AGENDA

CABINET

Monday, 4th August, 2008, at 10.00 am	Ask for:	**Karen Mannering / Geoff Mills**
Darent Room, Sessions House, County Hall, Maidstone	Telephone	**(01622) 694367/ 694289**

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

1. Declaration of Interests by Member in Items on the Agenda for this meeting
2. Minutes of the Meeting held on 14 July 2008 (Pages 1 - 6)
3. Impact of the current economic situation on the Council (Pages 7 - 18)
4. Response to consultation on Water Company Draft Water Resource Management Plans (Pages 19 - 28)
5. Ashford's Future: Proposed Entry into the Partnership Agreement (Pages 29 - 42)
6. Other items which the Chairman decides are relevant or urgent

MOTION TO EXCLUDE THE PRESS AND PUBLIC

That under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

(During these items the meeting is likely NOT to be open to the public)

7. Impact of the current economic situation on the Council (Pages 43 - 48)
8. Kent Building Schools for the Future Programme (Pages 49 - 96)

Peter Gilroy
Chief Executive
Friday, 25 July 2008

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

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KENT COUNTY COUNCIL

CABINET

MINUTES of a meeting of the Cabinet held at The Margate Media Centre, 11-13 King Street, Margate on Monday, 14 July 2008.

PRESENT: Mr P B Carter (Chairman), Mr N J D Chard, Mr M C Dance, Mr G K Gibbens, Mr P M Hill, Mr A J King, OBE, Mr K G Lynes and Mr C Wells.

ALSO PRESENT: Mr R L H Long TD, and Mr R F Manning.

OFFICERS: Dr I Craig (Director of Operations, Children, Families and Education) was present on behalf of Mr G Badman; Managing Director of Children, Families and Education; Ms A Honey (Managing Director, Communities); Ms L McMullan (Director of Finance); Mr O Mills (Managing Director for Adult Social Services); Ms M Peachey Director of Public Health) and Mr A Wilkinson (Managing Director, Environment and Regeneration).

UNRESTRICTED ITEMS

1. Declarations of Interest

No declarations of interest were made by any Cabinet Members with regard to any item on this agenda.

2. Minutes of the Meeting held on 16 June 2008
(Item 2)

The Minutes of the meeting held on 16 June 2008 were agreed and signed as a correct record.

3. Presentation by Mr C Wells, Cabinet Member for Children, Families and Educational Achievement, relating to the Working Neighbourhood Fund
(Item 3)

(1) Mr Wells stated that he was delighted to give this presentation to Cabinet following the Government's recent announcement that Thanet had been assessed as being eligible to receive over £4m of Working Neighbourhood Funds over a three year period from 2008-2011. He stated that this represented a new phase of targeting resources to the most deprived areas of the country and that he hoped to see a step change in outcomes through partnership working in order to reduce levels of worklessness and benefit dependency; decrease the proportion of children in households without work; and add value to mainstream programmes and funding.

(2) Mr Wells stated that the delivery of the funding would be focussed on the following groups:-

- Those of school leaving age and NEETs (Not in Education, Employment or Training)

- Those in school but at risk of not achieving
- Those on out of work benefits – priority groups with Job Centre Plus
- Those within employment but have no qualifications or low skills

(3) It was noted that the outcomes from this important work would contribute to the achievement of a number of specific performance measures within the KA2 strategy indicators; specifically those relating to economic success and learning for all. The work would also contribute to the achievement of several DCSF targets, such as those relating to recognised qualifications for young people and Looked After Children. Mr Wells acknowledged in his presentation, that the outcomes that both KCC and Thanet District Council would be working towards could not be achieved without the ongoing excellent co-operation that exists amongst a number of public, private and voluntary sector partners.

(4) Mr Wells stated that there was sufficient capacity and expertise within KCC to deliver innovative approaches to reducing NEETs and realistic progression routes in the locality, together with inspirational activities for learners at risk of not achieving in school and upskilling those in employment with recognised qualifications.

(5) Mr Carter echoed the comments of Mr Wells in welcoming these essential additional funds for Thanet and assuring the people of Thanet that KCC would do all it could to support the achievement of the key outcomes referred to in the presentation. In particular, he spoke about the County Council's plans to expand the Kent Apprenticeship Programme for young people aged 16+, with a target of 400 apprenticeship placements for young people in Thanet over a three year period. He also spoke about the Pre-Apprenticeship Programme for young people aged 16+ with no qualifications; an employment and 'skills match' service for employees and employers; work placement mentoring and "Fighting Fund" eg equipment and transport costs; and short courses, incremental learning opportunities and a skills framework.

(6) Mr Carter also stated that he wanted to help to broaden opportunities for Thanet residents to pursue employment and training opportunities outside Thanet with the potential idea of the introduction of shuttle buses to help people get to employment opportunities in Mid and West Kent and back each day.

(7) Mr Wells stated that a strategy to improve work readiness in Thanet was due to be presented to TDC's Cabinet on 7 August 2008 and that either he or Mr Dance would be present for that meeting.

(8) Finally, Mr Carter stated that KCC would follow progress keenly to ensure the achievement of these important outcomes for the people of Thanet.

(9) Cabinet agreed to note the presentation and endorse the actions that would now begin to achieve the desired outcomes.

4. Revenue and Capital Budget Monitoring Exception Report: Impact of the Current Economic Situation in the Council and Roll Forward of the Remaining 2007-2008 Underspend

(Item 4 – Report by Mr Nick Chard, Cabinet Member for Finance, and Mrs Lynda McMullan, Director of Finance)

(1) Mr Chard introduced the first exception report for 2008-09, which identified a number of significant pressures that will need to be managed during the year if the Council was to achieve a balanced revenue position by the year end. It was noted that, as this was the first exception report of the new financial year, it was usual to report a projected overspend but this was before any management action had been agreed. He reassured the Cabinet, however, that the Council's revenue budget had underspent in each of the last eight years and he was confident that the current year's budget would also not overspend.

(2) Mr Chard referred to the summary table of the forecast revenue pressures, excluding schools, shown in Table 1 on page 1 and 2 of the report. He reported that the projected forecast variance was +£6.762m (excluding asylum) and +£11.762m (including asylum).

(3) Mr Chard spoke briefly about the cost pressures being faced by the Council with regard to the current economic conditions and stated that a detailed paper was being prepared for consideration at an extraordinary Cabinet meeting on 4 August. It was noted that the paper was likely to recommend sensible management of the additional costs over a three year period, rather than risking an impact on the quality of service delivery if these additional pressures were contained in a single financial year.

(4) With regard to the position on the Capital Programme, Mr Chard assured the Cabinet that, in the current economic climate, the level of capital receipts due to be realised in the current financial year might not reach the projected level necessary to fund all of the planned projects in 2008/09 and that this situation was being monitored closely and options for dealing with a likely lower level capital receipts were being considered.

(5) Finally, Mr Chard commended the recommendations to the Cabinet set out in paragraph 6.2 and 6.3 of the report. He assured the Cabinet that the proposed virement and base adjustment within the Children, Families and Educational Achievement Portfolio would not have an adverse effect on the amount of money spent on grants.

(6) Mr Carter stated that he was eager to see the proposed management action referred to by Mr Chard to enable the revenue budget to be brought back on target. He added that, in the current economic conditions, the Council had an even greater duty to maintain sound financial management and to deliver the lowest possible Council Tax next year. Mr Carter also stated that a number of meetings were currently being held within KCC to consider the impact of increased costs in a number of areas and an agreement would be reached on how to reshape the Council's priorities accordingly.

(7) Finally, Mr Carter stated that negotiations with the Home Office about the costs of dealing with the impact of asylum were proceeding well. It was noted that, whilst Mr Carter could not give details at this stage, there appeared to be an acceptable solution on the table with regard to the Council's historic debt on asylum and the true costs of asylum going forward from this year. Mr Carter stated that he hoped to be able to make a more detailed announcement shortly.

(8) Cabinet agreed to:-

(a) note the initial forecast revenue and capital budget monitoring position for 2008/09, and the potential impact of the inflationary pressures on the current and future years budgets;

(b) agree the revenue virement and base adjustment of £1.863m within the Children, Families and Educational Achievement Portfolio as detailed in Section 2.1.3 of the report; it being noted that the grants to voluntary organisations budget had historically underspent with the saving being used to offset pressures elsewhere within the Children's Social Services, therefore this adjustment would not affect the historic level of expenditure on grants to voluntary organisations but would simply correct a base budget imbalance; and

(c) agree that the remaining £5.111m of uncommitted 2007/08 revenue budget roll forward be set aside as a contingency against the current economic climate.

5. Adoption of the Isle of Grain to South Foreland and Medway Estuary and Swale Shoreline Management Plans

(Item 5 – Report by Mr Keith Ferrin, Cabinet Member for Environment, Highways & Waste and Mr Adam Wilkinson, Managing Director for Environment & Regeneration)

(1) Mr Carter introduced this report, stating that, as the County Council with the longest coastline in the country, it was essential to have a Shoreline Management Plan (SMP), which determines the Coastal Defence Policy. Mr Carter stated that these important plans, which had been developed in consultation with the Environment Agency, elected Members, key interest groups and members of the public, had been prepared to a rigorous standard in strict accordance with national guidance and would assist with the long term planning of the coastline in Kent and inform future plans and strategies of the County Council and its partners. It was noted that the plans had limited implications for people and property and would assist in attracting resources for essential flood defence works in the future.

(2) Mr Wilkinson echoed the comments of Mr Carter, adding that the preferred management policies and action plan would be the subject of further detailed investigation and consultation over the coming years before implementation. He also noted that SMP's were a living document that evolved as knowledge of the coastline increased and that the plan and policies would be reviewed every ten years.

(3) Mr Chard made reference to the Environment Agency's policy of managed re-alignment of the coastline, which would effectively mean a managed retreat of the coastline in some areas, but nevertheless, he welcomed the possibility of the Council being able to attract additional resources for future flood defence works.

(4) Mr King endorsed the approach set out in the report of maintaining vigilance in this important area and the need to maintain a positive and constructive dialogue with the Environment Agency. He added that he was impressed with the Environment Agency's

approach during the consultations to date.

(5) In response to a question from Mr Carter, Mr Wilkinson stated that he would prefer to report back to Cabinet on the non-critical areas on an annual basis, but reserved the right to report back on the critical areas as and when required.

