

AGENDA

Meeting: Cabinet
Place: Council Chamber - Council Offices, Browfort, Devizes
Date: Tuesday 19 April 2011
Time: 10.30 am

Membership:

Cllr John Brady	Cabinet Member for Economic Development, Planning and Housing
Cllr Lionel Grundy OBE	Cabinet Member for Children's Services
Cllr Keith Humphries	Cabinet Member for Health and Wellbeing
Cllr John Noeken	Cabinet Member for Resources
Cllr Fleur de Rhe-Philippe	Cabinet Member for Finance, Performance and Risk
Cllr Jane Scott OBE	Leader of the Council
Cllr Toby Sturgis	Cabinet Member for Waste, Property and Environment
Cllr John Thomson	Deputy Leader and Cabinet Member for Adult Care, Communities and Libraries
Cllr Dick Tonge	Cabinet Member for Highways and Transport
Cllr Stuart Wheeler	Cabinet Member for Leisure, Sport and Culture


Please direct any enquiries on this Agenda to Yamina Rhouati, of Democratic Services, County Hall, Trowbridge, direct line 01225 718024 or email yamina.rhouati@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

All public reports referred to on this agenda are available on the Council's website at www.wiltshire.gov.uk

Part I

Items to be considered while the meeting is open to the public

Key Decisions Matters defined as 'Key' Decisions and included in the Council's Forward Work Plan are shown as 

1. **Apologies**

2. **Minutes of the previous meeting** (*Pages 1 - 8*)

To confirm and sign the attached minutes of the Cabinet meeting held on 22 March 2011.

3. **Chairman's announcements**

4. **Declarations of Interest**

To receive any declarations of personal or prejudicial interests or dispensations granted by the Standards Committee.

5. **Public participation**

The Council welcomes contributions from members of the public. This meeting is open to the public, who may ask a question or make a statement. Written notice of questions or statements should be given to Yamina Rhouati of Democratic Services by 12.00 noon on Friday 15 April 2011. Anyone wishing to ask a question or make a statement should contact the officer named above.

'Deliver high quality, low cost, customer focused services'**

6. **South West UK Brussels Office - TUPE transfer of Wiltshire Council employees** (*Pages 9 - 16*)

Report of the Corporate Director, Neighbourhood and Planning is circulated

7. **Urgent Items**

Any other items of business, which the Chairman agrees to consider as a matter of urgency

Part II

Items during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

None.

CABINET

MINUTES of a MEETING held in ALAMEIN SUITE - CITY HALL, MALTHOUSE LANE, SALISBURY, SP2 7TU on Tuesday, 22 March 2011.

Cllr John Brady	Cabinet Member for Economic Development, Planning and Housing
Cllr Lionel Grundy OBE	Cabinet Member for Children's Services
Cllr Keith Humphries	Cabinet Member for Health and Wellbeing
Cllr Fleur de Rhe-Philippe	Cabinet Member for Finance, Performance and Risk
Cllr Jane Scott OBE	Leader of the Council
Cllr Toby Sturgis	Cabinet Member for Waste, Property and Environment
Cllr John Thomson	Deputy Leader and Cabinet Member for Adult Care, Communities and Libraries
Cllr Dick Tonge	Cabinet Member for Highways and Transport
Cllr Stuart Wheeler	Cabinet Member for Leisure, Sport and Culture

Also in Attendance:	Cllr Richard Beattie
	Cllr Richard Britton
	Cllr Richard Clewer
	Cllr Linda Conley
	Cllr Richard Gamble
	Cllr Mike Hewitt
	Cllr David Jenkins
	Cllr Jerry Kunkler
	Cllr Alan Macrae
	Cllr Bill Moss
	Cllr Jeff Osborn
	Cllr Mark Packard
	Cllr John Smale
	Cllr Anthony Trotman

36. **Apologies**

Apologies were received from Councillors John Noeken, Alison Bucknell and Laura Mayes

37. **Minutes of the previous meeting**

The minutes of the meeting held on 15 February 2011 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 15 February 2011

38. **Chairman's announcements**

The Leader made the following announcements:

The Leader congratulated to Wootton Bassett for becoming Royal Wootton Bassett. The Leader said she was very pleased to hear the news which was well deserved and added that the Council would be supplying the appropriate road signs.

