**

## **REPORT OF THE COUNCIL'S CORPORATE SERVICES OVERVIEW AND SCRUTINY PANEL ON THE GOVERNANCE ARRANGEMENTS OF LOCAL AUTHORITY TRADING COMPANIES AND THE EXECUTIVE TRADING AND ENTERPRISES SUB-COMMITTEE**

### **Panel Members:**

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# REVIEW OF GOVERNANCE ARRANGEMENTS OF LOCAL AUTHORITY COMPANIES AND THE EXECUTIVE TRADING AND ENTERPRISES SUB-COMMITTEE

## Report by the Corporate Services Overview and Scrutiny Panel

### Introduction

- 1.1 At its meeting on 22 July 2010 Council agreed the establishment of a Trading Enterprises Sub Committee (TESC) in order to exercise the powers of the Council's Executive with respect to local authority companies.
- 1.2 In addition it was proposed that the Overview and Scrutiny Committee (and Audit Committee) be asked to investigate and make recommendations on the governance arrangements for local authority companies and the TESC, with a view to ensuring that they are open, transparent and fully accountable to Council Members and members of the public.
- 1.3 The matter was referred to the Corporate Services Overview and Scrutiny Panel by the Overview and Scrutiny Management Committee at its meeting on 26 July 2010.
- 1.4 The Terms of Reference for the review (attached at Appendix A) were agreed at the Panel meeting on 1 September 2010. The key objectives of the review were agreed as:
  - a) To ensure that any companies established by Wokingham Borough Council have robust, transparent audit and governance arrangements in place;
  - b) To ensure that the best interests of Wokingham Borough Council and its residents are represented within the management structure of companies established by the Council and that democratic accountability and transparency is maintained;
  - c) To ensure that the TESC is able to competently undertake its function of oversight and performance management of companies established by the Council and that it exercises that function transparently and openly;
  - d) To ensure that all Members are informed of significant matters relating to Local Authority Companies established by Wokingham Borough Council that would affect the interests of the Council and residents;
  - e) To ensure that the Council has visibility of and can protect its interests in arrangements entered into by Local Authority Companies where these arrangements have the potential to affect the risk profile or financial viability of the Council.
- 1.5 It was noted that the Chairman of the Panel would provide a briefing to the Audit Committee on the review's findings.
- 1.6 Administrative support was provided to the Panel by Kevin Jacob, Principal Democratic Services Officer and Madeleine Shopland, Senior Democratic Services Officer and specialist advice provided by Paul Ohsan-Ellis, Principal Internal Auditor.

## **2.0 Background**

- 2.1 Wokingham Enterprises Limited (WEL) is a Local Authority Trading Company set up on 15 December 2009. On the 4 May 2010, the Executive approved the proposal that WEL operate as a trading company for the purpose of the regeneration of Wokingham Town Centre.
- 2.2 Local Authorities have long established powers to trade with other public bodies, but the power to trade by offering services to the wider market on a commercial basis, (with the ability to make a profit), is a relatively new power under Section 95 of the Local Government Act 2003. A local authority can only exercise this power through a company and is only permitted to trade in anything that it is already authorised to do. However, the underlying purpose of the introduction of the power was to encourage a more entrepreneurial approach and attitude amongst local authorities and is consistent with other powers of wellbeing granted to local authorities by successive Local Government Acts. The power to trade is designated as an executive power and therefore exercisable through a local authority's Cabinet or Executive.
- 2.3 Initially, take up of the power to trade amongst local authorities was low. Changes in the local government environment, most notably the need to significantly reduce costs and provide services in new ways, has refocused attention on the use of local authority companies alongside options such as outsourcing and use of the power to charge for the provision of discretionary services.

## **3.0 Information Gathering**

- 3.1 The Panel met on 7 October 2010 and heard evidence from a number of witnesses:
  - Graham Ebers, General Manager Business Services and Section 151 Officer
  - Heather Thwaites, General Manager Policy and Partnerships
  - Andrew Moulton, Director of Transformation

Heather Thwaites 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. Andrew Moulton informed Members that prior to WEL being mobilised to trade in May 2010 his involvement with the company had been limited. Trade and enterprise are key themes of the Transformation Programme.

- 3.2 The Corporate Services Scrutiny Panel met on 21 October 2010 and heard information from:
  - Susanne Nelson-Wehrmeyer, Head of Governance and Democratic Services and the Council's Monitoring Officer
  - Azhar Ghose, Senior Solicitor

The Panel was informed that as Head of Governance and Democratic Services, Susanne Nelson-Wehrmeyer had been asked to oversee the setting up of WEL, initially as an umbrella company to develop a number of various business proposals, but later as an operational limited company for the purposes of

regeneration of Wokingham Town Centre. Azhar Ghose had been directly involved in the creation of the company and was currently acting as the company secretary.

3.3 The Chairman also heard evidence from:

- Liz Chidgey, Deputy Executive Director for Adults, Health & Community Well-Being, Essex County Council by conference call on 19 October 2010
- Councillor Bill Dick, Chairman of the Community Wellbeing and Older People Policy Scrutiny Committee, Essex County Council gave evidence to the Chairman via a conference call on 21 October 2010, (as set out in Appendix D).

The purpose of contacting Essex County Council was to seek information based upon their experiences of establishing a LATC.

3.4 The Panel heard information from four witnesses at its meeting on 9 November 2010:

- David Lee, Leader of the Council
- Anthony Pollock, Executive Member for Finance and member of the TESC
- Susan Law, Chief Executive
- Matt Deegan, Executive Member for Community Regeneration and member of the TESC.

3.5 The Panel examined whether there was clarity around the rationale for the Council creating a Local Authority Trading Company, why the private limited company model was chosen and what other models had been considered. It was mindful that the objectives the Council is seeking to achieve are central to the choice of governance model and in turn heavily influenced the drafting of the company's objectives.

3.6 The Panel noted that the objectives of WEL as a property based business formed part of the detailed Business Case and Business Plan agreed by the Executive on 4 May 2010. In evidence given by the witnesses these were confirmed as:

#### **Objectives**

- To successfully regenerate Wokingham Town Centre;
- To facilitate the finding of a long term investment partner;
- To provide a vehicle that will allow the organisation to trade with the private sector. This would maximise the use of resources and ultimately contribute to the Council's efficiency agenda;
- To purchase and hold assets for the purpose of investment and regeneration based upon robust business plans;
- To sell on assets at appropriate points in time securing income for the company and potentially the Council.

3.7 At its meeting on 7 October 2010, Graham Ebers informed the Panel that a Local Authority Trading Company is considered the most appropriate model to help

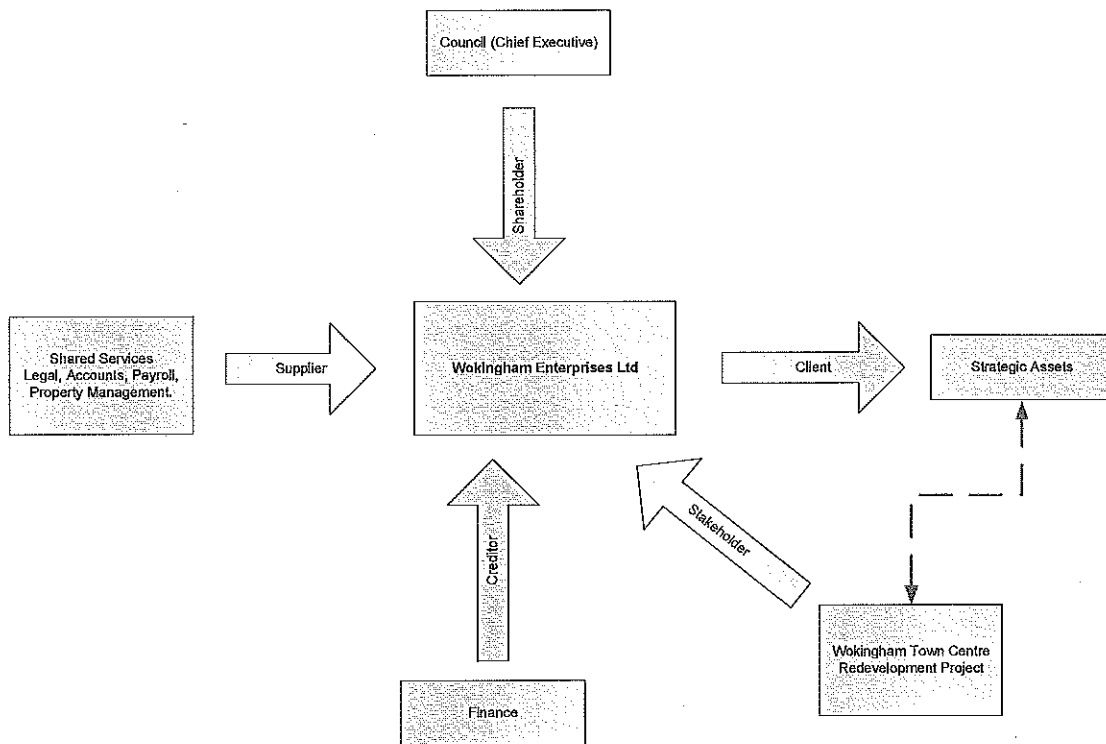
achieve its objectives. A limited company has the advantage of being the most tried and tested model with a view to possible future investment by a partner at a later stage which is one of the key objectives of the company.