(6) Cabinet agreed to:-

(a) endorse and adopt the Shoreline Management Plan, the preferred Management Policies and the action plan; it being noted that the policies to be adopted under the understanding that these will be the subject of further detailed investigation and consultation;

(b) endorse and adopt the preferred Management Policy as a development planning consideration; and

(c) request the Planning Applications Committee to note the policies within the SMP and take due regard of the coastal flooding and erosion risk areas when determining planning applications.

6. Kent and Medway Mental Health and Social Care NHS Partnership Trust – Foundation Trust Application

(Item 6 – Report by Mr Kevin Lynes, Cabinet Member for Adult Social Services and Mr Oliver Mills, Managing Director for Adult Social Services)

(1) Mr Lynes introduced this report, which sought the Cabinet's endorsement of the Kent and Medway Partnership Trust's (KMPT) application for Foundation Trust status. In supporting the application, Mr Lynes spoke of the excellent working relationship that existed between KCC and the KMPT and introduced Erville Millar, Chief Executive of the Kent and Medway NHS and Social Care Partnership Trust, together with Peter Smallridge, Chairman of the Trust, to comment further on the KMPT application and answer Members questions accordingly.

(2) Mr Mills stated that this was a very important submission to Monitor, the independent regulator for Foundation Trusts. He added that the statutory responsibility for the provision of mental health services would remain with the County Council, but that the application for Foundation Trust status would provide a number of opportunities for the provision of outward looking services.

(3) Mr Erville Millar addressed Cabinet. He stated that the application for Foundation Trust status was important in two ways; firstly, it would place the governance of services more in the hands of local people, and, secondly, as the Trust would be free from the control of the Department of Health and Strategic Health Authority, there would be a number of financial and other freedoms to make both strategic and imaginative policy decisions over a longer period of time. He referred to the earlier discussions under the Working Neighbourhood Fund debate about the expansion of the apprenticeship scheme, stating that there was a much greater likelihood that young people with mental health difficulties would have problems in gaining access to training and employment. He assured Cabinet Members that this was just one of the important linkages between the Trust and KCC that needed to be tackled.

(4) Mr Carter asked Mr Millar what the most important advantages would be of achieving Foundation Trust status in terms of finding solutions to the mental health issues within the County. Mr Millar highlighted the opportunity for greater engagement in governance for local people, who would form a majority of the public governors for the new Trust; the greater opportunities for long term financial planning as the Trust would move to a five year financial cycle; and the ability to reinvest any surpluses into services that would benefit residents in Kent. Mr Smallridge added that it was also important to highlight that a successful application for Foundation Trust status would mean that mental health services within Kent would be managed by existing organisations and individuals in Kent and not from outside the County.

(5) Cabinet agreed to:-

(a) endorse the application by the Kent and Medway Partnership Trust (KMPT) for Foundation Trust status; and

(b) note that, subject to Monitor's granting of Foundation Trust status, KCC would enter contractual arrangements with the new Trust which best promoted joint working arrangements to secure better outcomes for people in Kent using specialist mental health services.

7. Urgent Matters

(Item 7)

The Leader stated that there were no matters of an urgent nature for the Cabinet to consider.

To: CABINET – 4 August 2008

Subject: **IMPACT OF CURRENT ECONOMIC SITUATION ON THE COUNCIL**

By: Nick Chard, Cabinet Member – Finance
Lynda McMullan, Director of Finance

Classification: Unrestricted

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1. INTRODUCTION

This report updates Cabinet on the likely implication of the current UK and world economic position on the County Council's budget and medium term plan.

1.1 Revenue
This report provides an assessment of the impact of the current economic situation and inflationary pressure on KCC for both the current and future years. Based upon this:

- Section 2 sets out the additional estimated pressure KCC should anticipate over the medium term by year;
- Section 2 also provides a recommendation of how we should allocate the £5.111m contingency set aside for the current economic situation (as approved by Cabinet on 14 July) for 2008-09;

1.2 Capital
There are a number of issues which we are facing in 2008-09 and the medium term which are likely to affect the timing of delivery of our capital programme. Most relevant, is the impact of the falling land and property values, and how KCC can respond. Further details are provided in section 4, together with our proposals for managing this.

2. IMPACT OF CURRENT ECONOMIC CONDITIONS ON THE COUNCIL

2.1 BACKGROUND

2.1.1 The global and UK economic position has fundamentally shifted over the past year and by any independent subjective assessment that shift is a deteriorating one. The consequences and likely impacts are wide spread. This paper seeks to set out those issues and begin to address what KCC can do to prepare (react) and shape (pro-act) how the future economic environment unfolds.

2.2 KEY FACTS AND FIGURES - SOME HEADLINES

2.2.1 The Consumer Price (CPI) and the Retail Price Index (RPI) are both on an upward trajectory, with the former hitting 3.8% and the latter 4.6% in June. It is likely RPI will start to fall sooner than CPI as house prices fall, as lower house prices means lower depreciation to charge on house costs in RPI indices. It can be expected with a high degree of probability that at some point in the next year CPI will exceed RPI.

2.2.2 The Bank of England's assessment is that people's expectations of inflation have risen and there is a danger that this will spill over into wage demands which in themselves become inflationary, pushing up the costs of goods and services which become even more inflationary.

2.2.3 The three main causes of inflation at present are high fuel prices, high food and other commodity prices and a depreciating Sterling. Oil reached a record just under $140 (US - 16 June 2008) and the outlook for the US dollar is for it to depreciate, which will push oil higher still in quoted US dollar terms. Adding in a bit of supply shortage fears, continued global demand for oil and some undoubted speculation in the oil markets and the conclusion is high oil prices (i.e. above $100 a barrel) are here to stay for some time and some (e.g. Goldman Sachs) forecast $200 a possibility.

2.2.4 This has a knock on effect on gas and electricity prices. European gas contracts are mostly indexed to oil prices and as the UK is a net importer of gas wholesale (and later in the supply chain, domestic) prices are rising. A not insignificant element of gas is also actually used to generate electricity (around one third comes from burning gas) putting price pressure here too.

2.2.5 The UK also has a trade deficit in food (the US is in balance and France for example is in surplus) (Ernst & Young Item Club May 2008) so the UK is more exposed to global high food prices than many other large economies. 1.7% of the current 3% CPI inflation is estimated to be due to food. The Centre for Economic and Business Research (The Times, 27 May) forecasts the UK faces 5% per annum food price inflation for the next decade.

2.2.6 Individual inflation faced by consumers varies according to their spending patterns and headlines are misleading. Those on low fixed incomes whose spending on food and fuel is a disproportionately larger amount of disposable income are actually facing much higher levels of inflation and hence more people are being pushed into fuel poverty.

2.3 PUBLIC SECTOR FINANCES – THE NEXT SPENDING ROUND (CSR10/SR09)

2.3.1 In summary we can expect higher inflation, lower growth, worse public finances overall, a need for a reduction in public spending as a share of gross domestic product and probably standstill cash for local government - which will of course be a real terms cut. No additional cash at a time of increasing demand on our services will undoubtedly mean difficult decisions lie ahead.

2.3.2 The Institute for Fiscal Studies analysis of The Budget 2008 indicated that real terms cuts in forecast spending needed to grow from £4bn for the CSR07 period (3 yrs 2008-11) to £8bn for SR09 (2 yrs 2011-13). So that's an extra £4bn over 2 years, or £2bn per annum. As the Chancellor has taken £2.7bn per annum borrowing to fund the rebates to part compensate for the 10p tax cut rebates (and assume that these rebates or equivalent will have to be made permanent rather than just one off) then this means £4.7bn reduction per annum.

2.3.3 CSR 07 had 2010-11 public sector spend at £397billion at constant prices so that's a 1.2% reduction per annum in real terms growth. CSR 07 had broadly 2% real terms growth per annum so assuming the trend continues that means headroom is down to 0.8% real terms growth across the whole of the public sector! Funding settlements for Local Government services (with the exception of Education) tend to compare unfavourably with other public sector areas, particularly Health.

2.4 IMPACT ON KCC REVENUE BUDGET

2.4.1 The current forecast gross revenue position is £10.041m (excluding Asylum), of which £5.325m is the result of increased inflation and the current economic situation. There is a further impact of £2.4m on the highways capital maintenance programme which, if not funded, will result in a reduced programme of works. Details, together with the forecast impact over the Medium Term Plan (MTP), are summarised in table 1 below. Appendix 1 (an exempt paper) sets out the supporting details. The figure for 2009-10 of just under £15m is, like 2008-09, the figure in excess of that already built into the MTP. Consequently, the projected impact of inflationary pressures in 2009-10 is in excess of £30m.

2.4.2 It should be noted that these estimates continue to assume that future pay awards will be at 2% (excluding any increments), in line with Government policy. It should be noted that this is a working assumption, (that is, no decision having been taken by the Council), with every 1% on pay equivalent to some £3.8m. In addition, it is assumed that all other staff emoluments remain at existing rates.

2.4.3 The estimated inflationary impact for 2009 to 2012 will be built into the MTP, which is currently in the process of construction. It should be noted that the major impact is likely to be felt within 2009-11 as contracts are renewed, with remaining impact in 2011-12. Over the next months and years we will be closely monitoring and managing this position but at this stage these will be the figures used for planning.

2.4.4 The main impact on Dedicated Schools Grant (DSG) relates to an estimated 40% in the contract price for energy. This has a full year impact in 2009-10 of £2.5m. A secondary impact could come from the P&V sector where, as a result of the common funding formula for Early Years, any wage inflation would result in increased budgets for the maintained sector. As the Dedicated Schools Grant is designed by Government to meet such costs, it is expected that any inflationary pressure on the DSG will have to be met from within schools already allocated 2009-10 budgets and may reduce the £67m which schools have in revenue reserves.

Table 1: Summary of Incremental Revenue Impact of Inflation and Current Economic Situation on KCC (excluding DSG)

Portfolio	2008-09	2009-10	2010-11	2011-12
	£k	£k	£k	£k
Operations, Resources & Skills	190	996	810	1,000
Children, Families & Educational Achievement	59	83	61	69
Kent Adult Social Services	1,384	7,102	6,382	399
Environment, Highways & Waste	3,182	6,148	2,656	1,171
Communities	148	244	53	53
Corporate Support & External Affairs	0	85	87	89
Finance	362	213	389	242
TOTAL	**5,325**	**14,871**	**10,438**	**3,023**

2.5 Several of the increases shown in the table are either directly or indirectly affected by the increased costs of electricity which is purchased by LASER. In 2006 the Management Committee of the Central Buying Consortium (CBC) were alerted to the fact that the Group was running out of procurement expertise when it came to buying in what were becoming increasingly complex commodity markets. A sub-group was formed to look at options and in due course recommended that all electricity and gas buying should be transferred to Kent thereby utilising the expertise built up in LASER since its formation in 1989 as an energy buying organisation within Kent Commercial Services. Kent for their part agreed that they would carry out the tendering and contract award activity at no cost to members in line with the standard CBC procedures.