Barbara Mills, Head of Legal Services, would be retiring at the end of the month. Barbara had worked for the Council for 20 years and the Leader thanked her for all her hard work and wished her well for the future.

39. **Declarations of Interest**

There were no declarations of interest.

40. **Public participation**

Ms Louise Cole, representing the National Deaf Children's Society, addressed the committee on concerns regarding provision of services for hearing impaired children in the County.

Mr Jeffrey Taylor addressed Cabinet on the report on the Aggregate Minerals Site Allocations DPD as referred to at minute no. 45.

41. **Cabinet Capital Assets Committee Minutes**

Cabinet received the minutes of the Cabinet Capital Assets Committee for 10 January and 7 February 2011. Some discussion ensued regarding section 106 agreements.

Resolved

That the minutes be noted.

42. **Transfer of NHS Wiltshire Public Health to Wiltshire Council under Section 75 Arrangements**

The Leader presented a report which set out the proposal for the transfer of Public Health services from NHS Wiltshire to Wiltshire Council.

Resolved

1. That the Cabinet agrees to proceed with a transfer of the current Public Health functions from NHS Wiltshire to the Wiltshire Council by way of, and to the extent permitted, by an arrangement under section 75 of the National Health Service Act 2006 and the relevant regulations, with a target date of September 2011, and to be an “early implementer” of the Health and Wellbeing Board.
2. That the authority to finalise that agreement be delegated to the Corporate Director of Public Health and Wellbeing following consultation with the Leader.
3. That the transition process is recognised in the Wiltshire Council Corporate and Business Plans.
4. That there be no additional costs to the Authority until the final transfer in 2013.

Reason for the decision

The Health and Social Care Bill (currently progressing through parliament) sets out the Governments intention to transform the delivery of health services in England. This Bill proposes, amongst a number of reforms, radical changes to the organisation of the commissioning and management arrangements for local health services. One of these reforms is the transfer of Public Health services from the NHS to local government.

43. **School Admissions Arrangements 2012/13**

Councillor Lionel Grundy Cabinet member for Children’s Services presented a report produced as part of the statutory process for the determination of admission arrangements to maintained schools. He said that this was an annual requirement and this year it had the addition of arrangements in respect of service families.

Resolved

That Cabinet approves:

1. the proposed scheme for the co-ordination of admission to secondary schools for 2012/13.
2. the proposed scheme for the co-ordination of admissions to primary schools for 2012/13.
3. the proposed admission arrangements for Voluntary Controlled & Community secondary schools for 2012/13.
4. the proposed admission arrangements for Voluntary Controlled & Community primary schools for 2012/13.

Reason for the decision

The Local Authority has a statutory duty to have a determined admission policy for 2012/13 in place on or before 15 April 2011.

44. **Submission Draft Waste Site Allocations Development Plan Document (DPD): Publication for formal consultation followed by submission to Secretary of State for Independent Examination**

Councillor John Brady, Cabinet member for Economic Development, Planning and Housing presented the report and drew attention to some amendments to the plan and covering report. He explained that following a consultation 43 suitable sites had been identified and the purpose of the report was to seek approval to publish a draft Waste Site Allocations DPD for formal eight week public consultation, followed by submission to the Secretary of State for Independent Examination.

During the debate members sought clarification regarding several of the selected sites.

Resolved

That Cabinet:

1. Approves the Submission Draft Waste Site Allocations DPD for publication for an eight week formal consultation to commence in May/June.
2. Endorses the Waste Site Allocations Proposed Submission Draft and recommends that Full Council approves the document for the purpose of submission to the Secretary of State, subject to there being no representations which, in the opinion of the Director for Economy and Enterprise in consultation with the Cabinet Member, raise fundamental issues on the soundness of the Strategy.

- 3. Authorises the Director for Economy and Enterprise, in consultation with the Cabinet Member, to make any necessary amendments to the Core Strategy in the interests of clarity and accuracy before it is published, and to make the arrangements for consultation.**

Reason for the decision

To ensure that an up-to-date waste policy framework is in place for Wiltshire in line with the requirements set out in the Council's Local Development Scheme.