- 3.8 Panel Members were informed by Susan Law that an in-house team had not been considered an appropriate vehicle for several reasons. Firstly, there was not the specialist expertise required and secondly the Council would have had to operate as a Local Authority and not as a commercial vehicle. This would have severely limited what could be achieved as Local Authorities are ordinarily unable to make a profit from trading.
- 3.9 Andrew Moulton informed Panel Members that the creation of a Local Authority Trading Company is consistent with the Council's aspiration to shape and secure certain markets. If this model is successful the Council could consider replicating it for other ventures such as social care. Other vehicles such as a Limited Liability Partnership had been examined but considered less appropriate for the Council's objectives for regenerating Wokingham Town Centre. The Council had been advised by both internal and 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.
- 3.10 Various witnesses referred to the opportunity that had arisen at short notice for the Council to energise proposals for the regeneration of Wokingham Town Centre through the purchase of Peach Place. In order for the Council to meet this fundamental objective it had been necessary to move quickly and decisively. By progressing the purchase of Peach Place through WEL, it was felt by the witnesses that the Council had been able to progress this objective significantly faster than would have otherwise been possible through traditional powers open to local authorities, i.e. through Compulsory Purchase.

**Review Objective 1): To ensure that any companies established by Wokingham Borough Council have robust, transparent audit and governance arrangements in place**

- 3.11 The Panel considered whether WEL had robust, transparent audit and governance arrangements in place, taking into account its objectives.
- 3.12 The Panel was mindful that the relationship between local authorities and Local Authority Trading Companies was multifaceted, comprising different interactions and relationships between the authority and the company which were constantly changing. The Panel acknowledged that the establishment of a Local Authority Trading Company created relationships which were far more complex than, for example might exist when a local authority had a shareholder 'interest' in a company it chose to invest in as part of its portfolio of investments.
- 3.13 The Panel identified a number of interactions as being applicable to the relationship between Wokingham Borough Council and WEL. This is set out diagrammatically below:

**Multitude of Relationships between Wokingham Borough Council  
and Wokingham Enterprises Ltd**



- 3.14 The Panel noted that the type of governance arrangement put in place to regulate the interaction of the Council and WEL reflects the different nature of the relationships between the Council and the company, depending upon the function being undertaken. The Panel also acknowledged that the governance arrangements for WEL have been designed to reflect the particular dynamic of the company being a property business. A different governance model and structure might be appropriate for a different business model as the Council's objectives would be different, i.e. in the case of social care.
- 3.15 The Panel questioned how the Council would hold the Company to account. It was noted that the Council is WEL's sole shareholder and as such has particular rights and privileges under legislation which it can use to influence the direction of the company. Susanne Nelson-Wehrmeyer and Azhar Ghose emphasised that the relationship between the two bodies would be governed by various documents and agreements, (as supplied to the TESC on 1 November 2010), which would establish mechanisms such as a Shareholder General meeting and a Joint Board that would make the company Directors accountable to the Council.
- 3.16 David Lee and Matt Deegan indicated that the Company would be held to account through the governance structure and various documents which governed how the Company would be run such as the Annual Remit Document, Strategic Business Plan, Articles of Association and Service Level Agreements. The Panel noted that the drafts of these documents had been considered and noted by the TESC at its 1 November 2010 meeting, but that the final documentation making up the governance documents would be the subject of negotiation with the Company.

- 3.17 The Leader of the Council informed Members that the Company would not be able to enter into agreements above a certain level (yet to be agreed) without consent from the Council.
- 3.18 It was indicated in the draft Strategic Partnering Agreement that a Joint Board would review WEL's performance in line with the aforementioned documents and agreements. It would be made up of no more than two Council Officers, four Council Members and two representatives of the Company, one of which should be an Executive Director. The Joint Board would meet in private at least once a year. Matt Deegan suggested that one of the Council Officers would be the Chief Executive and that members of the TESC would be part of the Board. Whilst the Joint Board would have no specific powers it would offer the Council an opportunity to have an input into the management of the Company and WEL the opportunity to discuss its long term plans with the Council.
- 3.19 Panel Members were of the opinion that the presence of Executive Members and Council Officers on the Joint Board and non-Executive members as Directors would assist in the Council's holding of the Company to account. However, the Panel did have concerns that there were also disadvantages around the appointment of non-Executive Members as Directors, (as set out in para 3.33 and 3.34).
- 3.20 It was noted that the TESC has the authority to appoint and remove the Company's Directors who are collectively and individually responsible for the actions of the Company as well as legally obliged to act in the best interest of the Company. This power of appointment and removal of Directors is another mechanism by which the Council can hold WEL to account. It was recognised by the Panel and acknowledged by a number of witnesses that there is potential for a conflict of interest to arise between the best commercial interests of the Company and the overall policy objectives of the Council as a community leader.
- 3.21 Graham Ebers reminded the Panel that the Council is the sole share holder. Consequentially, the Company will be included in the Council's consolidated end of year accounts. In addition it will be referred to in specific notes within these accounts. The end of year accounts will be examined by the Council's External Audit provider. The Panel welcomed this as it felt that this would be a good example of transparency.

### **Audit Arrangements**

- 3.22 The Panel acknowledged that as a limited company, WEL is obliged by the Companies Act to establish and maintain accurate financial systems and regularly publish financial statements. Such systems will include appropriate provision for the appointment by the Company of an external auditor. In addition, it was noted that the Council's position as 100% shareholder gives it certain rights of access under the Companies Act to that information and the Company's financial systems.
- 3.23 However, as Graham Ebers informed the Panel at its meeting on 7 October, WEL is not obligated to appoint the same external auditor as the Council. The Panel noted from the submissions of Graham Ebers, Andrew Moulton, Susanne Nelson-Wehrmeyer and Matt Deegan that the exact remit and involvement of the Council's Internal Audit function within WEL is a matter of on-going negotiation. The Panel felt that over and above any minimum rights granted by



legislation, there is a strong case for the Council's Internal Audit function to have as much access to the financial affairs of WEL as possible given the scale of the investment of public money in WEL. In this regard, the Panel was pleased to note that paragraph 10 of the draft Strategic Relationship Agreements sets out in some detail the requirement of WEL in respect of auditing arrangements, access to information and property and obligations on WEL to comply with recommendations made by the Council.

- 3.24 The Panel felt that it has received sufficient assurance that robust audit arrangements shall be put into place based upon the submissions made by the witnesses and the draft establishment documents set out in the Agenda of the TESC 1 November 2010. However, Panel Members agreed that the internal audit arrangements of WEL and the relationship between the internal audit function of the Council requires further clarification.
- 3.25 In coming to a view on the adequacy of WEL governance arrangements, the Panel sought to establish the type of governance arrangements that is found within companies established in the private sector. It was noted that a single tier board system was often used in the private sector in the United Kingdom. Under this system a chief executive officer is responsible for managing the company whilst a chairman manages the board. Potential advantages of this system include the fact that all key decisions are made and approved within a single forum and that such boards are often perceived as being less bureaucratic than two tier boards. It was thought that the operation of WEL was consistent with this approach.
- 3.26 On the basis of the information available to it, the Panel was satisfied that the principles of robust governance and audit arrangements had been adequately considered and addressed in the creation of WEL. The Panel was mindful that the scrutiny review had been undertaken prior to the final agreement of the establishment documents. In the absence of finally agreed documents, the Panel remained uneasy that there was a lack of certainty around the relationships between WEL and the Council, given that WEL is already trading. It strongly felt in light of the pivotal nature of the agreements their resolution needed to be given a high priority. The Panel felt that this ought to be possible within a three month period.

**Recommendation: That the Panel recommends to the Executive that negotiation with Wokingham Enterprises Limited on the company's establishment documents, (setting out the detail of the different relationships between the Council and Wokingham Enterprises Ltd) should be expedited. In the Panel's opinion this should be achievable within a period of 3 months.**

**Review Objective 2): To ensure that the best interests of Wokingham Borough Council and its residents are represented within the management structure of companies established by the Council and that democratic accountability and transparency is maintained.**

- 3.27 The Panel examined the composition of the company board. It was informed at its meeting on 7 October 2010 by Andrew Moulton, Director of Transformation that the Social Enterprise Development Manager, the Head of Commercial Development and himself were acting as three officer Directors of the company. Andrew Moulton, was acting as Managing Director. Whilst these individuals could be perceived as

being 'dual hatted' when acting as Directors they were required by law to act in the interests of the company and not the Council. However, they would also be mindful of the Council's objectives as the sole shareholder in the company. The Panel noted that these were interim appointments.