The tendering and contract award process carried out by Kent in 2007 secured a range of competitive prices for electricity (half hourly and non half hourly metered supply) and gas. The decision to go for two year fixed prices across the board has proved to be the right one as electricity and gas prices have escalated rapidly during the past year. This can be demonstrated by the following statistics showing the contract values together with the amount saved by adopting two year rather than one year fixed prices.

Description	Contract Value £	2008/2009 Saving £
Electricity: h/h	27,941,186	5,375,599
Electricity: non h/h	17,341,676	3,155,404
Gas	49,344,027	14,135,702
TOTALS	**94,626,889**	**22,666,705**

The CBC has with Kent/LASER one of the most highly regarded energy buying organisations in the UK and it was pleasing to hear that the Collaborative Energy Review Project led by the OGC has just declared the LASER Flexible Procurement Model to be ‘Compliant’. LASER is the first buying group to receive this rating.

2.6 Based on the information provided in the table, it is recommended that the £5.111m contingency for the current economic situation is allocated to portfolios to fund the revenue pressures highlighted in the table. Of the £5.325m of pressures highlighted for 2008-09, £0.320m relates to pressures within Commercial Services for which no additional support is proposed, leaving £5.005m of other portfolio pressures to be funded from the contingency. This would leave a residual £0.106m of contingency which could be allocated to highways maintenance in recognition of a potential further increase in the Baxter index and the impact on the capital maintenance programme.

3. POTENTIAL MITIGATING ACTIONS

3.1 The impact of inflationary pressures on the revenue budget in the current year is covered by the allocation of the £5.111m contingency.

3.2 Directorates have in place management action in order to contain other pressures on their budgets in the current year.

3.3 There remain substantial likely future inflationary pressures for future years. These will be addressed as part of Cabinet's overall deliberations and recommendations to County Council in February 2009 over the budget to set for 2009-10 and the medium term plan 2009-12.

4. <u>CAPITAL PROGRAMME UPDATE</u>

4.1 A large proportion of KCC's capital programme is property based. The latest Economic Survey shows that building tender price inflation in London is forecast to run at 6.3% over the next year and by 6.5% the following year, compared to a situation where expected rates have been 4 - 4.5%. The additional inflationary costs are likely to be in the region of £6M per year on average. It is proposed that portfolios should absorb this inflationary impact.

4.2 The impact upon Highways is more pronounced with the anticipated additional costs of £2.4m in 2008-09, £2.9m in 2009-10 and £3.0m in 2010-11. It is intended that this exceptional pressure for highways is built into the revised overall capital programme assumptions for 2009-12 which will be subject to an update to Cabinet in September, alongside proposals for addressing the £2.4m pressure in 2008-09.

4.3 The main risk to the capital programme is however about ensuring the funding is secure. There are 3 main risks to be considered:

- **Cost of borrowing is rising –** KCC has a strong cashflow and Treasury function. While sustained higher rates will pose problems, it is expected that over the short to medium term KCC's Treasury Strategy can be contained within existing cash limits.
- **Section 106 Agreements** – as developments are delayed due to economic conditions it is expected that the related capital projects are also slipped. In addition, there is some concern that developers will also be attempting to reduce their Section 106 commitments. While this will almost inevitably impact upon the published capital programme, the risks are expected to be "contained" to the extent that projects underpinned by Section 106 agreements will have to be deferred in line with the availability of such funding. More information will be available in September.
- **Capital Receipts –** as property values fall in the short to medium term, there is a significant impact on KCC's capital programme. The remainder of this section deals with this issue.

4.4 As reported last month, the current national economic climate is impacting on our ability to realise capital receipts at the values previously estimated and assumed at the time of setting the budget. We need to consider our course of action in dealing with the impact of this, as a significant element of the published 2008-11 capital programme is planned to be funded from capital receipts (£186.8m).

4.5 There are two problems to be recognised within this situation – both the fall in value of the asset plus a potential cashflow problem if a purchaser cannot be found (even at a reduced value) due to the "credit crunch". The implications, without an alternative solution, would be:

1. We defer or cut, where possible, projects in order to bridge the capital receipts funding shortfall. However, we do not know how long it will be before property values return to what they were and therefore whether it is realistic to defer / cut projects for an indeterminable amount of time.
2. We go ahead with the asset disposal, within reason, and projects will have to be scaled back to the lower level of resources available or abandoned altogether.
3. We go ahead with the projects but defer disposing of assets until prices improve and therefore we have to find alternative short term funding.
4. A mixture of the above.

4.6 Neither of the first two options is very palatable. Deferring projects will not only adversely impact the quality of our services but would also have a detrimental effect on the local economy at a time when it actually needs boosting. Disposing of assets in the current climate, even if possible, is unlikely to provide good value for money as disposing of assets during a 'property slump' is a short-sighted approach.

4.7 The third option will partially protect the service improvements that the capital programme is intended to deliver; we have therefore considered options for avoiding the huge cuts that would be needed to the programme in order to compensate for the unrealisable capital receipts in the current market.

4.8 The recommended response to this is to:

1. Create a second Property Enterprise Fund (PEF2). The objective of PEF2 is to provide a temporary borrowing facility, capped at £85m, from which we can offer directorates an agreed value in recognition of the current or previous value of an asset that is assumed in the MTP. Attached to this report at **Appendix 2** is the suggested process and governance of PEF2, which Cabinet is asked to recommend for subsequent approval by County Council in September.
2. Recast the capital programme and report back in September.
3. Dispose of assets for which negotiations are already at an advanced stage and/or the sale proceeds are not substantially reduced from the value assumed in the MTP.

5. RECOMMENDATIONS

Cabinet is asked to:

5.1 **Note** the forecast impact of the current economic situation on the revenue position for 2008-09 and the medium term as shown.

5.2 **Agree** the allocation of the £5.111m contingency for the current economic climate as detailed in paragraph 2.6

5.3 **Note** the estimated impact on the services funded by the Dedicated Schools Grant as highlighted in paragraph 2.4.4.

5.4 **Agree** the establishment of a second Property Enterprise Fund in order to defer disposing of the assets until prices improve, subject to approval by County Council in September, with a temporary borrowing facility capped at £85m. Further details of the Fund are provided in Appendix 2.

5.5 **Support** the inflationary impact on highways, as detailed in paragraph 4.2, be built into the revised capital programme for 2008-12, with a compensatory reduction elsewhere within the overall capital programme (which will be incorporated into the "Revenue and Capital Budget Report" to be agreed by Cabinet in September).

PROPERTY ENTERPRISE FUND 2 (PEF2)

1. Introduction

1.1 The current capital programme between 2008 and 2011 is based on £180m of funding to come from capital receipts. Given the current fall in property and land values, which is predicted to continue into next year and potentially for a number of years beyond, achieving the £180m within this time frame is no longer realistic. This means we have to have an intelligent solution to the funding issue over the next three years.

1.2 Unless we provide this solution, the capital programme is in real danger of entering into a stop / start pattern, risking service delivery and value for money. Consequently, a funding model is being proposed that will enable service directorates to continue to plan and deliver capital projects with a degree of certainty that in the current climate, does not exist.

1.3 Our proposal is to create a second Property Enterprise Fund (PEF2). This would be distinct from the existing Fund (PEF1) in that only earmarked receipts would be accounted for through PEF2. Non-earmarked receipts would continue to go through PEF1. Another distinction is that PEF2 would be for the sole purpose of supporting the capital programme, whereas PEF1 is for the strategic acquisition of land and property to add value to the Council's portfolio, aid the achievement of economic and regeneration objectives and the generation of income.

1.4 The financial objective of the PEF2 is to broadly break-even over a rolling five-year cycle. Large profits or losses are not good news in relation to the delivery of the capital programme or our financial standing. Large profits would suggest that we took unnecessary action to remove service improvements from our capital programme. Large losses would mean we have not been sufficiently prudent in our valuation of assets at the date of transfer into PEF2.

2. Mechanics of PEF2

2.1 The proposal for how PEF2 would work are as follows:

i. The Directorate/Portfolio can elect to pass an earmarked property to PEF2 if it requires guaranteed funding for their overall programme;

ii. The project may have already been included in the medium term plan, but new projects will be considered, initially through the Project Appraisal Group (PAG) process;

iii. The property will only be accepted by PEF2 if it meets certain criteria (see appendix 1), and the final decision (documented in writing), as to whether a property can be passed to the fund will lie with Property Group;

iv. A risk factor percentage will be applied by Property Group to reflect the borrowing costs, risk of planning, market conditions, holding costs, plus any individual risks which are linked with the property relating to, for example, title or political issues. It is proposed that the transfer "price" to PEF2 should be within a range of:

1. a minimum of the current valuation; and
2. a maximum of 75% (to reflect borrowing costs for 5 years) of the valuation included in the 2008-11 MTP, less projected holding costs. This will be a one off transaction and no further adjustment will be made to the capital sum to be transferred;

The value is to be negotiated between the holding directorate and Property Group, but should normally remain within the maximum and minimum range shown above. **Where agreement cannot be reached, the Director of Finance will arbitrate in consultation with The Leader.**

v. PEF2 will offer to buy the property from the directorate within the maximum and minimum range set above;

vi. The directorate determines if the valuation is sufficient to fund their programme. If so, that part of the funding can be deemed to be in place. If not, the programme must be reduced by an equivalent amount;

vii. The receipt is then held corporately until Property Group in consultation with the Cabinet Member for Finance feel the time is right to realise an appropriate level of receipt;

viii. Any overall surplus from PEF2 would be recycled into the Council's priorities in the capital programme.

2.2 It should be noted that as per iii) above, not all sites would be eligible for going into PEF2 and specific requirements are detailed at Annex 1.

2.3 PEF2 is being proposed as providing an option for directorates. Should a directorate not wish to make use of this funding arrangement, they may still seek disposal of a property through Property Group using the existing process. If this route is chosen the Directorate's assumptions around the timing and value of the capital receipt need to be realistic i.e. as advised by Corporate Property Group, and the Property Group, in consultation with the Director of Finance and the Cabinet Member for Finance, may refuse to proceed with the disposal if it does not represent good value for the Council.

