

COUNCIL MEETING 18TH JUNE 2007POLICY RECOMMENDATIONS IN PUBLIC SESSION**A CABINET – 4TH JUNE 2007**Minute **CORPORATE PERFORMANCE PLAN AND CORPORATE ACTION PLAN**
6

Councillor Lager, Cabinet Member for Resources and Performance, introduced the draft Performance Plan and explained that this set out

- a summary of the Council's performance during 2006/7
- the improvement trend from 2005/2006; and
- projected performance in 2007/08

It was noted that this Plan would need to be approved by the Council at its meeting on 18th June and published by the statutory deadline of 30th June 2007.

He also referred to the draft Action Plan which had been circulated prior to the meeting, with a further update being available at the meeting. This outlined the high profile projects and initiatives which will be delivered in the community during 2007/08 together with details of the Council's achievements during 2006/07. Councillor Lager emphasised the excellent work that had been undertaken to bring the Council's Planning Performance to on or above target from a position below target. He also emphasised the need for the Council to focus heavily on performance as performance was not good enough in all areas.

23

DECISION:

- (1) That the draft Corporate Performance Plan and draft Corporate Action Plan be noted.
- (2) That the Leader of the Council be authorised to approve the final draft of the Corporate Performance Plan for recommendation to the Council.
- (3) That both Plans be communicated to all Members, partners, stakeholders and the public when complete.

Minute **HOUSING TRANSFER – SECTION 25 LOAN** (Please note the Cabinet report is attached
9 as Appendix 1)

Councillor Lager. introduced a report setting out a request from Greenfields Community Housing (GCH) for an additional loan to enable them to start the acquisition of land for new premises as soon as possible. The report proposed that the request be recommended for approval to the Council subject to requiring GCH to continue to meet the accommodation costs that they are currently being charged until at least 31st December 2008.

During discussion it was pointed out that although GCH could look to purchase existing facilities rather looking to build accommodation this decision was one for GCH to take

DECISION:

That it be recommended to the Council that, subject to approval by the Department for Communities and Local Government (DCLG), the Council approve an additional loan of up to £1.5m to GCH under Section 25 of the Local Government Act 1988, subject to the terms and conditions as detailed in the Cabinet report.

B STANDARDS COMMITTEE – 13TH JUNE 2007

Recommendation concerning guidance for Members appointed to outside organisations – report to Standards attached at Appendix 2.

HOUSING TRANSFER – SECTION 25 LOAN UPDATE

Cabinet – 4th June 2007 Agenda Item 6(e).

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Background Papers:- None
Financial Implications:- Detailed in the report
Equalities Implications:- None
Legal Implications:- None
Options: To agree, amend or reject the proposals
Risks: In the unlikely event that the transfer of the Housing stock to GCH did not go ahead, and the money had been spent on acquiring land, the Council would have to recover the loan by selling the land to a third party. Any costs incurred would either have to be met from the receipt or from balances.

EXECUTIVE SUMMARY

Greenfields Community Housing (GCH) have requested an additional loan to enable them to start the acquisition of land for new premises as soon as possible.

As part of agreeing to the request, it is proposed to require them to continue to meet the costs that they are currently charged for using the Council's facilities until 31st December 2008.

DECISION

To recommend to Council, that subject to approval by the Department for Communities and Local Government (DCLG), the Council lends GCH an additional loan of up to £1.5m under Section 25 of the Local Government Act 1988, subject to the terms and conditions detailed in the report.

HOUSING TRANSFER – SECTION 25 LOAN UPDATE

BACKGROUND

On 19th February 2007 the Council agreed the loan of £3.575m to facilitate the setting up of Greenfields Community Housing (GCH) under Section 25 of the Local Government Act 1988. Permission for this was subsequently received from the DCLG on 11th April 2007.

GCH had also indicated that they would like either: -

- (a) A loan of £5m to acquire the land, commission relevant specialists and proceed with the construction and fitting out of the offices.

or

- (b) A loan to commence the project to purchase an appropriate site and commission specialists up to the point of the commencement of construction, or transfer of the Housing stock (whichever is the later) - £830,000.

The Council proposed that officers should consider the benefits/risks of the request and the results be reported back to the Housing Transfer Programme Board (HTPB).

FURTHER PROGRESS

Subsequent to the decision, GCH have requested that the amount for option (b) needed to be increased to up to £1.5m.

The options were discussed by the HTPB on 11th April 2007 and, subject to some further details being provided, were supportive of option (b), together with conditions being placed on GCH as detailed below.

PROPOSAL

In discussing the proposals the HTPB recognised the risk to the Council of having to meet the accommodation costs currently charged to Housing before it is clear of its own future requirements.

Therefore the following proposal was agreed.

It is proposed to agree to provide the loan of up to £1.5m to GCH on the 19th June 2007, subject to approval of Cabinet, Council and the DCLG on the following terms: -

- (i) GCH to repay the loan, with interest (rate to be in line with that earned by BDC on its investments during the period) on the day of transfer.