- 3.28 At its meeting on 21 October 2010 the Panel was notified by Susanne-Nelson Wehrmeyer and Azhar Ghose that whilst 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 – two Members, two Officers and two Independents (including the Chair).
- 3.29 Members were informed at the Panel meeting held 9 November 2010 that there would be seven Directors – two Council Officers, three Independents (including the Chair) and two Members. It was thought that this would allow the Council a greater element of control and influence.
- 3.30 Andrew Moulton commented that key delivery risks relating to the company and their likely impact had been summarised along with mitigating actions in the report considered by the Executive on 4 May 2010. Potential risks identified had included possible conflicts of interest for Members/Officers acting as board members or directors of the Company. This risk had been identified as being highly likely and having medium impact. The governance of Members and Officers by the mandatory provisions of the Model Code of Conduct had been identified as a potential mitigating action.
- 3.31 The Panel was also informed by Susanne Nelson-Wehrmeyer that the potential for conflicts of interest had been identified at the set up stage. It was noted that due to 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. If Members ceased to be a Member of the Council they would automatically cease to be a Director.
- 3.32 Susan Law informed Members that the Council had been legally advised that it would be inadvisable for Executive Members to be part of the Board because of possible conflicts of interest during decision making. She felt that backbench Members could potentially bring local knowledge to the table and that any conflicts of interest that might arise could be managed using declarations of interest and removal from the decision making process.
- 3.33. The Panel noted that potential conflicts of interest for Members as Directors and means of minimising this risk had been identified through the establishment documents including the Articles of Association of the Company. Nevertheless, the Panel expressed concerns about Members acting as Directors, whilst recognising the potential benefits of this with regard to democratic accountability. They agreed that it was vital that any Member who sat on the Board acting as a long term guardian of residents' interests was fully aware of the potential risks and liabilities that they might face, that they had the right skills set in order to carry out their role and received sufficient guidance and training.
- 3.34 The Panel acknowledged that as a private company, its employees and directors would be held to account in different ways to Council employees and that in particular, there was no legislative mechanism that would require the attendance of

WEL employees or directors at Council meetings, including as part of the overview and scrutiny process. The Panel hoped that over time a position of mutual trust would develop between WEL and all Members of the Council and the role played by Overview and Scrutiny in ensuring democratic accountability to the extent that no reasonable request for information or attendance at scrutiny meetings would be rejected. However, the Panel did feel that there was a strong case for the introduction of contractual obligations with the governance documents to ensure cooperation and attendance at meetings as a last resort. It strongly hoped that, regardless of any legal or contractual obligation, any Local Authority Trading Company would see the benefit of a good relationship with all parts of the Council's democratic structure.

**Recommendation: That when establishing Local Authority Companies or significant contracts for services that the Council places an obligation on the contracting party that if reasonably requested they participate in Overview & Scrutiny or Audit Committee reviews pertinent to the services provided.**

**Review Objective 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 transparently and openly.**

- 3.35 The Panel established that the TESC is a Sub Committee of the Executive and had initially been formed of three Members. The preferred members to sit on the Sub Committee are the Executive Members who have responsibility for the Council in the area of business that the outside bodies are engaged in, Council Budgets and Commercial Enterprises. The Panel noted that a fourth Member, Councillor UllaKarin Clark, would be appointed to the TESC by Council on 18 November 2010. It was hoped that this would help to resolve any quorum issues. The Panel was satisfied that the composition of the TESC was correct and that the current Sub-Committee members understood their role.
- 3.36 The terms of reference of the Sub Committee are attached as Appendix A to the report. Witnesses agreed that the TESC will play a strategic role and oversee the activities of WEL and any future companies, ensuring that the Council's interests are being met. An example of this is revenue monitoring which would take place through the Directors of the Company reporting to Joint Board. This information could then be fed back to the TESC as part of the data it received of performance management.
- 3.37 The Panel examined the Sub-Committee's reporting arrangements. It was noted that the Council's Constitution stated that 'The Trading Enterprises Sub-Committee shall report and make formal recommendations to the Executive as appropriate, [in accordance with its functions described in 5.7.5 above.]'
- 3.38 Susanne Nelson-Wehrmeyer explained that the way in which the Sub-Committee reported back to the Executive has not yet been determined. If resolved by the Executive and the Sub-Committee, the TESC could submit regular formal reports with recommendations or provide information for the Executive to note. Anthony Pollock and Susan Law commented that it was likely that the minutes would be taken to the Executive and that they would be able to ask questions on them, although the Panel later established that this would not ordinarily take place.

Susan Law also stated that the Executive could request updates from the Sub-Committee Chair on an ad hoc basis.

- 3.39 The Panel questioned whether there would be a standing item on the Executive agenda for updates from the Sub-Committee on the activities of the company and any future companies. Several witnesses suggested that it would be more appropriate for the Sub-Committee to update the Executive at times of significant company activity. WEL is a property development company and as such there would be periods of less activity. Susan Law told Members that as the company was not directly involved in the regeneration of the Town Centre (WBC and Wilson Bowden are the developers), during the period of development, it was likely to have more of a 'watching' rather than active brief.
- 3.40 The Panel acknowledged that the minutes of the TESC formed part of the Council's published minute volume and that Members would be able to ask questions of the Executive Member for Community Regeneration in relation to the activities of WEL at meetings of the Executive and full Council.
- 3.41 Members of the Panel agreed that it was important that an open and transparent reporting structure is established and formalised so as to allow for the public and Members to see what actions are taking place and have confidence in those actions. The Panel was mindful that the nature of WEL as a property based business meant that often there would be periods of relative inactivity. It also took into account the statements by various witnesses that in their view it would not be appropriate for reports to be made on the basis of a standing item, when there was a risk there might not be anything to report. However, the Panel strongly felt that it was very important that formal reporting arrangements were developed not just in the case of WEL, but all other Local Authority Trading Companies and that the proposed arrangements could be strengthened. The Panel concluded that it was reasonable to go beyond a requirement for at least an annual report and that a quarterly reporting cycle was justified within the first two years of trading, subject to a review of that frequency at the end of the two year period.
- 3.42 Taking the available information into account the Panel was satisfied that it appeared that the TESC would be able to adequately exercise its functions. However, the Panel acknowledged that the Council was still in the early stages of exercising its trading powers and that it would have to be demonstrated that the promise shown within the governance documents became a reality before full assurance could be assumed.

**Recommendations: That the Panel recommends to the Executive**

- i) That the Executive and TESC agree the mechanisms for reporting on the activities of Local Authority Trading Companies.**
- ii) For the initial two years of trading the reporting should be on a quarterly basis, the frequency to be reviewed after two years**
- iii) That the Executive Member for Community Regeneration, (or appropriate Executive Member) reports to Council on the activities of Local Authority Trading Companies on at least an annual basis**

**Review objective 4): To ensure that all Members are informed of significant matters relating to Local Authority Companies established by Wokingham Borough Council that would affect the interests of the Council and residents.**

- 3.43. The Panel expressed concern that there was no formal reporting arrangement presently in place for informing Members of significant matters relating to Council established Local Authority Companies. Witnesses acknowledged that the way in which these matters were reported to full Council needed to be finalised. Anthony Pollock, Susan Law and Matt Deegan commented that updates could be provided as part of the Executive Member statements which were given at Council meetings. Susanne Nelson-Wehrmeyer indicated that Chairmen of the Council's Committees and Sub Committees were invited to provide an annual written report to Council on their committee's activities. In addition Matt Deegan commented that WEL would be required to produce an annual report. David Lee stressed that the TESC would act as an interface between the Council and any companies. Consequently it was essential that the reporting structure was as open and transparent as possible.
- 3.44 At the 9 November 2010 Panel meeting Members learnt that the TESC would meet on a basis which had yet to be determined by the Sub-Committee. Matt Deegan commented that there was no preset timetable and that he anticipated that the activity of the Sub-Committee would be in line with the activity of the Company. It was probable that in the early stages of the Company the TESC would meet at least monthly to monitor activity. He expected that the frequency of meetings would decrease at times when the Company was engaged in less activity.
- 3.45 The Panel was of the opinion that it was integral to ensure transparency and openness and that the reporting arrangement between the TESC, the Executive and Full Council be formalised to ensure that all Members are kept informed of important matters relating to the Local Authority Company. Members acknowledged that all meetings held would be open to the public with full access to information as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended unless any exemptions were applicable. If the business under consideration concerned individuals or was commercially sensitive information for example, then that part of the meeting may be conducted in private. Panel Members appreciated that not all documentation would be publicly available due to sensitivity of information contained, but were concerned that it was essential for openness and transparency that there was a culture of openness and that as much information as possible should be in the public domain. In particular, the Panel felt that just because an issue could be argued to be commercially sensitive to WEL, that did not automatically mean that the information could not subject to public scrutiny given the relationship between company and the Council as a public body.