2.4 The benefits of the PEF2 proposal are as follows:

i. it brings responsibility and accountability together. In context, that means that those responsible for the valuation then have to deliver;

ii. it avoids boom and bust periods of spend;

iii. it enables us to take a longer term view on getting best value from our assets, thereby avoiding potential fire sales to enable vital capital projects to go ahead;

iv. it puts the disposal decision in the hands of the expert, not the directorates;

v. risks are held centrally rather than be dispersed. This makes managing and mitigating those risks much easier;

vi. it gives certainty to service directorates.

3. Funding of PEF2

3.1 As the proposed mechanism of PEF2 will mean paying money out to directorates in advance of receipts being realised, the funding stream for this will be from prudential borrowing. Therefore it is proposed that the fund have a maximum deficit limit of £85m.

3.2 Revenue implications and funding
If full use is made of the overdraft limit then the revenue costs for a full year's £85m borrowing equates to approximately £4.25m per annum. This is based on interest costs only, as opposed to both interest and minimum revenue provision (MRP), as any borrowing undertaken by PEF2 is expected to be only short term and would effectively be repaid as soon as the capital receipt is realised. A projection of the PEF2 balance will be included in the Medium Term Plan each year and that projection will be included in the prudential indicators.

3.3 The proposed funding for the revenue costs associated with PEF2, which would include holding costs of vacant properties within the fund and interest costs on the overdraft, is to use the prudential equalisation reserve. This reserve would be re-imbursed as receipts are eventually realised, at 5% per annum of the value of the disposal. The time will be calculated from the point the asset transferred into PEF2 to the date of disposal.

3.4 In the event of there being no further funds available from the prudential equalisation reserve, the costs of the PEF2 borrowing would need to be a first call from the revenue budget. It is the view of the Director of Finance that the risk of this is minimal but will be reviewed every year as part of the budget process in any case. This approach has been discussed with the External Auditor.

3.5 PEF2 will also have the ability to temporarily let properties, or agree occupation temporarily by a Directorate/partner/service provider. Any rent received would form a revenue stream of income which could then be used to fund some of the revenue costs.

3.6 Fund surpluses/deficits
Should PEF2 be in overall surplus at the end of the five year period, after repaying borrowing costs and other disposal costs, this balance would be available for investment as Members see fit. This could be used for example, to reduce the level of borrowing the authority undertakes to fund the capital programme, or to fund new schemes to the capital programme.

3.7 Surpluses on individual receipts will not automatically be reinvested into the directorate from which they came, and similarly any losses on individual receipts will be contained and managed within PEF2.

4. Governance

4.1 The governance of PEF2 would follow that of PEF1, the only significant difference being the value of the maximum overdraft of the fund.

4.2 The fund will be operated within the parameters of the Property Management Protocol (PMP) in compliance with the Council's Constitution and Financial Regulations, and within the Local Government Act 2003.

4.3 Properties/sites will only be accepted into PEF2 if they meet the criteria set out in annex 1, and the final say as to whether a property can be passed into the fund will lie with Property Group.

4.4 The project must already be included in the current medium term plan or have already been approved through the Project Appraisal Group (PAG) process.

4.5 The decision on timing of sale and terms of sale will lie with Property Group in consultation with the Cabinet Member for Finance once the property has been released to the fund.

4.6 All transactions coming within the PEF2 balancing limit of £85m should be authorised jointly by the Director of Property and Director of Finance in consultation with the Cabinet Member for Finance, the Chief Executive and the Leader.

4.7 PEF2 will benefit from any surpluses achieved on the sale of the individual properties, but will also bear the risk of any deficits which will be managed and contained within the fund.

4.8 **Delegation to Officers**
Subject to the authorisations in paragraph 4.6 above, the Director of Property is authorised to:

- Determine and settle the acquisition or disposal of any land or property, or an interest in land or property where the consideration (including any associated works) does not exceed **£1,000,000** in any single transaction.
- Determine and settle the terms of a lease (taken or granted) for any land or property, not exceeding a period of 20 years or where the consideration does not exceed **£100,000** per annum in any single transaction.
- As provided by arrangements made under Appendix 2 Part 4 of the Constitution for the Leader to discharge executive functions, the Chief Executive may exercise any power delegated under this protocol to the Director of Property; and the Director of Property may delegate his/her powers in writing to more junior officers.

4.9 **Financial Regulations**
All of the protocols set out in Financial Regulations and Schemes of Delegation must be adhered to, except where the Property Management Protocol specifically provides for alternative levels of authorisation.

4.10 **Reporting**
Monitoring of the fund will be reported quarterly to Cabinet.

5. Risks

5.1 The main risk is that the property market does not recover significantly within the next 3-5 years. This could potentially result in:

- The prudential equalisation reserve being insufficient to continue to fund the revenue costs of PEF2.
- The debt charges budget needing to be increased to pay for extended borrowing costs.

5.2 To mitigate these risks, a maximum and minimum range has been set for the value that will be applied to each property going into PEF2. This lower and upper limit is suggested as it offers certainty to Directorates so that capital projects can continue, but is also realistic enough so that when the properties are disposed of in the future, KCC recovers the costs of holding the asset in the short term.

6. Recommendations

6.1 Cabinet is asked to approve the establishment of PEF2, with a maximum deficit balance of £85m, subject to approval by County Council on 4th September 2008.

<u>Criteria for Properties to Qualify to be Passed into PEF2:</u>

The property will only be accepted by PEF2 if it meets certain criteria and the final say as to whether a property can be passed to the Fund will lie with Property Group.

The criteria for properties to qualify to be passed into the fund are as follows:

1. The property/land must have freehold unencumbered title. A full title report will be required prior to agreement to fund.

2. The boundaries must be agreed with the directorate and marked clearly on site (and on a plan).

3. The risk of a village green application being made is minimised and in the event that this is assessed at a high risk and the risk factor will be adjusted accordingly.

4. There must be an agreed and guaranteed date for vacant possession. This is the latest date on which the directorate and any other KCC partners/service providers will vacate the property. A signed undertaking that vacant possession will be given on this date will be required. Where third parties are occupying the property they must enter into a legal agreement to vacate the property by the agreed date.

5. The vacation date can be no longer than three calendar years after the date the property is passed to the Fund.

6. The property may be occupied (if prior agreement has been reached with Property Group) by a third party, only if the terms of the occupation are scrutinised by Property Group and deemed to pose no threat to the disposal of the property.

7. A surplus declaration must be provided by the Directorate. In the case of properties which are not vacant, this surplus declaration will contain the agreed vacation date by all internal and external parties and will be contractually binding.

8. In the case of properties which are not vacant at the time of hand over to the Fund, the Directorate will agree to pay the running costs of the property up to the date of vacation. For the avoidance of doubt this will include rates, utilities, cleaning costs, security, maintenance and repair of fabric and services.

9. In the case of properties which are not vacant at the time of hand over, the Fund will become the landlord and the Directorate will sign a simple agreement covering the terms of occupation. This will include maintaining the property in a condition no worse than at the point of hand over to the Fund. This is vital to ensure value is not diminished in the interim period before vacation. If necessary a photographic schedule of condition can be prepared on transfer.

10. The following special criteria apply:

<u>CFE</u>

i. A section 77 consent must be provided. If this is not possible a higher risk factor will have to be applied to reflect the possibility of consent to dispose not being granted.
ii. The school must declare the land/buildings surplus prior to handover.
iii. School closure procedures must have commenced and a time scale agreed for the date of completion of the process.
iv. Where a school is being amalgamated or a new school built the consultation exercise must already have commenced (statutory consultation and notice served), so there is no deemed risk of the land being taken into the schools ownership.
v. If the school is still in occupation, they must enter into the agreement as detailed (9) above.
vi. Agreement in writing must be provided from the school confirming the land can be released and they will not lay claim to ownership of the land.
vii. If the land is connected to Diocese school then confirmation must be provided that land to be sold is KCC's title.
viii. If the planning application for the redevelopment of the site will be linked by the District Council to a planning application for a new school, then the Directorate must undertake to submit the planning application by an agreed date. If the Directorate subsequently do submit a planning application or decide not to build a new school, then the funding for the property released will be reclaimed by the Fund, in the event that this renders the land un-developable.

<u>E&R (Highways)</u>

ix. Stopping up orders for land designated, as Highways must have been obtained.

<u>All Directorates</u>

x. Service closure or relocation procedures must have been undertaken together with all relevant consultation.

11. Where the property to be released is adjacent to KCC retained land or where land is acquired subsequently adjacent to the property, Property Group have must be consulted regarding any use and/or development of the adjacent land and must approve any terms of PFI or other contracts on the land. This is to prevent any reduction in value of the Fund's land.

12. Property Group will undertake any representations to Districts regarding Local Development Frameworks (LDF) in respect of the Fund's property, however Directorates must undertake to safe guard the LDF allocations of property which will be released for disposal over the forthcoming LDF period (10 years).

By: Keith Ferrin, Cabinet Member Environment, Highways & Waste

Roger Gough, Cabinet Member Regeneration and Supporting Independence

Adam Wilkinson, Managing Director, Environment & Regeneration

To: Cabinet 4th August 2008

Subject: Response to consultation on Water Company Draft Water Resource Management Plans

Classification: Unrestricted

Summary: This paper provides an overview of the water industry planning process and the Draft Water Resource Management Plans of the five water companies that supply parts of Kent. It sets out, and seeks approval for, the key elements of the proposed KCC response to the consultation on these plans.

Introduction

1. During 2008 to 2009 all the water companies in England and Wales are required to produce Water Resource Management Plans (WRMPs) that set out how they propose to balance demand and supply for mains water into the future. These plans are produced every five years but cover a rolling period of 25 years. The first five years of each plan includes a programme of works that forms part of the company's business plan and this provides the basis on which the industry financial regulator OFWAT will determine the charges that each company is allowed to make to its customers. The remaining 20 year period provides a forward strategy and options analysis. It also provides the rationale for investigations and studies that will be included within the 5 year business plan.

2. This water industry process is generally referred to as the Periodic Review. The current Periodic Review 2009 (PR09) will cover the period 2010 to 2035.

3. In the past these plans have only been available to the Environment Agency (the environmental regulator for the water companies) and OFWAT. However the Water Act 2003 placed these plans on a statutory footing, which requires companies to publish and consult on their plans and submit them to the Secretary of State (Defra) Formal representations can be made to the Secretary of State by consultees.