- (ii) GCH to agree to pay at least their current accommodation costs until 31st December 2008, ie: -

	<u>Per Annum</u>
Causeway House	£ 87,410
Millennium Tower	£167,300
Cordons Farm	£164,480

- (iii) The Council will seek to minimise the costs to GCH if they vacate any part of the accommodation prior to 31st December 2008 by letting the space/facility to a third party, or if this is not possible, by applying for empty business rate relief.
- (iv) In the event of the transfer not going ahead, any unspent money would be returned to the Council and any assets acquired would be owned by the Council.
- (v) Expenditure would be jointly authorised by the Resources Director of GCH and the Finance Director of the Council.

GUIDANCE FOR MEMBERS SETTING OUT THEIR RESPONSIBILITIES WHEN APPOINTED AS COUNCIL REPRESENTATIVES ON EXTERNAL BODIES

Standards Committee – 13th June 2007 Agenda Item 7.

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Background Papers:- None
Financial Implications:- None
Equalities Implications:- None
Legal Implications:- Within report
Options: 1. To adopt the guidance as attached 2. To amend the guidance
Risks: Within report

EXECUTIVE SUMMARY

The guidance has been produced as a result of the Ethical Governance Audit that was undertaken during 2006. It was recommended that guidance be prepared for members so that their position and responsibilities as a representative on outside bodies could be clearly understood.

DECISION

Recommend to Council that, subject to any amendments made by the Standards Committee, that the attached guidance is adopted.

GUIDANCE TO MEMBERS SITTING ON OUTSIDE BODIES

INTRODUCTION

The guidance that follows is designed to help you act with confidence and diligence by explaining your obligations to the organisation concerned. The intention is not to discourage you from seeking appointment but to ensure you understand the position and to reassure you that if you act with due diligence, as you would in relation to your duties as a councillor, then you should have little to fear and much to contribute.

The duties of members appointed to outside bodies cannot be taken lightly and members who are so appointed must take care and carry out their duties to the best of their ability. It is important for members to attend meetings on a regular basis, although some organisations will allow substitutes to attend on an occasional basis.

Members cannot be required to act as delegates and carry out their duties and vote in line with the instructions of the District Council; they must act in accordance with their own judgment and the duties and responsibilities set out below. A member's ultimate responsibility is to the terms of the trust, the objectives of an association, or the objectives of the company.

To summarise, a member of an outside body must:-

- (a) get to know the aims and objectives of the organisation so that he/she can help to achieve them;
- (b) check what his/her own personal tasks and responsibilities are;
- (c) exercise due care, skill and diligence in performing them;
- (d) act honestly;
- (e) avoid conflicts of interest where possible but
- (f) be guided by the interests of the organisation, its employees and beneficiaries;
- (g) be aware of and take an active interest in the organisation's activities, especially its financial and trading position, at all times;
- (h) raise any issues causing concern and not hesitate to seek advice if required; and
- (i) ascertain what insurance cover indemnities exist (see paragraph 6 below).

If, having read the guidance, there are issues about which members are unsure or if members encounter any problems and feel that, for instance, they cannot reconcile a conflicting interest, they should seek advice from the Monitoring Officer or the Head of Law and Governance. Questions of a legal nature should be referred to the Head of Law and Governance or an officer from Legal Services. Other queries about, for example, the general operation or the constitution of the outside body should be raised with the secretary of the organisation.

INDEMNITY FOR LOSS

The Council has in place, insurance that subject to various exceptions, indemnifies members against loss or damage suffered by a member arising from his/her action or failure to act in his/her capacity as a member of the authority or as representative of the authority. Full details of the indemnity can be obtained from the Insurance Risk Manager upon request.

DIFFERENT TYPES OF ORGANISATION

Trusts

A trustee should be fully aware of the state of trust property, of the contents of all the deeds and documents relating to the trust, and carry out the terms of the trust in accordance with those documents. Any breach of duty on his/her part may result in him/her being held personally liable. In addition he/she may be personally liable for the acts of his/her co- trustee(s) if his/her own neglect or default contributed to the breach.

A trustee must not make use of the trust property or of his/her position as a trustee for his/her own private advantage. It is a general principle that a trustee must not profit from his/her trust and he/she must execute the trust with reasonable diligence and conduct its affairs in the same way as an ordinary prudent person of business.

As a general rule, a trustee is personally responsible for the exercise of his/her judgement and for the performance of his/her duty. He/she cannot escape responsibility by leaving all decisions to be made by another person. Decisions concerning the trust must be taken by all the trustees acting together.

A trustee must usually act impartially and look at the interest of all those who may benefit from the trust. Like a company director, a trustee is expected to act with reasonable prudence and in good faith – the fiduciary duty – in the best interest of the trust and its objects. Trustees must keep an accurate account of trust property and trustees of charities are usually required to submit annual accounts to the Charity Commission. Furthermore, a trustee must usually invest promptly all trust capital and all income which cannot immediately be used for trust purposes.

The Charity Commissioners exercise powers of supervision and control of charitable trustees. If in doubt always consult the Charity Commissioners. A trustee who does so will avoid personal liability for breach of trust if he/she acts in accordance with the advice given.