**Recommendation: That all Members of the Council be briefed at the earliest practical opportunity on any further proposals to establish Local Authority Trading Companies.**

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

- 3.46 Witnesses were asked to identify financial and any other risks that the Council might be exposed to. The Panel was reminded at the 7 October meeting that potential financial and non financial risks and mitigating actions which could be taken to minimise their impact, had been identified in a report considered by the Executive in May 2010.
- 3.47 Members questioned what legal liabilities the Council held towards the Company. Susanne Nelson-Wehrmeyer informed the Panel that on 25 November 2005 the Executive had agreed that the Council would indemnify Members and Officers against any losses and damages arising from their appointment to outside bodies when they were acting on the Council's behalf. Members also noted that Council had agreed on 4 May 2010 that the Council would act as a guarantor for any losses and liabilities that WEL incurred whilst it remained a wholly owned company.
- 3.48 Members considered possible financial risks to the Council. The Council has lent the Company approximately £9.7million on specific terms. This loan will be repaid to the Council on the same basis the Council incurred its financing charges (i.e. cost neutral) (4% principle repayment). The loan is on the balance of a reducing balance and would be substantially repaid after 25 years. The non repayment of the loan is a potential risk. As shareholder the Council had paid up £3,000 for part of the Share capital. This is the extent of the Council's financial liability as shareholder. Should the Company fail this investment will be lost. Nevertheless, the loan to the Company had been secured on the properties and the Council has a first charge on the properties which could be invoked should the Company default on the repayment of the loan. Anthony Pollock commented that the bottoming out of the property market was a financial risk, albeit an unlikely one. The Panel acknowledged that the Council could, as sole shareholder, choose to wrap up the Company or transfer ownership of some or all of its shares in the Company should it so wish to.
- 3.49 Susanne Nelson-Wehrmeyer explained that should the Company fail the Council as the only shareholder will bear the reputational risk of failure. This would possibly affect any other companies the Council establishes in the future. She added that if the Company fails a bigger risk lay in the inability for the Council to retrieve any land holdings with the Company. Whilst a liquidator might pay out the Council to satisfy any outstanding loans it did not automatically follow that the Council re-acquired any of the Company's land holdings which were in place at the time it went into administration.
- 3.50 The Panel was pleased to learn that the TESC's remit included reviewing any significant identified risks on behalf of the Executive for the purposes of managing those risks. The Panel also noted that the TESC would establish, monitor and report regularly on strategic Key Performance Indicators contained within statements of corporate performance or other agreements entered into between the Council and the outside bodies (these documents are currently at draft stage) and report to the Executive on any areas of concern. In addition the Company's annual plan will be monitored and liaison meetings will take place between the two bodies.
- 3.51 The Panel was satisfied that potential risks to the Council had been identified and that the Council has put in place sufficient mitigation to protect its interests in arrangements entered into by Local Authority Companies. Nevertheless, they agreed it was vital that the agreements between the Council and the Company be

finalised and agreed, because of the residual risk that remained. It was noted that any other companies established by the Council in the future would face similar risks.

- 3.52 The Panel Members looked at the role of the Council Officers in relation to the Company. At present several Officers are acting as nominal officers of the Company. This arrangement will cease once external appointments are made. Council Officers, including the Chief Executive will make up part of the Joint Board which would review the Company's performance and the Agreements. Two Officers will also be appointed as Company Directors. The Chief Executive notified the Panel that it was not yet known who these officers would be. It is anticipated that they would be appointed following the appointment of the Member and Independent Directors and would fill any outstanding skills gaps. The Chief Executive indicated that 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 need to be ensured.
- 3.53 At the 9 November 2010 meeting Members were informed that the TESC had appointed the Chief Executive as the Council's Authorised Representative. This may be subject to change in the future. The Chief Executive commented that clear guidance will need to be given to the Authorised Representative to ensure that the Council's wishes are conveyed at the Company's annual general meeting. The Panel questioned how the wishes of the Council would be conveyed to the Authorised Representative and was of the opinion that a formal mechanism should be put in place to ensure accountability and transparency.
- 3.54 It was thought that the involvement of Council Officers on the Joint Board and as Directors of the Company would help the Council to have sight of its interests in arrangements entered into by Local Authority Trading Company. The Authorised Representative would be empowered to act on the Council's behalf and would be a contact regarding the various agreements and any issues arising with the Company services. It was recognised that the appointment of an Authorised Representative would again help to ensure that the Council had sight of its interests in the Company and that they were protected.

#### **4.0 Conclusion**

- 4.1 The Panel acknowledged that the governance, accountability and risk implications of establishing WEL as a Local Authority Trading Company had been diligently considered. The Panel recognised that the potential gains that WEL offered to the local community in terms of promoting the regeneration of Wokingham town centre are extremely significant and that in general Local Authority Trading Companies are an option that the Council needs to consider as it adapts to changes in the local government environment.
- 4.2 However, the Panel was concerned that much of the detail of governance arrangements between the Council and the Company remains un-finalised or agreed despite the fact that the company has been trading since May 2010 and felt that this needs to be expedited. It was also mindful that although the potential benefits of Local Authority Trading Companies are significant, so are the potential financial and reputable risks to the Council and that these risks need to be mitigated.

- 4.3 The Panel also felt that further work was needed on the reporting mechanism from the TESC to the Executive and the provision of information to all Members concerning such companies.

## **5.0 Recommendations**

From the written and verbal evidence provided to the Panels, the following were the main findings and the recommendations which were formulated as a result.

- 5.1 That the Panel recommends to the Executive that negotiation with WEL on the company's establishment documents, (setting out the detail of the different relationships between the Council and WEL) should be expedited. In the Panel's opinion this should be achievable within a period of 3 months.

Reason: The agreement of establishment documents between the Council and WEL is fundamental to achieving a satisfactory level of assurance that appropriate controls are in place to manage the complicated relationships between the Council and WEL and minimise the financial and reputational risks to the Council.

- 5.2 That the Panel recommends to the Executive that elected non-Executive Member representatives appointed as Directors of WEL or other Local Authority Trading Companies receive comprehensive briefings and training on their role and its obligations and liabilities prior to taking up their positions on the Board.

Reason: To ensure the representatives have sufficient understanding of their role to be able to successfully exercise it.

- 5.3 That when establishing Local Authority Companies or significant contracts for services that the Council places an obligation on the contracting party that if reasonably requested they participate in Overview & Scrutiny or Audit Committee reviews pertinent to the services provided.

Reason: To ensure that democratic accountability and oversight can be maintained.

- 5.4 That the Panel recommends to the Executive that:

- i) the Executive and TESC agree the mechanisms for reporting on the activities of Local Authority Trading Companies.
- ii) for the initial two years of trading the reporting should be on a quarterly basis, the frequency to be reviewed after two years.
- iii) the Executive Member for Community Regeneration, (or appropriate Executive Member) reports to Council on the activities of Local Authority Trading Companies on at least an annual basis.

Reason: The Panel has concerns about the prompt flow of information between TESC, the Executive and Full Council. The Panel understands that there will be periods of inactivity and consequently little to report, but feels that reliance on exception and ad hoc reporting in this innovative and critical area is insufficient during this period of extensive change.



- 5.5 That the Panel recommends to the Executive that all Members of the Council be briefed at the earliest practical opportunity on any further proposals to establish Local Authority Trading Companies.

Reason: The Panel found at the start of the review that the level of knowledge of back bench Members regarding WEL and the Local Authority Trading Companies was low. Communication with all Members on the use of Local Authority Companies is necessary in order to improve their understanding and support for the use of Local Authority Trading Companies in the future.

- 5.6 That the Chairman and Committee of the Corporate Services Overview and Scrutiny Panel consider the implementation of any agreed recommendations after a period of 12 months;

Reason: To ensure continuity and obtain assurance that agreed recommendations are implemented.

## OVERVIEW AND SCRUTINY REVIEW

### TERMS OF REFERENCE

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

##### **Purpose of Review:**

1. To respond to a request by Council to investigate and make recommendations on the governance arrangements for local authority companies and the Trading Enterprises Sub-Committee with a view to ensuring they are open, transparent and fully accountable to Councillors and to members of the public.

##### **Key Objectives:**

1. To ensure that any companies established by Wokingham Borough Council have robust, transparent audit and governance arrangements in place;
2. To ensure that the best interests of Wokingham Borough Council and its residents are represented within the management structure of companies established by the Council and that democratic accountability and transparency is maintained;
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 transparently and openly;
4. To ensure that all Members are informed of significant matters relating to Local Authority Companies established by Wokingham Borough Council that would affect the interests of the Council and residents;
5. To ensure that the Council has visibility of and can protect its interests in arrangements entered into by Local Authority Companies where these arrangements have the potential to affect the risk profile or financial viability of the Council.

##### **Scope of the work:**

1. Research of the legislative basis of local authority companies;
2. To establish the rationale behind the preferred use of a local authority company over other possible business models;
3. Research to establish the legislative framework for corporate governance, risk management and democratic accountability of local authority companies;
4. Examination of the corporate governance arrangements of Wokingham Enterprises Limited against that framework;

5. Research to ascertain best practice in both the public and private sector, taking into account the experiences of other local authorities that have established local authority companies;
6. Examination of the role, responsibilities and Terms of the Reference of the Trading Enterprises Sub-Committee against best practice and legislation;
7. To report back to the Audit Committee, Executive or Council as agreed by the Panel on the findings of the review and any recommendations.

#### Outside of scope

1. Day to day operation of local authority companies, e.g. Terms and Conditions of staff except where these may impose a liability on the Council.

#### BACKGROUND:

At Council on 22 July 2010, Members considered the establishment of a Trading Enterprises Sub-Committee in order to exercise the powers of the Council's Executive with respect to local authority companies. In addition to establishing the Sub-Committee, it was proposed and agreed that the Overview and Scrutiny Committee (and Audit Committee) be asked to investigate and make recommendations on the governance arrangements for local authority companies and the Trading Enterprises Sub-Committee, with a view to ensuring they are open, transparent and fully accountable to Council Members and members of the public.