4. There are five water companies that provide water supply services to Kent. South East Water (SEW), Folkestone & Dover Water Services (FDWS) and Southern Water Services (SWS) cover most of the county. Parts of the Dartford and Sevenoaks local authority areas fall within the supply zones of Thames Water and Sutton & East Surrey Water.

5. SEW, FDWS and SWS have agreements for bulk water transfers between companies and SWS and SEW also share some resources such as Bewl Water Reservoir. However each company is required to produce a separate plan, making it difficult for consultees to develop a strategic overview of the plans.

6. The water companies are involved in the Water Resources in the South East Group (WRSE), chaired by the Environment Agency (EA), which comprises representatives from the water companies, OFWAT, SEERA and Natural England. The group consider the shared strategic development of water resources in the South East. Modelling work has been undertaken for the group to inform possible future regional solutions for optimising the use of resources. This work also looked at a number of housing scenarios which informed discussions at the South East Plan Examination in Public.

7. For some time, water companies have had a commercial interest in acquiring new capital infrastructure assets as OFWAT allows interest charges on capital investments at a rate that is seen to be attractive to the financial institutions that own these companies. This has tended to incentivise highly engineered, capital-intensive water supply solutions at the expense of measures that would control water demand and hence decrease company revenues. Partly as a result of this, the energy demands of the water industry have increased greatly over the last 15 years.

8. OFWAT is now developing financial mechanisms to redress this imbalance and is also currently consulting on Water Efficiency Targets that would operate in a similar way to the existing Leakage Reduction Targets. The water companies' final WRMPs will need to accommodate these targets and this may result in significant adjustments to the plans.

Pressures on Kent Water Resources

9. Kent is already designated by the EA as an area of 'severe water stress'. This status requires water companies to consider the case for universal metering of households as part of their WRMPs. KCC supported this approach. In the future climate change is expected to further reduce the county's available water resources at the same time as increasing the demand for water. In addition to this, planned housing growth alongside continuing changes in household occupancy characteristics will add significantly to the pressure on these limited resources.

10. The implementation of the EU Water Framework Directive will require river water quality improvements on a number river reaches within Kent. Kent has a high dependency on groundwater sources for its water supply and in many cases these improvements are expected to require the reduction of groundwater abstractions by water companies in order to allow natural chalk springs to recover their flow rates and recharge the river systems

11. Water companies have been instructed by the EA not to consider these possible abstraction reductions within their PR09 planning. It is understood that the reason for this is that studies are still on-going so the nature and level of reductions is not yet known, and also because the timescales for implementation of the WFD are long and give time for alternative water supply options to be developed. However, SEW , for example, estimate that this process could result in decreases of up to 20 percent in their deployable output.

The Draft Water Resource Management Plans for Kent

12. The WRMP process is tightly prescribed and water companies are given detailed guidance on how to incorporate a number of factors into their plans. In PR09 this has included, for the first time, guidance on how to incorporate climate change impacts.

13. Each draft WRMP first establishes a baseline situation. This is based on:

a) the assumption of no additional supply infrastructure beyond that which is already funded.

b) a projection of future water demand based on predicted demographic and water use changes.

c) a continuation of current policies on, for example, water metering.

14. This baseline situation normally reveals a widening deficit between demand and supply.

15. The WRMP then includes a comprehensive analysis that gives consideration to a wide range of options that might contribute towards balancing supply and demand. These are screened and feasible options are prioritised according to their efficacy, cost and impact on carbon emissions. The options are then introduced incrementally into the plan until demand and supply are brought into balance throughout the plan period.

16. The draft WRMPs from the five water companies differ from each other considerably in the detailed schemes that are proposed. However they can be generally characterised as follows:

(a) During the period 2010 to 2015 the companies are focussing on managing water demand by introducing universal compulsory metering, promoting greater water efficiency and further reducing leakage levels. This is thought to be a sound and fair approach that will deliver value for money for water customers and will also give some reduction in energy consumption and carbon emissions.

(b) During the period 2015 to 2020 the companies are planning to improve water transfers and develop some new water supply measures such as schemes for recycling of wastewater effluent. Both FDWS and SWS are also expecting they will need to develop some desalination plants. For FDWS this threatens to quickly escalate their carbon emissions. By this time the financial cost of these carbon emissions is likely to be high and it can be expected that this may lead to significant increases in customers' water bills.

(c) Beyond about 2020 all the Kent water companies are expecting to have to fall back on more expensive and carbon-intensive solutions such as new reservoirs or desalination schemes. In the case of FDWS, the company anticipates a threefold increase in its carbon emissions by about 2030.

17. In their 2008 Strategic Direction Statements all the local water companies anticipate above-inflation increases in water bills over the long-term.

18. Regarding the later years of the WRMPs, the water companies stress that the schemes listed are merely indicative and subject to adjustment within two further planning cycles. However some proposals, such as the development of a major new reservoir and associated strategic pipelines, have particularly long lead times. Indeed feasibility studies for the proposed Broad Oak reservoir have already started during the 2005 to 2010 planning period. It may be very difficult to make significant changes later on to the approach taken within these current plans other than to adjust the timescales for some options.

19. For this reason it is of particular concern that there appears to have been inadequate attention given to the best use of water transfers around the county. SWS already transfer water from Bewl Water Reservoir via the Medway Scheme to their

‘Kent Medway’ supply zone and onwards via a strategic main pipeline to their ‘Kent Thanet’ supply zone. After 2025 SWS expects to be using the full capacity of this pipeline, moving approximately 20 Ml/day from west to east. At about this time SEW, on the other hand, expects to be moving a similar quantity of water from the new Broad Oak reservoir near Canterbury to its supply zones in the south-west of the county, having invested some £50m in the necessary pipelines. KCC is presented with five separate company plans and there is no overall rationale put forward for this pattern of investment and transfers. However, on the face of it, it would seem reasonable to expect that SEW should plan to make additional use of SWS’s Bewl Water Reservoir to supply its zones in south west Kent and SWS should use water from SEW’s Broad Oak Reservoir to supply Thanet.

20. There may be advantages of having a strategic ring main across the county but this case is not made. Instead the emphasis within SEW’s draft plan, in particular, is on supplying its water supply zones from its own reservoirs and strategic pipelines.

21. Although there are some references in these documents to inter-company transfers they fail to present a coherent approach to this issue and there are major discrepancies in approach between the WRMPs. For example, SWS is a net exporter of water and assumes all existing agreements, due to expire as early as 2012, will be renewed. However FWDS have taken the approach that these will not be renewed and have considered a worst case scenario. This illustrates an urgent need for better inter-company co-operation to strategically plan for water supply across Kent and calls into question whether the commercial decisions of the individual water companies are leading towards the future best value for Kent’s water customers.

22. This also brings into question the effectiveness of the WRSE group that should be facilitating integrated solutions across the whole of the South East.

23. On a more fundamental level, the water companies appear to have systematically over-estimated water demand by assuming high figures for population and per capita water consumption along with cautious estimates of the impact of demand management measures. On top of this they then adopt a very low risk level compared to the industry average and they do not follow the EA guidance on the calculation of headroom, both of which lead to further over-estimation of the need for additional supply infrastructure. FDWS has also departed from the EA guidance on climate change with the result that they estimate a 20% reduction in their deployable output (DO) over the planning period. This compares to a 1.5% reduction for SWS who have followed the guidance.

24. There are merits in adopting a cautious approach that would provide a high security of supply but this is adequately addressed within the established EA guidance. The systematic over-estimation of demand that is evident with these plans would result in significant unnecessary increases to household water bills.

25. In the case of SEW, similar weaknesses can be found in their analysis of non-household water demands and in the calculation of peak demand factors. Taken together, these discrepancies mean that the case for the company’s preferred option of constructing Broad Oak reservoir is undermined and it would only be needed towards the end of this 25 year planning period at times of peak demands. These peaks could be accommodated by other solutions that would be much more cost-effective, such as effluent re-use schemes.

26. In their draft WRMP SWS propose a new effluent re-use scheme for the Medway. We understand that this would take effluent that is currently discharged into the Medway estuary and pump this back 5km upstream of the Springfield intake to

augment supplies to the Kent Medway zone. This highly cost-effective scheme would make available an additional 28Ml/d which, if shared with SEW, could meet the increased demands for both companies. Furthermore such effluent re-use schemes are highly resilient to the impacts of droughts and climate change because any additional demand leads directly to an increase in supply.

27. Similar effluent re-use schemes should be given greater attention elsewhere in the county too. During the preparation of the Ashford Integrated Water Strategy the consultants identified a feasible effluent re-use scheme for the River Stour that would return diluted effluent from the river at Wye into supply for Ashford. This scheme appears to have not even been considered by SEW.

KCC Policy and Action

28. In September 2005 the Strategic Planning Policy Overview Committee produced a select committee report on water and wastewater particularly in Ashford. This was undertaken as a result of concern raised at the high level of development planned for the area and the pressure that this would place on the regions natural water resources and its water and wastewater infrastructure and it aquatic environment. The report made 16 recommendations to address the issues. The report concluded that there was real concern over the lack of clarity regarding projections for population and demand and regarding regulatory requirements such as the Water Framework Directives and the impact that these could have on water resource planning, these concerns are still relevant today.

29. The committee also raised concern that the phasing and funding of water infrastructure development is not necessarily synchronised with or linked to the pace of growth in Ashford, but to water industry funding mechanisms. Again this still appears to be the case and timescales for key infrastructure appears to have changed as more reliance is put on compulsory metering. The committee identified the need for key stakeholders to work together and to ensure that potable water is used wisely. Concern was raised over the capacity of the environment to meet the needs of growth and development in a tight timescale. Again this is still applicable particularly with increased sustainable reductions being required in future and the predicted impact on the local environment from possible options like desalination and effluent reuse. The committee recognised that the concerns highlighted in the report could equally apply to other areas of the County.

30. In December 2006 KCC adopted a Water Policy reflecting widespread concern about the current and future water situation in Kent. It provides key principles for KCC to observe in all its decisions and to reflect them in the management of its own operations and estate. It recognises the threats arising from increased levels of consumption, climate change, and new development and demonstrates that we will need to adhere to a water policy hierarchy which seeks to reduce, reuse and recycle.

31. Through its policy, planning and procurement decisions KCC will seek to ensure an adequate supply of water in Kent to meet environmental, social and economic need, through the most sustainable means. Water efficiency will be promoted, through the planning system and the Kent Design Guide ensuring the highest possible levels of water efficiency measures are implemented in new and existing development.