45. **Aggregate Minerals Site Allocations DPD: Results of Recent Consultation on Initial Site Options**

Public Participation

Mr Jeffrey Taylor spoke on behalf of The Bromham Quarry Campaign

Councillor John Brady, Cabinet member for Economic Development, Planning and Housing presented the report which noted the progress made and confirmed site options which are excluded from further consideration and also those that are suitable to be carried forward. Further assessments would be taking place and it was confirmed that the results of these would be available of the Council's website.

Resolved that:

- 1. The site options contained within Tables 1 and 2 of Appendix 1 of the report are excluded from further consideration.**
- 2. Those site options contained within Table 3 of Appendix 1 of the report are subject to further assessment to gather sufficient information for officers to make a recommendation.**
- 3. Targeted consultation is undertaken on the Petersfinger site submitted during the consultation.**
- 4. On the basis of the detailed assessments, a local figure for aggregate provision in Wiltshire and Swindon is produced and the Director of Economy and Enterprise and Cabinet Member, in consultation with their counterparts in Swindon, should write to SWRAWP and central government notifying them of the provision that can be met for the period to 2026.**

Reason for the decision

To ensure that an up to date and appropriate level of provision for sand and gravel extraction can be established for Wiltshire and Swindon, in accordance with national policy. Once adopted, the Aggregate Minerals Site Allocations DPD will form part of the Council's policy framework.

46. **Revenue Budget Monitoring**

Cllr Fleur de Rhe-Philipe, Cabinet Member for Finance, Performance and Risk presented a report which advised Cabinet of the revenue budget monitoring position as at 31 January 2011 for financial year 2010-11.

It was noted that there was an ongoing reduction in the projected overspend

Resolved

To note the report showing a forecast overspend of £0.960m which remains in line with the Council's financial plan.

Reason for the decision

That members can approve the financial position of the Council at the continued corporate approach to managing the financial pressures and government reductions ahead of the final outturn for 2010-11

47. **Urgent Items**

There were no urgent items.

48. **Exclusion of the Press and Public**

Resolved:

That in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in minute number 49 below as it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraphs 3 & 4 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

49. **Future support for Tourist Information Centres**

Cabinet considered a confidential report outlining proposals for the future support of Tourist Information Centres.

Resolved:

To agree the proposals set out in the report as amended.

Reason for the decision

To implement the next stage of the process agreed at the January Cabinet

(Duration of meeting: 10.30 – 12.40)

These decisions were published on 29 March 2011 and will come into force on 6 April 2011
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The Officer who has produced these minutes is Yamina Rhouati, of Democratic Services, direct line 01225 718024 or e-mail yamina.rhouati@wiltshire.gov.uk
Press enquiries to Communications, direct line (01225) 713114/713115

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Wiltshire Council

Cabinet

19 April 2011

Subject: South West UK Brussels Office – TUPE transfer of Wiltshire Council employees

**Cabinet Member: Councillor John Brady
Economic Development, Planning and Housing**

Key Decision: No

Executive Summary

The Council has been a member of the South West UK Brussels Office (SWUKBO) Partnership since its inception in 2001 and took on the Secretariat function from Somerset County Council in April 2010 which involves employing the SWUKBO staff on behalf of the South West UK Partnership. The Partnership has recently agreed to set up the office as a social enterprise (company limited by guarantee). An agreement in principle has been reached with partners to transfer to that company when formed the service that is now performed by the Partnership and, consequently by operation of TUPE, the staff engaged in the delivery of that service and who are currently employed by Wiltshire Council.

The new company is in the process of being established and registered. Whilst further due diligence and consultation with staff and trade union representatives is required before the service can be transferred, progress has been made in identifying the level of funding and other support that can be made available to the new company. Care has been taken to ensure that such funding helps the SWUKBO to meet the objectives in its business plan.

Subject to final agreement the service transfer would result in the transfer of up to four employees of Wiltshire Council to the new company under TUPE Regulations – Transfer of Undertakings (Protection of Employment) Regulations 2006.

Proposals

That Cabinet:

- (i) Agrees further consultation with staff and trade union representatives and due diligence leading to the TUPE transfer of staff from Wiltshire Council to the new South West UK European Partnership Company.