An indemnity can be given from the trust fund provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. There will be no problem if the trustees themselves pay the premiums but if they are paid out of the charitable funds the trustees will need the consent of the Charity Commissioners unless the trust deed allows it. Again you need to establish what the position is from the Trust itself.

Unincorporated Associations

An unincorporated association consists simply of its members acting together for social reasons, the promotion of politics, sport, art, science or literature or for any other lawful purpose. The property and funds of the association generally belong to the members jointly. The business of the association is either conducted in a general meeting or

delegated to committees under the constitution. The members of such committees are usually trustees whose duties and responsibilities are outlined above.

In most cases, an unincorporated association cannot sue or be sued and therefore questions frequently arise about a person's liability for goods supplied to an association, or contracts made on its behalf. The members of an association may be individually liable on contracts entered into by its executive or management committee as authorised by the constitution or because the members themselves specifically agreed to the particular transaction.

Having sounded this note of caution, many of the unincorporated associations with which members will be concerned do not have their own budgets or become involved in transactions of any kind. Many are purely advisory or consultative bodies and it is most unlikely that any question of personal liability will ever arise.

Members will be entitled to an indemnity from the organisation if they act in accordance with the constitution and are not at fault. It is possible to obtain insurance but if the organisation is to pay the premium it must be permitted by the constitution. In many instances, for the sort of reasons given in the previous paragraph, the organisation may well not have insurance cover.

Companies

The directors of a company have a duty to comply with specific business legislation eg concerning employment, health and safety at work, and the payment of taxes. They also have a duty to ensure that the company complies with the law in general, eg if a company is proved to have committed a criminal offence with the consent or neglect of a director, the director as well as the company may be liable. A company or its shareholders can also sue a director for breach of duty and damages.

A director must not act outside the company's objects as set out in the Memorandum of Association prepared at the time of the formation of the company. Therefore, members appointed as directors should familiarise themselves with the Memorandum of Association concerned. A director is expected to act honestly and in good faith and in reasonable belief that he/she is acting for the company's benefit. In exercising this fiduciary duty to the company, and acting with due diligence, a director should obtain appropriate expert advice as necessary. A director must exercise independent judgement in relation to his/her responsibilities to the company, though it is permissible for him/her to take account of the interests of a third party which he/she represents. In such a case the director must disclose that position and tread a fine line between the interests of the company and the party represented (in this case the Council). The director cannot vote simply in accordance with a Council mandate. To do so would be a breach of duty.

While a director is not liable for making a genuine mistake, he/she is expected to perform his/her duty to the best of his/her ability. A director must also disclose any interest he/she may have in actual or proposed contracts involving the company. In addition, directors must ensure that proper accounting records are maintained and that annual audited accounts, which give a true and fair view of the company's financial position, are filed with the Registrar of Companies within certain time limits. A director should be satisfied personally with the company's accounts.

The company's Articles of Association may allow for directors to be indemnified by the company in respect of the cost of defending such proceedings if the director is granted relief by the Court or acquitted. It is lawful for companies to purchase insurance to protect its directors against claims of negligence, breach of duty, trust, default. Directors would be well advised to ensure that such a policy of insurance is maintained at all times.

Insolvent Companies

Directors are, to a certain extent financially protected by limited liability. This means that, while company members may lose the share capital they contribute or, in a company limited by guarantee, have to pay the guarantee (usually £1) that is the limit of their risk. Provided the director has performed his/her duties honestly and in good faith he/she does not normally have any financial responsibility for the company's debts.

COUNCIL'S CODE OF CONDUCT

The Council Code of Conduct requires that a member must observe the Council's Code of Conduct whenever the member is acting, claiming to act or gives the impression that he/she is acting as a representative of the authority.

The Code of Conduct also states:-

Where you act as a representative of your authority –

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

CHECKLIST

Members are advised that in the event of being appointed to an outside body they should be clear about the answers to the following questions:-

1. What is the nature of the organisation and its main activities? Is it a company, if so what type of company is it (limited by shares or guarantee)? Is it unincorporated? Does it have charitable status?
2. In what capacity do I serve on the outside body? Is the effect of my appointment to make me a member of the company, a director or a charitable trustee?
3. Do I have a copy of the body's governing instrument (this may be a trust deed, a constitution or memorandum and articles or association)?
4. Have I been supplied with a copy of any code of conduct to which I am subject as a member of the body.
5. Am I aware of the identity of other directors, trustees or committee members?
6. Is there an officer of the body such as a secretary or clerk to whom I can refer?
7. Are written minutes kept of meetings and have I seen these minutes?
8. Are meetings being conducted in accordance with the governing instrument?

9. Am I aware of the financial position of the organisation to which I have been appointed?

10. Am I aware of any contracts between the body and the Council?

11. Do the governing body of the organisation receive regular reports on the financial position?

12. Have I seen the last annual report and accounts?

13. Am I aware and have I been advised of the main risks the body faces and what steps are taken to deal with such risks?

14. Have I been informed of the main insurances held by the body?

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June 2007