32. In 2004 KCC set up the Kent Water Demand Management Group with Mid Kent Water (now part of South East Water), the EA and Ashford's Future to develop partnership activities to promote water efficiency. KCC chairs this group which has since expanded to include FDWS, the Consumer Council for Water and the Kent Thameside Delivery Partnership. The KWDMG has developed an award-winning

project in Ashford with a local housing developer and the group has itself won a nation commendation in the 2007 EA Water Efficiency Awards.

33. KCC is now also leading a KWDMG project called “Savings On Tap: Water Savings for Existing Homes” that is piloting the installation of well-proven, cost-effective water saving technologies into existing properties in a small neighbourhood of Ashford. The project aims to develop a mechanism by which funds from the Ashford Strategic Tariff can be invested in delivering water savings within the existing local housing stock. This would give housing developers the opportunity to offset the residual water demand of their new homes and thereby achieve “water neutral” development and it would also give existing residents the opportunity to save money on their water bills and to benefit from the housing growth agenda.

34. The KWDMG is looking to develop similar schemes aimed at the property refurbishment sector.

Kent Agreement

35. Through the work described above KCC has already positioned itself at the forefront of public sector approaches to water efficiency and is also making progress on decreasing its own water use. The best opportunity to build on this position now lies in better engagement and target setting with all the Kent local authorities. The Kent Agreement 2 provides the opportunity to develop voluntary local water demand management targets across the county. The water companies are crucial to this and they face strengthening pressure, and potential obligations to deliver on water efficiency. The KWDMG offers a good platform for the development of joint public – private sector targets and delivery projects. Efforts are underway to reinforce the structure and delivery capacity of this group.

36. The current consultation is an opportunity to present these intentions to DEFRA and the water companies.

Housing growth and water demand

37. Housing growth and household change across the county clearly adds to overall water demand and to the water supply infrastructure necessary to meet this demand. Some of this infrastructure is directly related to specific housing or commercial developments and can be funded through water company connection charges. But housing growth also contributes incrementally to the total water demand and can trigger the need for major new infrastructure developments such as strategic reservoirs. Such investment requirements are funded through the normal water industry mechanisms and are paid for by customers through their water bills. In this way, existing residents pay for some of the costs associated with new housing.

38. A tariff on new homes might be a fairer way of funding this but it would be difficult to distinguish between costs associated with the upgrading of infrastructure assets to improve the security of supply and those costs attributable to specific developments. There also appears to be little prospect of OFWAT supporting such a change to the water industry funding mechanisms.

39. An alternative solution might be to allocate part of a strategic tariff, such as that included in the Ashford LDF, to investments in improving water efficiency of the existing local housing stock. This would have the advantage of offering existing residents the chance to control their own water bills and it would be a more sustainable, low carbon route to balancing demand and supply of water.

The Big Water Debate

40. Some of these issues were debated with water companies, the Kent local authorities and the EA at "The Big Water Debate" on 27th June 2008. This event was jointly organised with KCC and the key outcomes were:

(a) Full support for the accelerated compulsory metering programmes proposed by the water companies with a request to South East Water to consider faster implementation of their metering programme within Kent. All local authorities were urged to support this strongly in their consultation responses to ensure that DEFRA accepts this element of the draft WRMPs.

(b) Climate change is predicted to gradually reduce the yield of boreholes and reservoirs into the future. In the long-term (post 2020) water companies are expecting to have to rely on new reservoir construction and desalination facilities to make good the deficit, but both of these options will result in increased CO_2 emissions that will run directly counter to the thrust of climate change adaptation. It was agreed that this would be deeply undesirable and that the best option for avoiding this lies in a vigorous programme of water demand management supported by a strong public - private sector partnership and shared targets linked to KA2. Robust monitoring will also be needed in order to give water companies the confidence that demand really is being reduced and allow them to delay or shelve investments in further supply options.

(c) Assurance by the Environment Agency that mechanisms would be put in place to control the impacts of the potential new reservoir at Broad Oak on low flow levels in the River Stour.

Wastewater Issues

41. The current draft Water Resource Management Plans do not address wastewater issues as these are managed through a separate process that is primarily driven by river water quality objectives. The EA sets the effluent quality standards that they require of the wastewater companies (Kent is covered by Southern Water Services and Thames Water) and the investment requirements are appraised by the EA nationally.

42. There are wastewater issues within Kent but the general trend is towards tightening of discharge consents and improving wastewater treatment and river water quality. This will enhance the opportunities for effluent re-use schemes into the future.

43. KCC is the planning authority for wastewater issues and will undertake a thorough assessment of these within the coming Waste Development Framework.

The Way Forward

44. The County Council has also established itself in a position of some influence on the management of water demand but now needs to strengthen this through developing agreements and targets with both water companies and with local authorities.

45. But, on the issue of strategic water supply infrastructure, KCC's influence is limited. We are a statutory consultee on planning applications for specific water supply infrastructure but that role comes too late in the process to influence the overall strategy. The current process of developing WRMPs represents the only significant

opportunity within the next 5 years for KCC to influence the strategic direction on water supply and to deliver on our Towards 2010 Target 46.

46. We are now responding strongly to DEFRA on each of the draft WRMPs but, under Section 62 of the Water Act 2003 and Section 37 of the Water Industry Act, the Secretary of State has the power through to call a public inquiry to consider the impact of the WRMPs. KCC therefore also has the opportunity to lobby the Secretary of State for such a Public Inquiry. Ideally this would be a last resort if the water companies are not willing to integrate their plans and look at the issue strategically, however this course of action is only open to us over the coming few weeks.

47. Given the serious concerns raised during our assessment of the draft WRMPs it appears that KCC should lobby for a Public Inquiry into the plans of SEW, SWS and FDWS. As a first step KCC would require urgent legal advice into the implications and costs of this approach.

Recommendations

48. The following recommendations are made to Cabinet:

(a) The KCC responses to the WRMP consultations should include:

(i) Strong support for the emphasis on demand management and the implementation of universal compulsory metering providing that there are appropriate tariffs in place to ensure that vulnerable families in Kent are not subjected to higher bills.

(ii) Strong response to DEFRA that existing customers should not be made to pay higher water charges to pay for the water infrastructure needed to accommodate housing growth.

(iii) Detailed questioning of the basis for the water companies' proposals for balancing water demand.

(iv) Pointing out the unacceptable lack of strategic co-operation between companies regarding their medium and long-term infrastructure proposals and rejecting some of these proposals.

(b) KCC should seek legal advice with a view to requesting the Secretary of State to call a public inquiry into the Draft Water Resource Management Plans of South East Water, Southern Water Services and Folkestone & Dover Water Services.

(c) KCC should use our influence on Local Development Frameworks by:

(i) Demanding high standards of water efficiency in new homes.

(ii) Calling for a strategic tariff on new developments that would be partly used to off-set the residual water demands of new homes by investing in improvements to the water efficiency of the existing local housing stock.

(iii) Ensuring land is identified and safeguarded for future infrastructure that maybe required in the long term.

(d) KCC should continue to play a leadership role in promoting the sustainable management of water demand and should encourage local water demand targets within the District Chapters of the Kent Agreement 2.

Background documents

(a) KCC Water Policy (December 2006)

(b) Water and Wastewater, Particularly in Ashford Select Committee Report (September 2005)

(c) Draft Water Resource Management Plan (April 2008) Folkestone and Dover Water Services Ltd (Veolia Water)

(d) Water Resource Management Plan Main Report (April 2008) Southern Water

(e) Draft Water Resource Management Plan (May 2008) South East Water

(f) Draft Water Resource Management Plan Main Report (May 2008) Sutton and East Surrey Water PLC

(g) Water – Planning for the Future Draft Water Resource Management Plan (May 2008) Thames Water

(h) Ashford Integrated Water Strategy 2006 – 2031, July 2007. Ashford's Future.

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By: Roger Gough, Cabinet Member for Regeneration and Supporting Independence

Adam Wilkinson, Managing Director, Environment & Regeneration

To: Cabinet 16th June 2008

Subject: Ashford's Future – proposed formalisation of the Ashford's Future Partnership Board and the related incorporation of a Special Purpose Vehicle

Classification: Unrestricted.

Summary: This paper informs Members of the proposal for formalising and restructuring the Ashford's Future Delivery Board. It also seeks approval for the County Council's participation in the establishment of a Special Purpose Vehicle (SPV) as a key new element in delivering growth to Ashford.

Introduction: The current delivery structure in Ashford

1. (1) The Ashford's Future Delivery Board (AFDB) is an informal partnership comprising the key organisations with a role to play in delivering successful, sustainable growth in Ashford. The Founding Partners comprise ABC, the County Council, SEEDA and EP. Other organisations represented on the Board currently include the Environment Agency, Highways Agency, Housing Corporation, and Robyn Pyle of Land Securities as a private sector representative.

(2) The informal partnership has worked effectively to date, and has secured additional partner and Government resources that have funded masterplanning and other technical studies; some significant land purchases, especially in the town centre; the funding of the Ashford's Future Core Team; a range of projects to kick start growth, including 'green space', economic development and voluntary sector capacity building projects.

(3) This activity has been driven and co-ordinated by the Ashford's Future Core Team and by an executive officer group drawn from the partners, in support of the AFDB.

(4) The Ashford Growth Area is entering a new phase of delivery. Given the scale of infrastructure that needs to be provided to support the doubling of the size of the town it is acknowledged that the Ashford's Future Partnership will need to adapt and strengthen its programme and project management capacity. Accordingly it is proposed that current arrangements be revised to ensure the efficient delivery of key projects, and the securing of resources.

The rationale for change

2. (1) In 2006 a review of delivery arrangements in Ashford was undertaken by consultants on behalf of the DCLG. Their report (entitled the Bell Report) recommended that the Delivery Board should be reduced in size, that it should have stronger private sector representation, and be able to accept developer and other contributions.

(1) The Ashford's Future partners commissioned a further study by Genecon (Economic and Spatial Regeneration Consultants). Genecon confirmed the widespread view that the existing informal arrangements for co-ordination between the Ashford's Future partners needed to be put on a more formal basis in order to strengthen delivery capacity. This is the purpose of the proposed Partnership Agreement. The Genecon Study also identified a range of reasons for establishing a SPV for specific purposes.