The Overview and Scrutiny Management Committee at its meeting of 26 July 2010 referred the matter to the Corporate Services Overview and Scrutiny Panel.

#### INFORMATION GATHERING:

##### Potential Witnesses

Name	Organisation/Position	Reason for Inviting
Susan Law	Chief Executive, WBC	To ascertain how the establishment of local authorities fits into the wider vision of the Council
Andrew Moulton	Director of Transformation, WBC	As the lead Officer responsible for the Transformation programme and establishment of local authority companies as a vehicle to deliver some of the programme
Heather Thwaites	General Manager , Policy and Partnerships, WBC	As the lead Officer responsible for Wokingham Enterprises Ltd at the time it was established
Graham Ebers	General Manager Business Services, WBC	As the lead Officer responsible for Council budgets and Chief Finance Officer

Susanne Nelson-Wehrmeyer	Head of Governance and Democratic Services, WBC	As the Council's Head of Governance and Democratic Services/Monitoring Officer
Cllr Matt Deegan	Executive Member for Community Regeneration, WBC	As the Executive Member whose remit includes commercial ventures and also as member of the Trading Enterprises Sub-Committee
Cllr Anthony Pollock	Executive Member for Council Budgets	As the Executive Member whose remit includes Council budgets and also as a member of the Trading Enterprises Sub-Committee
Cllr David Lee	Leader of the Council	As the Executive Member with overall political responsibility for the direction of the Council
Representative/s	Essex County Council or other local authorities that have established local authority companies	To ascertain what arrangements and processes have been put in place by other local authorities

#### Information to be obtained from

Organisation	Information to be Requested
Wokingham Borough Council	Executive and Council reports relating to the establishment of Wokingham Enterprises Ltd and the Trading Enterprise Sub-Committee <ul style="list-style-type: none"> <li>• Business Case</li> <li>• Business Plan</li> <li>• Shareholder Agreement</li> <li>• Memorandum of Association</li> <li>• Articles of Association</li> <li>• Job descriptions of Chair and Board Members</li> </ul>
Department for Communities and Local Government	General Power for Local Authorities to Trade in Function Related Activities through a Company – <i>Guidance on the Power in the Local Government Act 2003</i>

Financial Reporting Council	The UK Corporate Governance Code June 2010
Other local authorities	Governance arrangements of local authority companies established by other local authorities
Private sector institutions	Standardised models for the governance of wholly owned subsidiaries.

## **TIMESCALE**

**Starting:** September 2010

**Ending:** December 2010

**Referred by the Management Committee to:** Corporate Services Overview  
and Scrutiny Panel

**Terms of Reference agreed by:** Corporate Services Overview and Scrutiny Panel  
1 September 2010

**Panel Members involved in  
the review:**

Alistair Auty  
Chris Bowring  
Michael Firmager  
Norman Jorgensen  
Jenny Lissaman  
Stuart Munro

**Panel Lead Member:** Norman Jorgensen

**Executive Member:** Matt Deegan

**Reporting Lines:** Audit Committee  
Council and/or Executive depending on outcomes

## TRADING AND ENTERPRISES SUB-COMMITTEE

### 5.7.1 Introduction

The Council has set up a wholly owned local authority company for the purpose of regenerating Wokingham town centre and a Local Housing Company is also under consideration at the date hereof.

In addition, as part of the transformation of the Council preparatory steps are being taken for other companies or ventures to be set up for different purposes as part of delivering services through alternate business models. The outcomes may include joint venture or partnership working with the Council and therefore Section 10 of the Constitution should also be considered.

The Trading and Enterprises Sub-Committee will play a key role in promoting and properly managing these new ventures (referred to generally as "outside bodies" or "outside body" hereafter) on behalf of the Council which may be wholly or partly owned by the Council.

### 5.7.2 Composition

The TESC shall comprise of 3 Members of the Executive. The preferred members to sit on the Committee will be the Executive Members who have responsibility for the Council in the area of business that the outside bodies are engaged in, Council Budgets and Commercial Enterprises.

### 5.7.3 Restrictions on Membership

Only members of the Executive can be members of the TESC with voting rights. The Committee may invite non-members of the Executive to attend the meetings from time to time but they will not be entitled to any voting rights.

### 5.7.4 Meetings

The TESC shall meet on a basis agreed by the Committee and all meetings shall be held open to the public with full access to information as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended unless any exemptions are applicable.

### 5.7.5 Functions in connection with outside bodies

The TESC shall have delegated authority to carry out on behalf of the Executive all its functions in relation to an outside body pursuant to the Local Government Act 2000 and in particular the following functions shall be delegated or be a part of the functions of the Committee in connection with outside bodies namely:

- a) The appointment and revocation of any individual to an outside body as detailed in Section 11.2 of the Council's constitution;
- b) To establish, monitor and report regularly on high level performance indicators contained within statements of corporate performance or other agreements entered into between the Council and the outside bodies and report on areas of concern to the Executive ;
- c) To authorise and promote arrangements or agreements between the Council and the outside bodies that may include the delivery of services , operational issues,

joint working, effective communication and information sharing between the two parties in order to achieve their respective goals;

- d) To oversee and monitor any agreements entered into between the Council and the outside bodies
- e) To receive analysis reports on past and comparative levels of performance;
- f) To review any significant identified risks on behalf of the Executive for the purposes of managing those risks;
- g) To take appropriate steps for the Council to be represented at all stages, processes and meetings concerning the outside bodies including the performance of any shareholder functions of the Company;
- h) To represent and act on behalf of the Council's interests in its dealings with the outside bodies and in discussions or negotiations with other parties;
- i) To oversee the delivery or the implementation of any Council (Executive) approved business or service plans in relation to the outside bodies;
- j) To be responsible for the exploration of opportunities for collaborative working with a view to achieving greater efficiency;
- k) To be responsible for ensuring that any Council's capital investment and or assets that may be transferred to or used by the outside body are properly protected and used by the outside body for the purposes approved of by the Council;
- l) To commission any actions that will facilitate the Council's decisions and policies and or the above functions including making any changes to the governance arrangements to the outside body
- m) To issue formal directions of the Council to the company and agree the basis of implementation of those directions by the company

#### **5.7.6 Reporting Lines**

The TESC shall report and make formal recommendations to the Executive as appropriate, in accordance with its functions described in 5.7.5 above.

#### **5.7.7 Public and Member Questions**

Public and Member questions may not be asked at meetings of the Trading and Enterprises Sub-Committee however questions relating to the work of the TESC can be asked at meetings of the Executive.

#### **5.7.8 Attendance at meetings of the Trading and Enterprises Sub- Committee**

Attendance at meetings of the Trading and Enterprises Sub-Committee shall be in accordance with the Executive Procedure Rules as set out in Chapter 5.4 of the Constitution.

#### **5.7.9 Quorum**

The quorum of a meeting of the TESC shall be three

If there is no quorum at the published start time for the meeting, a period of no more than 10 minutes will be allowed, and if there remains no quorum at the expiry of this period, the meeting will be declared null and void.

#### **5.7.10 Record of Decisions**

In accordance with Rule 5.4.16 of the Council's Constitution after any meeting of the Trading and Enterprises Sub-Committee a record of every decision taken at that meeting will be produced which will be circulated to all Members of the Council and made available for public inspection within two days of the decision being made.



Matrix of Questions and Answers

**Corporate Services Overview and Scrutiny Panel  
WEL and Local Authority Trading Company Review**

Topic	Questions	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
Background Information and Rationale	a) Can you provide a brief overview of your involvement in setting up Wokingham Enterprises Ltd as a Local Authority Trading Company?	<p>Was aware of political desire to establish a trading company.</p> <p>Previously was a director of the shell umbrella LATC established by WBC. Ceased to be a director when it became WEL. Was best placed to make sure the shell remained dormant.</p> <p>Made sure finance support was available when purchase of Peach Place was pursued.</p>	<p>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.</p> <p>The General Manager Policy and Partnerships 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</p>	<p>The Director of Transformation indicated that he had had direct involvement with WEL since May when the company was mobilised to trade.</p> <p>He had line manager responsibility for Clive Dove-Dixon. Prior to May 2010 he had been involved in a broad sense as enterprise was a key theme of the Transformation Programme.</p> <p>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.</p>			<p>SNW - Head of Governance and Democratic Services and Monitoring Officer - Part of my remit covers legal services.</p> <p>Was asked to organise the setting up, initially, of 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.</p> <p>At the time we set up the company (an umbrella company) looked as though 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.</p> <p>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.</p> <p>AG – Senior Solicitor involved in set up of company. Currently acting as company secretary</p>			

