

Minutes of Executive 22 February 2011

145. GOVERNANCE ARRANGEMENTS OF LOCAL AUTHORITY TRADING COMPANIES AND THE EXECUTIVE TRADING AND ENTERPRISES SUB COMMITTEE

The Executive considered a report from the Corporate Services Overview and Scrutiny Panel following its review into the governance arrangements of local authority trading companies and the Executive's Trading and Enterprises Sub Committee and also comments from the Audit Committee.

The Executive Member for Community Regeneration thanked the Panel for the work they had carried out and for the resulting report which acknowledged that the governance, accountability and risk implications of establishing Wokingham Enterprises Limited as a Local Authority Trading Company had been diligently considered. The Executive noted the comments made by the Panel and the Audit Committee and supported all the recommendations contained in the report.

RESOLVED That:

- 1) the recommendations of the Corporate Services Overview and Scrutiny Panel, following its review into the Council's governance arrangements of local authority trading companies and the Executive's Trading and Enterprises Sub Committee, be agreed;
- 2) the comments from the Audit Committee in respect of the Scrutiny report be noted.

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64. GOVERNANCE ARRANGEMENTS OF LOCAL AUTHORITY COMPANIES AND THE EXECUTIVE TRADING AND ENTERPRISE SUB-COMMITTEE – REPORT OF CORPORATE SERVICES OVERVIEW AND SCRUTINY PANEL

Councillor Firmager, Vice Chairman of the Corporate Services Overview and Scrutiny Panel presented the Panel's final report on the Governance Arrangements of Local Authority Companies and the Executive Trading and Enterprises Sub-Committee.

During the discussion of this item the following points were made:

- Councillor Firmager explained that the Corporate Services Overview and Scrutiny Panel had looked at the governance arrangements of local authority companies and the Executive Trading and Enterprises Sub-Committee. A range of witnesses had provided information including the Executive Member for Community Regeneration and Councillors and Officers from Essex County Council.
- Members noted that that the relationship between the Council and Wokingham Enterprises Limited (WEL) 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 meetings and a Joint Board that would make the company Directors accountable to the Council. The Audit Committee suggested that a 'generic governance checklist' be formulated which could be followed prior to the establishment of any further local authority trading companies. It was noted that with regards to WEL, the Council had moved quickly in order to purchase Peach Place.
- The Committee noted that the Panel had recommended that all Members be briefed at the earliest practical opportunity on any further proposals to establish Local Authority Trading Companies. Members felt that clarification was needed as to what was meant by 'the earliest practical opportunity.'
- The Committee had a keen interest, from an audit position, in the set up and operation of any current and future local authority trading companies.
- The composition of the Joint Board was discussed in some detail. It was noted that the Joint Board would be made up of no more than two Council Officers, four Members and two representatives of the Company, one of which would be an Executive Director. Members felt that the appointment of officers needed to be appropriate to the activity of the Board and the particular function of the company. A Member suggested that some guidelines on who the most appropriate officers for this function would be, be produced.
- A Member questioned why the Joint Board would meet in private and whether more transparency was required. The issue of commercial confidentiality was discussed. The Committee asked how Members would be informed of its activities. A Member asked what the relationship would be between the Joint Board and the Trading and Enterprises Sub Committee (TESC). Councillor Firmager commented that the appropriate Executive Member would report back to Council and that TESC would meet in public when appropriate.
- The Committee were pleased to note that the Panel had recommended that the Executive and TESC should be reporting on the activities of local authority trading companies for the initial two years of trading, that the reporting should be on a quarterly basis and that the frequency be reviewed after two years. Nevertheless, Members felt that three monthly updates should be provided on an ongoing basis.
- Members questioned whether there were any restrictions on the company issuing additional shares.

- The Committee noted that Council's Internal Audit function within WEL was a matter of on-going negotiation. They questioned who was involved in these negotiations and stressed that it was important that the Audit Committee was given an opportunity to be informed in a timely manner. They also noted that the Council's Internal Audit team had a right of access to WEL but asked for clarity on what the Council's Internal Audit team's remit was towards WEL. Paul Ohsan Ellis indicated that Internal Audit would treat the company in a similar way as the Council's IT supplier.
- The Leader had indicated that the Company would not be able to enter into agreements above a certain level which had yet to be agreed without consent from the Council. Members asked whether this level had been agreed and if so what it was.
- Concern was expressed regarding Members acting as directors potentially having conflicts of interest. The Committee questioned if the two Member directors were allowed to be from the Audit Committee and Overview and Scrutiny.
- Members agreed that it was vital that Members acting as directors received sufficient training before the company was launched and that Members were trained in understanding financial liability and risk profiles.
- The Committee wished to establish the rationale of the Council acting as a guarantor for a limited company.
- Officers explained what would happen should the company fail.
- The Chief Executive had been appointed as the Council's Authorised Representative. Members questioned how the Council would convey its wishes to the Authorised Representative and how the Authorised Representative would then convey these wishes to the company at the Annual General Meeting.
- Members questioned whether a list of delegated authorities had been produced and who would approve them.
- With regards to the 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, the Committee suggested that this recommendation be strengthened so as to read 'would be required' as opposed to 'if reasonably requested.'
- The Panel had recommended 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. Members believed that the Audit Committee should also look at this. A Member suggested that the Corporate Services Overview and Scrutiny Panel be asked to share their views with the Audit Committee. Steve Brady commented that the follow up of scrutiny recommendations was being considered as part of the corporate governance audit.
- Members felt that it would have been helpful had the Head of Governance and Democratic Services been able to attend the meeting to potentially answer some of the Committee's queries.