(2) At the County Council's instigation, the need for an SPV has been questioned with DCLG. The case was put that the same outcome could be achieved by strengthening the existing partnership arrangements and that a SPV may be inefficient in financial terms as the local authorities can borrow at a cheaper rate than the SPV. The SPV may also be liable to Corporation Tax and VAT, and Stamp Duty Land Tax might be payable on any transfer of land assets. The SPV might not draw in additional private sector finance other than through the kind of joint ventures with developers that are already proposed under existing arrangements.

(3) However, DCLG has made it clear in discussions that future Growth Area Funding for Ashford would be dependent on a commitment to the establishment of an SPV under private sector influence.

(4) In addition, it is accepted that private sector input in the form of an SPV will bring expertise, challenge and a new approach. The SPV will also bring a culture change and a perception that Ashford is entering a new phase of delivery. It should be noted however, that the SPV is only one part of the equation. **It will not provide the solution to all Ashford's infrastructure funding requirements.**

Restructuring the Ashford's Future Delivery Board

3. (1) It is proposed to formalise and rename the current Ashford's Future Delivery Board (AFDB) to the 'Ashford's Future Partnership Board' (AFPB), and to put in place revised membership arrangements. This will continue to be a public sector-led partnership, retaining the responsibility for developing and championing the overall Programme for Development for Ashford. This document, approved by the AFDB, and submitted to Government, sets out key project priorities for Ashford's growth, for all main partners to support and assist in delivering. DCLG has subsequently awarded Growth Area (GAF 3) funding to Ashford totalling £23m for the three year period 2008 to 2011, providing a significant statement of commitment to the Ashford Growth Area.

(2) A Partnership Agreement between the four Founder Partners (ABC, KCC, SEEDA, and EP) will establish a formal (though non-legally

binding) decision-making framework and will replace the existing informal arrangements on which the Partnership has been operating. Partner decisions will include formal approval of the Programme for Development and agreeing funding priorities, committing founder partners to support the growth agenda, the allocation of GAF and similar monies and - in the future - tariff funding.

(3) Cabinet is invited to nominate or confirm the Board Member for the AFPB on behalf of KCC.

(4) The AFDB has also agreed on the incorporation of a company limited by guarantee to act as a special purpose vehicle (SPV) to support the delivery of the Ashford's Future Programme. The company will have four public sector directors and four private sector directors, including a private sector Chairman, Robyn Pyle.

(5) The Founding Partners (Ashford BC, Kent CC, SEEDA and EP) are each in the process of seeking their necessary approvals to participate in the SPV and revised Ashford's Future Partnership Board.

The Proposed SPV

4. (1) The SPV will have two clear functions. Firstly, ensuring the delivery of key projects, to include bringing forward town centre sites where a number of different partners are involved in delivery, addressing a number of infrastructure constraints (including transport and flood risk management), and providing a more focused, better co-ordinated and better-resourced structure. A draft list of priority projects for the SPV has been endorsed by the AFDB, and is listed at the end of this report. In delivering projects the SPV's role will be to lead or to co-ordinate in order to ensure the efficient delivery of projects.

(2) Secondly the SPV is to provide a programme management function on behalf of the AFPB. In this role the SPV will ensure that all organisations with a responsibility for projects identified in the Partnership's Programme for Development are delivering on time and on budget, and will report to the AFPB.

<u>SPV Staffing and Structure</u>

(3) The SPV will have a board of directors (the SPV Board) comprised of representatives from ABC, KCC, SEEDA and EP, and up to four directors chosen from the private sector one of whom would act as Chair of the Board and who will exercise a casting vote at Board level. The AFDB has approved the appointment of Robin Pyle, a Director of Land Securities as Chair of the SPV, and the three other private sector directors, Vince Lucas (South Eastern), Bill Brisbane (retiring director from Roger Tym) and Courtney Collins (retired director from Gledes). The four founder members (ABC, KCC, SEEDA, EP) will each nominate a Director

(4) **Cabinet is invited to nominate a Director for the SPV Board.**

(5) To date, activity has been driven and co-ordinated by the Ashford's Future Core Team and by officers drawn from the partners, in support of the AFDB. It is proposed that a new SPV team will subsume the functions of the existing Ashford's Future Core Team. The existing team has been reviewed, and staff currently employed by ABC are in the process of being transferred (under the TUPE Regulations) to the new SPV where appropriate. It is anticipated that the SPV team will be fully operational by the Autumn 2008.

(6) The Managing Director Judith Armitt has been appointed and will take up post in June. Judith will be employed by Ashford Borough Council on an interim basis pending transfer to the SPV in the event that the Founder Partners agree to proceed with the proposed arrangements. Job roles have been developed for the other core staff in the SPV team. Where ABC employees are likely to have their contracts of employment transferred to the SPV, matters are being handled in line with TUPE Regulations and ABC's employment policies.

(7) There are currently informal arrangements operating in the Ashford's Future team whereby County Council officers work alongside members of the team to develop and deliver specific projects. This is particularly effective for transport projects. A similar arrangement of staff allocation is proposed for the SPV where necessary to strengthen project delivery and to ensure co-ordination with inter-related projects. For clarity, there are no plans to formally second or otherwise transfer the employment of any County Council officers to the SPV.

(8) The SPV team has been operating in transitional form since April 2008 to coincide with the start of the Growth Area Funding (GAF) 3 period, being fully operational by the Autumn. This is requiring work on a number of fronts, including finalising a number of documents, namely:

b) The non-binding Partnership Agreement between the four Founding Partners (Ashford Borough Council (ABC), the County Council, the Regional Development Agency (SEEDA), English Partnerships (EP)) to put the overall Ashford's Future Partnership on a more formal basis (see para 3(2) above);
c) The SPV company documents (see para 4(9) below);
d) The SPV Business Plan that will outline the activities that the SPV proposes to carry out in delivering aspects of the Programme for development;
e) Accountable Body Procedures that will detail the role, responsibilities and procedures to be undertaken by Ashford Borough Council in receiving and allocating GAF and other monies;
f) Financial Regulations and other procedural documents for the SPV.

<u>SPV Company Documents</u>

(9) The SPV Company documents comprise:

b) A Memorandum and Articles of Association for the Ashford SPV, and

c) A Members' Agreement between the four 'Founder Members' of the SPV (ABC, KCC, SEEDA, EP) to regulate their approach to the operation of the SPV.

(10) The Members Agreement is a document that requires that certain decisions can only be made by the unanimous agreement of the Members. In effect, this provides the County Council with a de facto veto for important matters. This list of decisions is set out in the Members' Agreement (and reproduced at Appendix 1) and includes matters such as: approving the company's draft Business Plan prior to submission to the AFPB for approval, agreeing any variation to the business or objectives of the company, agreeing to the admission of new members of the company, acquiring and disposing of land, applying for Planning consents, applying for grant funding and appointing private sector directors.

<u>SPV Membership Control</u>

(11) All Companies, including the SPV, are operated at two levels, that is, by the Members and the Directors. The Members of the Company are the owners of the Company and certain decisions can only be made by the Members. Such decisions include changing the objects and winding up of the Company. The Articles provide that new members may be admitted to the company; however this can only be done with the unanimous approval of the Founder Members, meaning that KCC would have an effective right of veto over the admission of new members. The County Council, as opposed to any individual, will be the Company Member. Clearly it would be impractical for all membership decisions to be the subject of formal reports to the County Council. It is therefore recommended that delegated authority is given to the County Council's representative on the AFPB to make certain Company Member decisions, in consultation with the Director of Law and Governance and Director of Finance.

<u>Directors Control</u>

(12) The second level of operation of a Company is via the Directors. Directors are appointed to manage the Company on behalf of the Members. As stated above, the documentation provides that the Directors of the Company will be four nominees of the Public Sector partners and up to four individuals from the private sector.

(13) This therefore establishes a 50/50 split between Private and Public sectors, although the Chair of the Board will be from the private sector and will have a casting vote. Director decisions will be made by simple majority.

(14) It is proposed that Directors should not have any direct financial interest in Ashford. Where there is any perceived conflict of interest, the private sector Directors will be expected to abstain from voting.

<u>The SPV Business Plan</u>

(15) The SPV Business Plan has been drawn up (and is currently in draft form) in response to the Programme for Development, and details the activities to be carried out by the SPV in delivering aspects of the PfD. The documents require the SPV to act in accordance with a Business Plan that has been given prior approval of the Members under the Members Agreement. The SPV Business Plan will be the subject of a further report to seek approval of the County Council.

Feedback and Approval from DCLG

(16) The Ashford's Future Team has been managing the interface between AFDB and DCLG, and we are assured that DCLG has been kept informed of developments and is satisfied with progress. The DCLG has already confirmed GAF funding of £23m for Ashford. The DCLG has confirmed its intention to meet the core operating costs of the SPV team in order for the SPV to be viable.

Implications for the County Council

Towards 2010

5. (1) The proposals support the delivery of a number of Towards 2010 targets, including (1) Jobs, (3) Town Centre Regeneration, and (40) Housing development and infrastructure.

Legal Issues

(2) The County Council's Director of Law and Governance is satisfied that the proposed legal documents adequately safeguard the County Council's position with respect to its participation in the proposed arrangements.

Financial implications

(3) The DCLG has indicated that the adoption of an SPV structure by the partners will be a pre-requisite for securing DCLG funding, and English Partnerships have indicated that it would be more likely to invest in the Ashford Growth Agenda if an SPV were in place. The SPV will be a company limited by guarantee, with each of the Founding Members liable for a contribution of £1 towards any debts that may be outstanding on the winding up of the company. The creation of an SPV on these terms does not, therefore, represent a direct financial risk to KCC, although it is possible that KCC may be asked to give specific financial guarantees to support the arrangements (albeit such obligations are likely to be shared equally between the four Founding Partners).

(4) Ashford Borough Council is the Accountable Body for GAF 3 government funding and other monies, and receives and holds the funding on behalf of the Founding Partners. Funds are then drawn down by partner organisations responsible for specific projects in delivering the Programme for Development.

(5) For projects where the County Council is the lead organisation, funding will be drawn down from ABC by the County Council in accordance with Accountable Body procedures and GAF 3 Funding Guidance. These monies are both outside and additional to the County Council's own budgets.

Partner roles, contributions and risks

(6) ABC has an Accountable Body role (see above), and acts as AFPB Chair. This is appropriate in terms of local accountability and there are safeguards in the company documents/Partnership Agreement about where funding should be prioritised and the approval mechanisms for the overall Programme for Development, which will ensure that other Founding Partners will have appropriate influence. The County Council intends to use its positive bilateral relationship with ABC to ensure that ABC does not in fact dominate or control AFPB to the County Council's detriment.