Topic	Questions	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments	
Background Information and Rationale – continued	b) What is the objective of the company?		considered by the Executive in May had been produced by herself and Bernie Pritch, Head of Strategic Capital and Asset Planning.	As set out in the 4 May 2010 Executive report			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.	Regeneration of Town Centre Facilitating the finding of a long term investment partner	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.		
Background Information and Rationale – continued	c) Why a company?	Felt to be the best option as the tried and tested model with a view to investment by a partner at a later stage. Limited Liability Partnership relatively new option.	Supported remarks of Graham Ebers	The Council had been advised by external legal advisers not to select a Limited Liability Partnership society on the basis of its tax advantages if it were minded to establish future models.			A local authority trading company had been considered the most appropriate vehicle to achieve the desired outcomes.	An in-house team had not been an appropriate vehicle because the Council did not have the specialist expertise required. Also would have had to have operated as a Local Authority and not as a commercial vehicle.	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.	Allows us to attract the right expertise to help us manage these	
Background Information and Rationale – continued	c) Why a company?							Whilst a limited liability partnership had not been considered			

Topic	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
Background Information and Rationale – continued							<p>appropriate for the regeneration of the Town Centre it may be an appropriate model for future projects.</p> <p>A company limited by a guarantee had not been appropriate because the Council had wanted to attract an investment partner in the future.</p> <p>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.</p> <p>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.</p> <p>However, SL believed that these disadvantages</p>		

Topic	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
	Limited Liability Partnership	As set out in the report of 4 May 2010 prepared by the Head of Governance and Democratic Services	Limited Liability Partnership.		Only a basic company structure was created. This was to facilitate new models as and when appropriate and depending on their business cases. 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.  No particular vehicle was excluded.		would be manageable.		
	As set out above.	As set out above.	As set out above.		Options which were considered are in the background papers to the Executive report (16 November 2009 - included briefly looking at the comparative merits of Companies limited by guarantee versus, those limited by shares and briefly touching upon Limited Liability Partnerships.			Other options didn't offer sufficient flexibility needed or were not appropriate based upon how the Town Centre was to be developed	
d) What other vehicles were considered?	As set out above.	As set out above.	As set out above.		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.			Flexibility – particularly in the long term Ability to trade and generate profit – deliver a dividend for the council  Against Corporation tax (isn't the same tax privileges as a local authority) Loss of control	
e) What other options were considered i.e. Limited Liability Partnership, Council, Social Enterprise?	Company is tried and tested.	Supported comments from Graham Ebers.	Supported comments from Graham Ebers and that arguments for Limited Company are set out in the 4 May Executive Report.						
f) What is the advantage of a company versus other vehicles? What are the disadvantages?									
<b>Background Information and Rationale – continued</b>									

Topic	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Neilson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
					Disadvantages 1. Corporation tax liability 2. less control Other Vehicles could include an LLP which retains the tax advantage of the Council however, it poses difficulties in finding future investors Legalities appear in the background papers to the Executive report dated the 26 November 2009 Has been possible since 1989 to set up Local authority controlled companies ( Local Government and Housing Act)				
						External and internal legal advice had been provided during the establishment of the company.		It has been possible for a long time now for local authorities to set up companies since 1989. Assurances were set out in the executive papers last November.	
<b>1. To ensure that any companies established by WBC have robust, transparent audit and governance in place</b>					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.	The company is a separate stand alone entity. However, the Council is sole shareholder and has certain rights as such. A detailed governance structure is in place. A Shareholders Agreement would set out what the Council wished the company to do. Articles of Association were required		Through the various documentation which governs the running of the company, Statement of Corporate Intent Annual Remit document – Strategic Business Plan Service Level Agreement Strategic Management Agreement Article of Association Council is 100% share holder. This allows us to set terms of governance. The joint board will monitor the	
<b>1. To ensure that any companies established by WBC have robust, transparent audit and governance in place - continued</b>	g) What assurance does the Executive have that the company was set up legally?								
	a) How will the Council hold the Company to account?								
	a) How will the Council hold the Company to account? - continued								

Topic	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Neilson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
1. To ensure that any companies established by WBC have robust, transparent audit and governance in place - continued	Questions					by companies' legislation. The company would not be able to enter into agreements above a certain level without consent.		performance of the company in line with the documents above and guide on future strategic plans.	
	b) Who appoints and removes the directors of the company? (and how much involvement do they have?)				Council does, through the TESC and executive members of that executive sub committee. TESC members will have an oversight role for the various businesses we anticipate setting up in the future. (see TESC terms of reference).			Council ultimately does this through the executive and the TESC which has been delegated this task.	
	c) What is the Shareholder Liaison Board and who sits on it?				Now named the Joint Board Principally comprised of TESC members, the Chief Executive and supporting officers and members along with 4 representatives of WEL.			Now 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.	
	Supp) What powers does it have? Does it meet in public or private?				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. Will be meeting in private.			Board allows WBC and WEL to discuss performance and future plans. Board has no specific powers. However, it does allow WBC to give very specific input into the management of WEL.	Also allows for

Topic	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
								WEL to discuss its long term plans and point out opportunities and risks to WBC. Meets in private.	
					No. The company is a separate legal entity and will manage its own operations through its executive officers (managing director).		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.	Not specifically, the company is a separate entity. Its own executive will manage the company	
d) Does the Council have any influence over the internal organisation of the company		General Manager 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.	The company directors have particular obligations under the relevant companies' legislation.		Directors of the company.	Directors of the company.	Directors of the company.	WEL directors	
e) Who is accountable for the actions of the company?			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		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.			Company is subject to the companies act and is obligated to be audited. WBC has stipulated in the Strategic Management Agreement page 13 point 10 our audit requirements. The company is not under	
f) Is the company subject to the External/Internal Audit either internally or via the Council's own arrangements?	As a limited company WEL is required to appoint an external auditor. As the Council has 100% ownership of WEL, it will appear in the Council's consolidated accounts. The Council								

Topic	Questions	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
		and WEL will have the same external auditor. The role of the Council's Internal Audit arm in WEL is not yet known. He would expect the Council's Internal Audit to undertake work – losses and liability.		programme. Company will have its own financial statements					our own audit team. WBC will also have full access to the accounts.	
2. To ensure that the best interests of WBC and its residents are represented within the management structure of the companies established by the Council and that democratic accountability and transparency is maintained	a) 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 benefiting shareholders of a company.			As 100% share holders company legislation does recognise our rights and also in accordance with WEL being a local authority company.	
	b) Are there any conflicts of interest as a result of the company? Do you foresee any conflicts arising?	Officers have had to wear two hats at points in the development of WEL which is not an ideal situation. Possible tension of the Council's goal to facilitate regeneration of the town centre vs. need to maximize property rental income.		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.		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			Potential conflict of interest for Members Conflicts around member involvement would be dealt with much the same way WBC already deals with such matters (declaration of interest etc) MD believed that Executive Members should not be Directors due to the possibility of conflicts of	
2. To ensure that the best interests of WBC and its residents are represented within the management structure of the companies established by the Council and that democratic accountability and transparency is maintained continued -										



Topic	Questions	Witness 1 Graham Ebers	Witness 2 Heather Thwaites	Witness 3 Andrew Moulton	Witness 4 Anthony Pollock	Witness 5 Susanne Nelson-Wehrmeyer/ Azhar Ghose	Witness 6 David Lee	Witness 7 Susan Law	Witness 8 Matt Deegan	Comments
						that decision making process regardless of the conflict.			Interest. Backbench Members could bring a local knowledge and a new perspective on matters. However, it is essential that individual Members have the relevant skills and received sufficient guidance.	
	c) Are the company directors required by law to act in the interests of the company and not the Council?			Company directors are required by law to act in the best interests of the company.		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.	They were required by law to act in the interests of the shareholder.	The Directors would be accountable for the company's actions and were required by law to act in the interests of the company.	Yes. The companies act legislates for this.	
	d) 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 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.		X		
3. To ensure that the Trading Enterprises Sub-Committee is able to competently undertake its function of oversight and performance management of	a) What role will the Trading Enterprises Sub-Committee play?				Would play a strategic role, gather information and check that the company was working within	Oversight of the various companies set up by the Council.  See the Terms of Reference.		TESC would oversee the activities of the company, ensuring that the Council's interests were	Principally to monitor performance and report to the Executive.  Will also sit on	

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companies established by the Council and that it exercises that function transparency and openly.					the appropriate guidelines.			being met.	the Joint Board and provide guidance and scrutiny.	
	b) What are the limits on the Council to hold the company to account?				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.	Ultimately the Council as 100% shareholder has the ability to remove directors and wind up the company if still solvent and the Directors make a declaration of solvency.	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	Company would be held to account through the governance arrangements. The Council had a majority on the company Board. SL - 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.	Have the ability to completely remove the directors and wind up the company.	
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.										
	c) How does this differ from Councils ability to hold officers of the Council to account?				X	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.	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.	X	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	

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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 - cont	d) 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.		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.	procedures on the Executive (TESC) and the CEO.	
	e) 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.		No, the correct environment is the joint board, however, TESC can ask for directors to attend TESC meetings.		
	f) How often will TESC meet? (Supp) How much business					This is down to TESC to determine. The Access to Information Regulations applies to all committees			This is still to be determined. TESC	

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					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.			members fully expect to monitor on a regular basis. Over the next few months 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. Some of documentation will be Part II items.	
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.	a) 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.		TESC 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.	Through the Joint board and the Strategic business plan	
	b) How are Members informed in relation to activities of the			Updates could be provided through Executive				Via TESC and the Executive. Also as part of	