- (ii) Delegates authority to the Service Director Economy and Enterprise to progress and conclude the transfer of the Council's employees as required.

Reasons for Proposals

- (i) The South West UK Brussels Office has been viable in its current form owing to 50% funding being made available by the South West Regional Development Agency (SWRDA) which was withdrawn from 31 March 2011. A new model has therefore been developed to enable the service to continue in the absence of such funding.
- (ii) Further due diligence and consultation with staff and trade unions in respect of the TUPE transfer of staff to the new company will help to reassure Wiltshire Council that any risks to either the Council or its staff have been minimised and to help identify those staff that are willing to be transferred. Wiltshire Council's Constitution requires Cabinet to approve the transfer of Wiltshire Council employees to other Councils or organisations.

Mark Boden
Corporate Director, Neighbourhood and Planning

Wiltshire Council

Cabinet

19 April 2011

Subject: South West UK Brussels Office – TUPE transfer of Wiltshire Council employees

**Cabinet Member: Councillor John Brady
Economic Development, Planning and Housing**

Key Decision: No

Purpose of Report

1. The purpose of this report is to seek approval to undertake further consultation with staff and trade union representatives leading to the TUPE transfer of staff from Wiltshire Council to the new company established to take on the work of the South West UK Brussels Office.

Background

2. Wiltshire Council has been a member of the South West UK Brussels Office (SWUKBO) Partnership since its inception in 2001. The purposes of the SWUKBO are:
 - to ensure the South West has a clear voice in Europe, that its interests are heard and its potential explored;
 - to relay information about developments on the European level of relevance and benefit to the region;
 - to develop transnational links and opportunities for co-operation with other European regions.
3. The work of the SWUKBO is important to Wiltshire Council. In the last three years the authority has secured in excess of £10 million of European funding to support various corporate and partnership projects and the Council's membership of the SWUKBO Partnership has been a contributory factor in this success.
4. Partners entered into a new Partnership Agreement in 2005 which delegates the responsibility of managing the functions of the SWUKBO to specific partners. In return, the partners pay varying contributions to the annual budget of SWUKBO. In Wiltshire Council's case this is circa £15,000 per annum.

5. Somerset County Council (SCC) is the current Leasing Authority and takes on all liability of SWUKBO's office premises on behalf of the Partnership. All costs incurred by SCC to rent the premises are chargeable to the budget of the Management Board of SWUKBO and handled by SCC.
6. Since April 2010, Wiltshire Council has been the Secretariat and responsible for the staffing arrangements of the office, including appointing staff and setting terms and conditions of employment or making any necessary variations. All costs incurred by the Secretariat in making and implementing such arrangements are chargeable to the budget of the Management Board of SWUKBO. The office currently employs four permanent members of staff who are on TUPE terms and conditions from SCC. Two agency workers are also currently employed by SWUKBO on weekly agency contracts.

Main Considerations for the Council

7. In October 2010 the Management Board of SWUKBO commissioned an Options Appraisal to examine the possible future of the organisation. This was initiated to respond to three scenarios:
 - **Practical alternatives:** if the SWUKBO closed, each member would have to source alternative providers of services to connect them with EU opportunities. Local Authorities may already have officers with European responsibilities although additional capacity would be required (particularly in relation to a Brussels presence).
 - **Financial – national:** public sector cuts mean 'thinking differently' in resourcing organisations and services. For previously grant-funded organisations there is a simple choice:
 1. Close or reduce capacity to fit the availability of any continued grant funding; or
 2. Restructure to maximise any continued grant funding and earn income from service delivery.
 - **Financial – SWUKBO:** with the imminent closure of the South West Regional Development Agency (SWRDA) and pressures on local authorities, the grant income will decrease significantly in this financial year. There are, however, reserves to enable the organisation to restructure (if it wishes) during 2011.
8. A Business Plan has been prepared by consultants on behalf of the Partnership and agreed at the Management Board meetings of 18 February and 31 March. This clearly plots the transitional arrangements to the new company and sets out a new enterprise, contract fee-based model. Workplan delivery will be agreed with all clients and will be either annual work plans or project based work plans, tailored to the client.