(7) It was anticipated that partners would contribute assets to the SPV, and that the SPV would attract private sector investment. Asset and other contributions to the SPV by the partners are not yet clear. SEEDA is currently exploring the most cost-effective way of making assets available to support delivery in Ashford. Officers consider that in order for the SPV to be effective, particularly in terms of delivering key town centre sites, it is essential that SEEDA's assets (especially those acquired with DCLG funding) are either donated or loaned to the SPV on terms agreed with the SPV and the Founder Members. The County Council's position is that it will only provide contributions in kind to the SPV, through the provision of dedicated specialist staff to deliver particular projects eg transport. It is not proposed to transfer funds from the County Council's base budgets to the SPV.

(8) Advice is awaited from SEEDA's consultants on tax and vat implications and the outcome of this advice will inform the final shape of the SPV to ensure that it is capable of meeting its original intentions ie to drive forward regeneration and infrastructure delivery but in the most tax efficient way.

Consultations

6. (1) Ashford Borough Council's Executive Committee approved the proposals on 6th March 2008.

(2) The broad terms of reference for the Partnership Agreement, SPV Board and SPV team were agreed by the AFDB at its meeting on the 13th December 2007.

(3) This matter was reported to the County Council's Environment and Regeneration Policy Overview Committee on 31st January 2008, where the POC gave in principle support to the establishment of the SPV, subject to funding being available to cover the costs.

Reporting

7. (1) The SPV will provide quarterly monitoring reports to the AFPB on the Programme for Development. Reports will include updates on project delivery with information on milestones, outputs, risks, issues to be addressed and budgetary information and such additional information as the AFPB may reasonably request from time to time.

(2) The KCC representative on the AFPB will have responsibility for ensuring there is appropriate co-ordination within KCC and will report to Cabinet on progress. The SPV Business Plan - which will define the scope of its activities - and Ashford's Future Programme for Development will also be reported to Members for approval. Approval of subsequent amendments to the Business Plan may be delegated to the representative of KCC as Founder Partner, such representative acting in consultation with the Director of Law and Governance and the Director of Finance.

(3) The County Council's normal democratic processes will therefore not be compromised.

(4) The process of developing the new arrangements has highlighted the need for a strengthening of the County Council's own procedures, business planning, reporting and decision-making in respect of the Ashford Growth Agenda. It is important to ensure that corporate objectives and resources are agreed prior to inputting to the Ashford Growth Agenda. Accordingly processes and procedures are being developed and Chief Officers will be responsible for ensuring their effective implementation.

Policy Framework

8. (1) The proposed decision is in accordance with the Policy Framework as set out in the Constitution.

Conclusions

9. (1) The proposals as detailed in this paper will help take forward the growth agenda in Ashford, enabling more effective delivery and reflecting the County Council's priorities. KCC is already heavily involved in supporting growth proposals in Ashford. The establishment of the SPV should help to ensure that KCC resources are more effectively deployed, together with an improvement in the collective capacity of the Ashford's Future Partnership to deliver a coherent and co-ordinated programme of projects and other activity to deliver growth in Ashford.

(2) The commitments and structures will provide robust governance arrangements, and should reassure Cabinet Members that the arrangements for the Ashford SPV incorporate the necessary safeguards.

(3) The Government's confidence in Ashford's ability to deliver growth through these new arrangements is being demonstrated by the securing of Growth Area Funding.

(4) The success of the new arrangements will depend largely upon the County Council's and other partners' level of engagement. It is important to ensure there is an integrated approach to the Growth Agenda across all Directorates. This is necessary in order to ensure the delivery of the County Council's commitments under the PfD, to allocate adequate resources in terms of funding and staffing, and also to protect KCC's service delivery interests. The developing KCC Regeneration Strategy should also provide the opportunity for the County Council to confirm its commitment and future contributions.

Recommendations

2. (1) Subject to resolution of the matters referred to in paragraph (2) below and subject to funding being made available by DCLG and/or other sources to cover the establishment and operating costs of the SPV: **Cabinet is requested:**

(b) to agree to the County Council becoming a Member of the Ashford's Future SPV;

(c) to authorise KCC's entry into a Partnership Agreement and Members' Agreement as outlined in this report;

(d) to make appointments to represent the County Council on the AFPB and of a representative to attend general meetings of the SPV and exercise the County Council's voting rights as a member of the SPV on behalf of the County Council;

(e) to delegate sufficient authority to such appointees to enable them fully to exercise the rights and discharge the duties relating to such appointments, acting as necessary of such in consultation with the Director of Law and Governance and Director of Finance;

(f) to nominate a Director on the SPV Board to manage the Company on behalf of the Company Members on such terms as the Director of Law and Governance shall approve.

(2) **To note** the following matters to be resolved:

(ii) The Director of Law and Governance to review and approve the proposed reporting regime of the SPV to the AFPB, and be satisfied this facilitates robust scrutiny by the AFPB of the Programme Management function; and

(ii) Approval of finalised arrangements by EP, SEEDA, DBERR (if required in respect of EP and SEEDA) and DCLG (in respect of all AFPB and SPV arrangements and in particular in respect of DCLG's funding of such arrangements).

(3) **To grant** delegated authority to the Managing Director of Environment and Regeneration in consultation with the Cabinet Member for Environment and Regeneration and the Director of Law and Governance to approve the final versions of the following documents on behalf of the County Council: the SPV Memorandum and Articles of Association, the Members' Agreement and the Partnership Agreement and authority for the Director of Law and Governance to execute those documents on behalf of the County Council.

(4) **To request** all County Council Managing Directors to consider the implications of the proposed Ashford's Future SPV and Programme for Development on their service areas.

(5) **To note** that a further report will be submitted seeking approval of the terms of the Ashford's Future Programme for Development and the SPV Business Plan.

Background Documents: Available from the Author below:

2. Partnership Agreement
3. Memorandum and Articles of Association
4. Members Agreement
5. Accountable Body Procedures – report to ABC Executive
6. Ashford's Future Programme for Development
7. The relationship between the AFPB and the SPV
8. The proposed SPV staffing structure
9. Genecon Report
10. Bell Report

11. Explanation of Terms:

ABC – Ashford Borough Council
AFDB - Ashford's future Delivery Board (current name for Partnership Board)
AFPB – Ashford's Future Partnership Board – new name for AFDB
DBERR – Department for Business Enterprise and Regulatory Reform
DCLG – Department for Communities and Local Government
EP – English Partnerships
Founder Members – public sector Members of the SPV (ie ABC, KCC, SEEDA, EP)
Founding Partners – relates to membership of Ashford's Future Partnership, and parties to Partnership Agreement (ie ABC, KCC, SEEDA, EP)
LDV – Local Delivery Vehicle (Government-sponsored body to deliver Growth Agenda in Growth Areas)
Partnership Agreement – Non-legally binding agreement between the Founding Partners
PfD – Programme for Development; document describing the intended delivery activities and outcomes for growth, by the Ashford's Future Partnership
SEEDA – South East England Development Agency

(AF) SPV – (Ashford's Future) Special Purpose Vehicle; the LDV proposed to be set up as a company limited by guarantee

12. Top 10 Priority Projects for the SPV

The following projects have been approved by the AFDB as priorities for ensuring delivery in the period 2008 to 2011:

- M20, Junction 9 and Drovers Roundabout
- Victoria Way
- Elwick Precinct
- Dover Place and Station Improvements
- Construction Skills Academy
- Enterprise Centre
- Marketing Strategy
- Broadband
- Sustainable Energy Supply
- Greenspace Infrastructure

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Appendix 1: “Material Matters” as defined in the Draft SPV Members Agreement

The following matters require the unanimous approval of all four Founding Members (ABC, KCC, SEEDA, EP):

2. The approval of, amendment to or variation of any Key Document.

3. Approving the Business Plan prior to adoption by the Company.

4. Approving any matter for which provision has not been made in relevant Business Plan for that Financial Year.

5. The approval of any matter which is outside the normal course of the Business;

6. The approval of, amendment to or variation the Financial Regulations.

7. Any variation to the Business and/or Objectives of the Company.

8. The admission of new members to the Company.

9. A variation to the maximum number of Directors to be appointed to the Board and the composition of the Board.

10. Any decision to waive the confidentiality restrictions imposed on any of the Founder Members or Directors under this Agreement.

11. The appointment or removal of any person as Managing Director and the terms of appointment of the Managing Director.

12. Determining whether any Director (or any person recruited to work for the Company) shall be entitled to remuneration or reimbursement of expenses in connection with the performance of his or her duties for the Board and determining the level and terms upon which such remuneration will be payable where such remuneration is outside the parameters of the Business Plan.

13. Forming any subsidiary of the Company, or acquiring any interest in any other company, partnership, limited partnership. limited liability partnership, trust or other body (incorporated or otherwise) and/or entering into joint ventures or partnerships.

14. Subject always to paragraph 17 of this Schedule acquiring, disposing or agreeing to acquire or dispose of (in each case) any freehold or leasehold interest in or licence over land (including the exercise of an option);

15. Entering into or making any contract, or incurring any capital expenditure with a total cost to the Company of more than [£x]. ***[DN: Parties to consider in conjunction with Financial Regulations]***

16. Taking any step which will result or may result in a winding up of the Company.

17. Making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or giving notice of the intention to appoint an administrator or filing a notice of appointment of an administrator unless in any case the Company is at the relevant time insolvent and the Founder Members reasonably consider (taking into account their fiduciary duties) that it ought to be wound up.

18. Disposing or charging any land or assets which were initially transferred to the Company by a Founder Member, or which were financed in whole or in part by a Founder Member.

19. Entering into (or agreeing to enter into) any borrowing arrangement and giving any security in respect of such borrowing.

20. Entering into any grant funding agreement.

21. Applying for Growth Area Fund monies and other funding.

22. Applying for planning consents and lodging appeals against planning authorities.

23. Altering:

2.0 the name of the Company;

3.0 the registered office of the Company;

4.0 the accounting reference date of the Company;

5.0 the place of business of the Company;

24. The categorisation of any Reserved Matter as a Material Matter.

25. The variation of any Reserved Matter and the approval of what constitutes a Reserved Matter, being such matters as cannot be delegated by the Board from time to time.

26. Any other matters which the Founder Members shall, with Member Approval, determine to be a Material Matter.

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