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	company?				member statements given at Council meetings. 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.	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	Trading and Enterprise Sub Committee (TESC) would act as an interface between the company and the Council. It was essential that the reporting structure was open and transparent but DL was open to how this should be carried out.	Minutes of TESC would be taken to the Executive. 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.	executive member statements at full council.	
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. - continued	c) How does the Trading Enterprises Sub-Committee report to the Executive?									
	d) How does the Executive report to Council on the activities of the Company?				How the Executive reported to Council would also need to be finalised. Updates could be provided through Executive member statements given at Council meetings.	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.	See above		X	

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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.									
	a) 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.  On the 24 November 2003 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 2009 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.	The Council had agreed to underwrite the company's losses.  DL confident that Audit and the Audit Committee would assess risk on a regular basis.		In November 2005 the Executive decided that WBC would indemnify members and officers against losses and damages arising from appointments to outside bodies.	
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.	b) 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.			There will be two officers on the non executive Board. They would play a very important role. It is not known at this stage who these officers would be. It was anticipated that they would be appointed after the Members and Independents on the Board and would fill any outstanding skills gaps.  Officers would	

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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.	c) What is the value of the Councils investment in the company?	£3.7 million invested on specific terms.			The Council had lent the company approximately £9-10million			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.		
	d) Are the loans to the company secured on the properties?	Yes- Council has first charge on the properties in the event of default								
	e) On what basis are the loans to the company made?	On a basis that is cost neutral to the Council/nil sum gain (4% principle repayment) Loan is on the balance of a reducing balance and would be repaid after 25 years								
	f) How can the Council cancel the loans?	First charge on the properties invoked in the event of default. Council has ability to cease the company as the 100% shareholder.								

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	g) Where does accountability for loans to the company rest?	With the Directors of the company.			With the Directors of the company.	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.				
<b>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.</b>	h) How will profits be generated and how will profits be passed to the Council?	Profits will be generated from rental income and capital appreciation on the assets owned by WEL – passed back to the Council via dividend payment.			Profits could be distributed as dividends to the Council as shareholder.					
	i) Is the company tax efficient?	As much as a private company can be. 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.			The company would be as tax efficient as a private company could be.					
	j) How will the company appear in the Council's accounts?	As the Company is 100% Council owned it will be appear fully in the Council's consolidated accounts.			Appear in the Council's consolidated accounts. Also appear as a specific note.					



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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 - cont.	k) What are the financial risks the Council is exposed to in relation of the company?	Revenue monitoring through the directors of the company reporting to the TESC.  Non repayment of loan made to WEL  Risks set out in 4 May 2010 Executive report  Council acts a guarantor and losses and liabilities would come back to the Council	X	X	The bottom falling out of the property market was a potential risk.	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.	The Council had agreed to underwrite the company's losses.	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 SL expected that the value of the loan not being repaid, but this loan is backed by the assets transferred.		
	l) What other non financial risks will the Council be exposed to	As set out in Appendix 2 of the May 2010 Executive report.					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.			

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	m) 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.				
<b>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.</b>	n) Who has the authority to transfer ownership of sum or all of the Council's shares?	Ultimately the Council as the 100% shareholder in WEL.  To be set out in the Share Holder Agreement and other documents to be considered by TESC				Executive or the TESC if so authorised by the Executive.				
	o) What limits are there on acquiring other companies?					None so far as is known.				

### Summary of discussions with Witnesses from Essex County Council

Councillor Bill Dick, Chairman of the Community Wellbeing and Older People Policy Scrutiny Committee, Essex County Council

- Council had wanted to become an enabler. London and Midlands models were examined. Officers had initially suggested a social enterprise model.
- Members were sent a questionnaire. Many felt that a Local Authority Trading Company would be a more appropriate model than a social enterprise for what the Council wanted to achieve.
- Process took some time.
- The Unions and staff had been happy with the process and the establishment of the Local Authority Trading Company.

#### 1. Have scrutiny done any work around the company? (Supplementary) What was the outcome of this work?

- Lead officers, staff and Directors make presentations to scrutiny.
- Scrutiny look at company's performance and can question why certain targets not achieved (eg: scrutiny recommended that people living in council owned care homes be moved to social housing in order to develop their independence. This has not yet been fully achieved. Scrutiny asks company to explain why this target has not yet been met).
- The Council owns the buildings in which the company is based. A rental and lease agreement is in place. Scrutiny and company working together to look at rationalising use of buildings to ensure less wastage and to potential save money (for both the Council and the company).
- Representatives from Telcare recently gave a presentation to scrutiny.
- Scrutiny identifies areas to look at where a difference can be achieved. Scrutiny had recently looked at absence management and the company had been included in this review. It was found that sickness in the company was just below 3% compared to approximately 5% in the Social Care directorate. Council is a very large organisation. Many company staff now feel part of the company and closer and more able to speak to their manager ('flatter management').

#### 2. Does scrutiny have the power to compel directors to appear before the Committee? If not, then who appears before scrutiny on behalf of the company?

- There is nothing in the contract which says that Directors must appear before scrutiny. However, company are willing to appear before scrutiny. It is good business practice and mutually beneficial to the company and the Council.
- As Council is the enabler is important that the company has a good relationship with the Council, including scrutiny.
- Cllr Dick frequently talks with the Managing Director. Good relationship between scrutiny and the company has been established and two way discussions take place.

**3. How do back bench members feel about the level of communication with the company? How can we ensure there is adequate communication between the company and Elected Members?**

- Despite the fact that the Council is a very big organisation Cllr Dick has not heard of any complaints. Members are able to contact officers within company.
- Scrutiny kept up to date with developments.
- Community Wellbeing and Older People Policy Scrutiny Committee undertook a site visit to gain a better understanding of the company.
- It was important to treat the company like any other provider and to keep dialogue flowing.

**4. What have been the benefits to the Council of the company? (Supplementary) What further benefits are foreseen?**

- Conflict of interest had been when the Council was both the enabler and the service provider.
- Under new arrangement Council has more control over the contracts it has. The Council is able to focus more on the service provided.
- Will hopefully save money in the long term. The Council is looking to save £300million under its Transformation programme.
- Officers undertook the transition process (separating company from the Council, TUPE of staff etc).
- The company was an 'arm's length' company.
- The Council was already feeling the benefits of the company.

**5. Have there been any problems with the governance of the company?**

- No. A cross party group of 5 councillors (currently 4) look at the financial side of the company on behalf of the Council. Three members are Conservative and one is a Liberal Democrat. One member is the Leader of the Council and 2 others are Cabinet members. Many of this group have a financial background (eg are accountants).
- No conflicts of interest since establishment of company.
- Whilst Internal Audit had initially raised some issues these had since been resolved.

**6. Have the rewards from setting up the company compensated for the risks involved?**

- Biggest reward was the Council becoming an enabler. The company's acting as service provider meant that the Council was able to focus more on the service provided to the community.
- No complaints from open market. Company has 'taken over' what was formally carried out by the Council (provision of service) and run it as a business.
- Company will go out to the open market in a few years time and will have to compete with other companies. [contract is 3 years, but there is a 2 year extension clause built in that could be invoked]

**7. What are the key lessons that we can learn from Essex's experience?**

- Staff commitment to the company borne out by Scrutiny's findings on absence management. Staff feel more in touch with managers.

- Local Authority Trading Company was best option for Essex County Council.
- Company accountable to the Council. Scrutiny monitors whether specific targets are being met. Cross party group monitors Council's investment.
- Interests of the Council as sole shareholder and interests of Council as commissioner.
- Professional contracts manager (Officer) looks at all contracts.
- Possibility of further Local Authority Trading Companies in the future (e.g in Children's Services area)

Liz Chidgey, Deputy Executive Director for Adults,  
Health & Community Well-Being, Essex County Council:

**1. Why did you decide on a Supervisory Board/Management Board structure?**

- Council only shareholder and owns 100% of the company.
- Considered what arrangement most appropriate to ensure some separation between the day to day running of business and Council's duty as shareholder.
- Cabinet is ultimate shareholder group.
- Shareholder Liaison Group chaired by Deputy Leader. Cross party representation on Group – not politically driven.
- Officers from Finance and Social Care act as commissioners. Support and provide challenge to Essex Cares.
- Good dialogue between Essex Cares and Members.

**2. What level of control does the Council have over the company and how is this exercised? Is this different from originally envisaged?**

- Political side.
- Officer level – Council ultimately shareholders. Clear contractual obligations on operational and management matters have been written in to the outcomes based contract. Contract is monitored by a specific officer.
- Control through close management of contract (part of Adult Social Care Team).
- Liz Chidgey meets with Commercial Director as part of the Council exercising its commissioning rights.
- The company could be free thinking and there was an opportunity for open dialogue. A Commercial Director and Commercial Team sat within the Council's Adult Social Care Team. It was important to have a mixture of Officers with commercial acumen and subject matter expertise. Some in house expertise helped to produce better results.