RESOLVED: That

- 1) the Audit Committee's comments on the Corporate Services Overview and Scrutiny Panel's report on the Governance Arrangements of Local Authority Companies and the Executive Trading and Enterprise Sub-Committee be provided to the Executive when they consider the report.
- 2) the Head of Governance and Democratic Services be asked to respond to the Audit's Committee's questions on issues relating to the scrutiny review on the Governance arrangements of Local Authority Companies and the Executive Trading and Enterprise Sub-Committee.

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83. POST MEETING ACTION SHEET & MATTERS ARISING

The Committee considered the post meeting action sheet from the meeting of 26 January 2011.

During the discussion of this item the following points were made:

- The Committee considered the Audit Committee's comments and questions relating to the Corporate Services Overview and Scrutiny Panel's report on the governance arrangements of local authority trading companies and the Executive's Trading and Enterprises Sub Committee and the answers provided by the Head of Governance and Democratic Services and the Senior Solicitor.
- The Chair questioned where the liability sat and was informed that it rested with the Company. The Council had provided a financial guarantee of support to Wokingham Enterprises Limited, (WEL) and therefore ultimately the Council was liable for the value of that guarantee and could potentially be pursued by creditors if WEL defaulted;
- The Committee was informed by the Head of Governance and Democratic Services that WEL had been set up by the Council's legal Officers on the basis of instructions given to them and that operational matters were now within the remit of the Strategic Director Resources;
- A Member questioned whether there was a cap or limit on the value of transactions that could be entered into by WEL without further authorisation. The Committee was informed that there was an aggregate limit of £1 million after which authority would need to be sought through the Local Authority, (WBC). The limit could be altered by special resolution made at an Annual or Extraordinary General Meeting or via amendment of the company Business Plan;
- Members asked for clarification of the decision making mechanism that would be followed by WEL in seeking budgetary approvals. It was clarified by the Senior Solicitor that the power to establish WEL as a Local Authority Trading Company rested with Executive who in turn had delegated its powers and obligations to the Trading Enterprise Sub-Committee, (TESC). TESC could make financial decisions relating to WEL within the limits of its financial authority above which full Council authority would have to be sought;
- The Strategic Director Resources commented that WEL had borrowed money from the Council in order to buy an asset. The company could only work within its own trading environment and had a responsibility to make sure its profit and loss account was not run at a loss. It was necessary for the WEL Board to remain vigilant and for TESC to be vigilant in turn;
- The Committee queried the controls put in place to limit WEL entering into forward commitments which could impact on the Council. The Strategic Director Resources commented that the Council's Chief Executive acted on behalf of TESC as the shareholder representative of the Council exercising the Council's 100% holding in WEL. Ultimately, this enabled the Council to exercise its shareholder powers and if necessary call an extraordinary general meeting to terminate the company or to consider such matters as the suspension/replacement of directors;
- Oversight was also maintained through the representation of Council Officers and elected Members on the WEL Board of Directors, the Joint Board and TESC;
- The Head of Governance and Democratic Services agreed to develop a generic governance checklist for local authority trading companies;
- Members questioned whether the Council's internal auditors were satisfied with the governance arrangements of WEL. The Business Assurance Manager commented

that the department had not been asked to be involved, but that it could be added to the work programme if the Committee was so minded;

- It was clarified to the Committee by the Head of Governance and Democratic Services that the appointment of internal auditors was a matter for WEL to decide upon as an independent company;
- The Committee was informed that it was expected that WEL would be considering the list of remit documents which set out the detail of governance arrangements between the company and the Council on 31 March 2011;
- Members sought reassurance that Officers who were Board Members could act independently. The Strategic Director Resources commented that the primary focus of the Chief Executive and other Officers was to act in the best interests of Wokingham Borough Council. The Committee was informed that one of the Officers, Keith Mackenzie Capital and Systems Accountant, was able to exercise the statutory powers of the Council's Statutory Finance Officer and was therefore totally independent;
- In response to a question, the Head of Governance and Democratic Services commented that part of the original purpose behind the establishment of WEL was to create a potential investment vehicle for an outsider developer. Therefore it was possible that a third party might wish to take a stake in WEL in the future, but that the Council as the 100% shareholder would have responsibility and control over that process. The Strategic Director Resources commented that any sale would have to be supported by TESC which would direct the Council Chief Executive's use of the Council's casting shares;
- Members of the Committee expressed concern regarding the level of expertise required of Board members appointed by TESC to the WEL board and the level of training and support they would be offered. The Head of Governance and Democratic Services commented that training for Council representatives on the Board of WEL was being considered as part of the overall Members' training bid and the Strategic Director Resources commented that it was appropriate for individuals to receive the necessary training to undertake their roles.

Following the discussion, a number of Members commented that in their opinion, the Committee had not received a sufficiently robust assurance to allay the concerns raised by the Committee. It was felt that this was unsatisfactory and disappointing and that written answers to outstanding issues set out below should be brought back to the Committee at its next meeting. In addition, the Chairman of TESC, Councillor Matt Deegan should be requested to attend.

RESOLVED That:

- 1) The Post Meeting Action Sheet be noted;
- 2) The following matters in connection to Wokingham Enterprise Limited and local authority trading companies be clarified and brought back to the next meeting;
 - a) A list of delegations and the lines of delegation between the Executive, the Trading and Enterprises Sub Committee and Wokingham Enterprise Limited and a list of what delegations the Chief Executive had in relation to the Council's trading companies;
 - b) Confirmation of the agreement of Wokingham Enterprise Limited's governance documents;
 - c) Production of generic governance checklist to be followed as part of the creation of future local authority trading companies;

- d) The governance framework for the Council's other local authority trading company, Connect Community Care.