9. As a consequence of the transfer of the service from the Partnership as part of the transition to a social enterprise, the staff currently employed by Wiltshire Council on behalf of the partnership would transfer under TUPE Regulations to the new company. It is envisaged that the transfer would be completed by summer 2011, subject to consultation with trade unions and affected staff, the transferee being established and due diligence being carried out.
10. The social enterprise will be a company limited by guarantee with nominal share value of £1 per member. Any organisation purchasing services from the company, and wishing to have an involvement in the Partnership beyond the client-contractor relationship, can be a member.

Environmental and Climate Change Considerations

11. There are no environmental or climate change impacts from this proposal.

Equalities Impact of the Proposal

12. There are no negative impacts from this proposal as terms and conditions will be preserved as part of the TUPE process.

Risk Assessment

13. Officers will undertake due diligence to understand the potential HR, legal and financial risks associated with this project if this proposal is approved. Early discussions with staff has demonstrated support from staff for the proposed TUPE transfer.

If the proposed decision is not taken:

- SWUKBO would need to be closed down by December 2011, when the reserves would have been largely spent and there is a break point on the office lease. It is not viable financially under current arrangements.

If the proposed decision is taken:

- Wiltshire Council would no longer be responsible for the Secretariat function but would continue to be an active member of the Partnership and benefit from the services of the new company.

Financial Implications

Management fee

14. The Council currently receives an annual management fee in the region of £15,000 for providing the Secretariat function. This will no longer be received following TUPE. However, there would be no requirement to deliver the secretariat function so this does not represent a net loss of income to the Council.

TUPE Transfer cost

15. The Partnership has agreed to pay the full management fee in the region of £15,000 to Wiltshire Council for carrying out the Secretariat responsibilities for the first part of 2011/12 which will cover the TUPE costs should this proposal be approved. An administration fee of £2,500 will be payable for the recalculation of pension contributions.
16. As a consequence of the transfer of the four current Wiltshire Council staff under TUPE, the Council, as a Best Value Authority, is required under statute to protect the current pension provision of these staff. The Council plans to set up the new company as an Admitted Body in the Wiltshire Pension Fund in order to achieve the protection required and to allow the staff to have access to continued LGPS pension provision. The financial implications relating to pensions will require further work prior to TUPE.

Legal Implications

17. Legal and HR Officers will conduct due diligence into the proposed transfer. The current issues have already been identified:

HR / Employee Implications

- (i) The employees remain on their SCC terms and conditions and we do not anticipate any harmonisation of their terms and conditions prior to transfer. A comprehensive TUPE consultation process is planned in order to both inform and consult with the trade unions recognised by Wiltshire Council followed by collective and individual consultations with those affected employees. We will work closely with both the HR and Legal representative of the new European Partnership once appointed in complying with our legal obligations under the TUPE Regulations.
- (ii) We are currently in discussions with our tax advisers to address the ongoing issue with the HMRC in relation to the fixed exchange rate we inherited from SCC. Additionally, we are seeking to address the matter of E forms and the correct process to follow in securing health cover for employees when their E certificates expire.

Commercial Implications

- (i) The service transfer document will contain the usual TUPE indemnities making Wiltshire Council liable for employee issues prior to their TUPE transfer and the new company liable for those after.
- (ii) As the new company will be an independent company, the Council will not be able to award work to it directly. The award of contracts for services provided by the new company will be governed by the Council's Contract Regulations and, if the relevant value threshold is exceeded, the Public Contract Regulations.

Options Considered

18. Doing nothing is not an option as the SWUKBO is no longer financially viable following the termination of funding from the SWRDA.

Conclusions

19. Wiltshire Council cannot continue to be the Secretariat for SWUKBO due to the withdrawal of funding from SWRDA which has made current arrangements unviable. The setting up of a social enterprise which can continue to provide the services offered by SWUKBO has been approved in principle by the Partnership. The TUPE transfer of existing staff is an integral part of the success of such a venture.

Mark Boden
Corporate Director, Neighbourhood & Planning

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Service Director – Economy & Enterprise

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The following unpublished documents have been relied on in the preparation of this Report:

Future of the South West Brussels Office – Transition Support: Stage 2
Business Plan Preparation

Appendices:

None

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