**3. How is the Council informed about the activities and the plans of the company?**

- Shareholder Liaison Group considered reports about the performance against its outcomes. The Shareholder Liaison Group and commissioners also received reports on the company's plans. This helped to ensure that there were 'no surprises.'
- The Council did not control the company's discussions. The company was given freedom and flexibility. However, the Council was kept updated on the company's intentions and any developments.
- If a profit was made discussions took place on how it would be used.

**4. What have Essex learnt from the experience of setting up a company?**

- Because Essex County Council is a very large Council it is important to have a decision making criteria in place. Scrutiny would be used to help develop this. It was important that the weight given to certain criteria was determined. Other potential vehicles were being developed.
- Essex decided against a social enterprise as the public had confidence in Essex CC as a brand.
- It had been a challenge in establishing the unit cost of providing services
- A large number of Council staff had been TUPEd.
- The company had purchased all support services from the Council. They had the option to give 6 months notice on individual services. They had given notice on the IT and HR systems. There would potentially be issues relating to changing to new systems and validating new systems.
- The Council owned the buildings in which the company were based. A rent and lease arrangement was in place.
- Council has a property dispersal regime in place. Potential conflict between this and recommissioning of services.

**5. What has worked well in terms of governance arrangements? What have been the problems?**

- Governance arrangements themselves are good.
- Relationships the main source of potential problems. Council both commissioners and shareholders.
- It necessary to develop the relationship between the Council as a commission and the company. A different approach and style is needed to that used when services were in house;
- Chief Executive and Chair of Board have discussions with Chair of Shareholders Liaison Group to ensure good relations.
- The first company Managing Director had left by mutual consent. It is important that the Managing Director had a good understanding of commercial matters and also had subject matter expertise. If unsure on person wish to appoint should take time to consider in more detail.

**6. Have you been able to attract high quality Directors?**

- Yes. The Company Chair has a Social Care and Health background and lots of experience. A good understanding of the political situation and new business set up is also important.
- Advertised for Directors and had a good response. Candidates were interviewed by Liz Chidgey and Members.
- Initially some tension between political and commissioning requirements.

**7. Have any conflicts of interest arisen within the company? How have these been managed?**

- No. Having an independent Board has helped.

**8. What has your Council been able to achieve that it would not if the company had not been formed?**

- Company opened up options. Council able to look at overall market to see how the market is shaping and developing.
- Essex Cares has brought other big players to the plate. The Council was now having different conversations with the open market.

- The company is having discussions with numerous partners, not just health bodies.
- The In House team could not compete with the outside market.
- The Council is moving away from blocked contracts to framework contracts. It needed to be open and transparent in order to show that it did not favour Essex Cares over any other company.

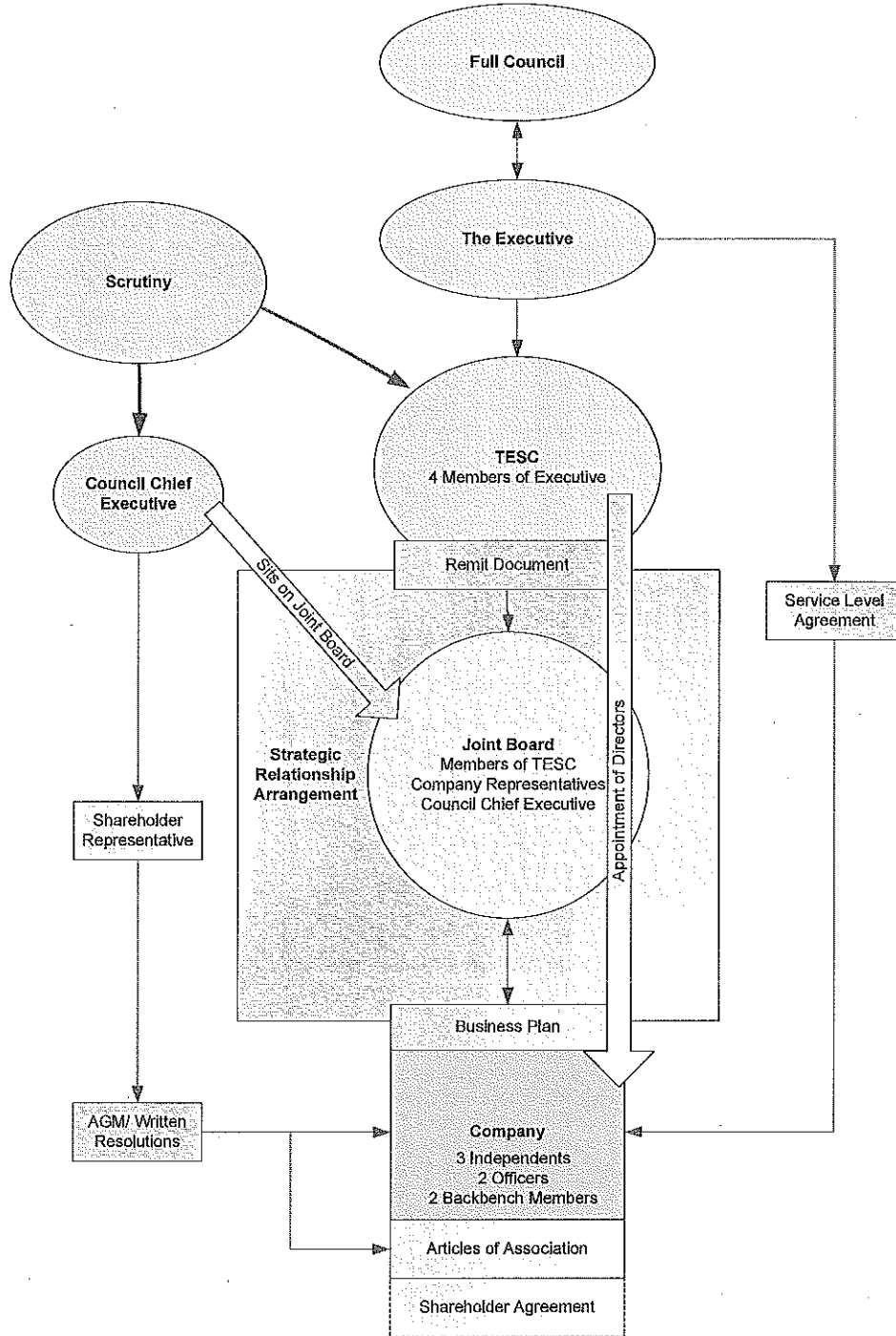
**9. Have the rewards from setting up the company compensated for the risks involved?**

- Yes although it is early days. Company has up to 5 years before it goes to open market competition for services. There is still a lot to do before the company does not just rely on Essex County Council as its main contract.

**10. What are the accounting and audit arrangements for the company?**

- Accounts go through Council's accounting and auditing system. The company have their own external audit providers.
- Company has a Finance Director who is not employed by the Council.
- Company's accounts go to the Shareholder Liaison Group.
- Discussions take place between company and Council's Finance Directors.
- The company's profit was currently healthy.

**Governance Arrangements covering WBC and WEL**





**LIST OF WITNESSES**

**Internal Witnesses**

Graham Ebers, General Manager Business Services

Cllr Matt Deegan, Executive Member for Community Regeneration

Azhar Ghose, Principal Solicitor

Susan Law, Chief Executive

Cllr David Lee, Leader of the Council

Andrew Moulton, Director of Transformation

Cllr Anthony Pollock, Executive Member for Finance

Susanne Nelson-Wehrmeyer, Head of Governance and Democratic Services

Heather Thwaites, General Manager, Policy and Partnerships

**External Witnesses**

Liz Chidgey, Deputy Executive Director for Adults, Health & Community Well-Being, Essex County Council

Cllr Bill Dick, Chairman of Community Health Wellbeing and Health Policy Scrutiny Committee, Essex County Council.

## GLOSSARY OF TERMS

<b>LATC</b>	Local Authority Trading Company. A company established under Section 95 of the Local Government Act 2003
<b>TESC</b>	Trading Enterprise Sub-Committee. Sub-Committee of the Executive established by Council on 22 July 2010.
<b>WEL</b>	Wokingham Enterprises Ltd – a LATC established by Wokingham Borough Council

## SUMMARY OF ESTABLISHMENT/GOVERNANCE DOCUMENTS REFERRED TO WITHIN THE REPORT

<b>Articles of Association</b>	This document is the Constitution of Wokingham Enterprises Limited, sets its objectives and includes procedural matters such as regulating Directors and Shareholders' meetings with Wokingham Enterprise Limited.
<b>Strategic Relationship Document</b>	This is the legal mechanism to ensure that Wokingham Enterprises Limited is obligated to deliver the Council's objectives as may be provided in the Remit Document and the Strategic Business Plan.
<b>Remit Document</b>	This document will set out at high level the Council's requirements in respect of the financial performance and investment return for a period of 3 to 5 years expected from Wokingham Enterprises Limited.
<b>Strategic Business Plan</b>	This document is Wokingham Enterprise Limited's response to the Council's Remit document. It will set out the planned activities for the corresponding period to meet the Council's objectives and the financial and performance indicators by which these will be measured.
<b>Service Level Agreement</b>	This agreement will provide the terms upon which services from the Council such as accounts and property management are supplied to Wokingham Enterprises Limited.