

AGENDA



- Committee - **CABINET**
- Date & Time - Tuesday, 24 July 2012 at 6.30 pm
- Venue - Council Chamber, Council Offices, Priory Road, Spalding

Membership of the Cabinet:

Councillors: G A Porter (Leader of the Council), C N Worth (Deputy Leader of the Council), P S Przyszlak (Deputy Leader), M G Chandler, R Gambba-Jones, H R Johnson, C J Lawton and G J Taylor

No substitutions permitted. Revised quorum 4.

Note: Cabinet reports may be referred to Council or Scrutiny Panels. They should therefore be kept for future reference during the current committee cycle.

Persons attending the meeting are requested to turn mobile telephones to silent mode

Member Services
Council Offices, Priory Road
Spalding, Lincs PE11 2XE

Date: 16 July 2012

AGENDA

1. Apologies for absence.
2. Minutes (Pages 1 - 10) - To sign as a correct record the minutes of the meeting of the Cabinet held on 19 June 2012 (copy enclosed).
3. Declarations of Interest.
4. Questions raised by the public under Cabinet Procedure Rule 2.4.
5. To consider any matters which have been subject to call-in.
6. To consider matters arising from the Policy Development and Performance Monitoring Panels in accordance with the Overview and Scrutiny Procedure or the Budget and Policy Framework Procedure Rules.
 - a) Final Report of the Community Interest and other Local Authority Companies Task Group (Pages 11 - 38) - To report on the recommendations of the Performance Monitoring Panel on work undertaken by the Community Interest and other Local Authority Companies Task Group. (Report of the Community Interest and other Local Authority Companies Task Group enclosed.)
 - b) Final Report of the Red Lion Quarter Task Group (Pages 39 - 102) - To report on the recommendations of the Performance Monitoring Panel on work undertaken by the Red Lion Quarter Task Group. (Report of the Red Lion Quarter Task Group enclosed.)
7. Refresh of Corporate Plan for 2012/13 (Pages 103 - 106) - For approval. (Joint report of the Portfolio Holder for Internal services, Performance and Business Development and the Assistant Director Democratic Services enclosed.)
8. CCTV Service Improvements - To agree options for improved CCTV Services in South Holland. (Joint report of the Deputy Leader of the Council and Portfolio Holder for Localism and Big Society and the Interim Community Development Manager to follow.)
9. Council Tax Support Scheme - To agree proposed consultation of the scheme. (Joint report of the Portfolio Holder for Strategic Finance and Democratic Services and the Assistant Director Commissioning to follow.)
10. Any other items which the Leader decides are urgent. -

Note: (i) No other business is permitted unless by reason of special circumstances, which shall be specified in the Minutes, the Leader is of the opinion that the item(s) should be considered as a matter of urgency.

(ii) Any urgent item of business that is a key decision must be dealt with in accordance with paragraphs 15 and 16 of the Constitution's Access to Information Procedure Rules.

11. To consider resolving that, under section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 of part 1 of Schedule 12A of the Act.
12. Construction Services Unit (CSU) Proposed Restructure (Pages 107 - 120) - To obtain approval to proceed with the proposed CSU restructure. (Joint report of the Portfolio Holder for Housing Landlord and the Interim Housing Manager enclosed.)

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Minutes of a meeting of the **CABINET** held in the Council Chamber, Council Offices, Priory Road, Spalding, on Tuesday, 19 June 2012 at 6.30 pm.

PRESENT

G A Porter (Leader of the Council)

M G Chandler

R Gambba-Jones

H R Johnson

C J Lawton

P S Przyszlak (Deputy Leader)

G J Taylor

C N Worth (Deputy

Leader of the Council)

Chief Executive, Assistant Director Democratic Services, Interim Housing Manager, Property Asset Manager and the Member Services Officer (Cabinet).

Apologies for absence were received from or on behalf of Councillors R Grocock and A R Woolf, together with Lisa Barwell (South Holland Citizens Advice Bureau), Maureen Scantlebury (Welland Seniors Forum), Douglas Sim (Holbeach Seniors Link) and Jason Rooke (Business Organisations).

In Attendance: Councillors B Alcock, A M Newton and G R Aley, and the Business Development Manager.

Community Representatives: Reginald William George Boot (Parish Councils) and Ladey Adey (Lincolnshire Citizens Advice Bureau).

1. **MINUTES**

The minutes of the meeting held on 3 April 2012 were signed by the Leader as a correct record.

2. **DECLARATIONS OF INTEREST**

There were none.

3. **QUESTIONS RAISED BY THE PUBLIC UNDER CABINET PROCEDURE RULE 2.4.**

No questions were raised by the public under Cabinet Procedure Rule 2.4.

4. **MATTERS WHICH HAVE BEEN SUBJECT TO CALL-IN**

There were no matters subject to call-in.

5. **MATTERS ARISING FROM THE POLICY DEVELOPMENT AND PERFORMANCE MONITORING PANELS**

There were no matters arising from the Policy Development and Performance Monitoring Panels.

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6. APPOINTMENT TO PANELS AND WORKING PARTIES

Consideration was given to the report of the Assistant Director Democratic Services on the recent recommendations of the Council in respect of the appointment of Panels and Working Parties etc. The Cabinet was invited to determine whether such Panels or Working Parties falling under the delegated authority of the Cabinet should be re-established and, if so, to determine their terms of reference and composition. Full details of the Panels and Working Parties referred to Cabinet by full Council together with their existing terms of reference and composition were set out within the report.

DECISION:

a) Sustainable Communities Steering Group

That the Sustainable Communities Steering Group be re-established for the municipal year; no alterations be made to its composition and substitutions be permitted where members form part of a political group subject to (i) substitutions applying for individual meetings only and (ii) the group leader or nominated representative submitting details to the Assistant Director, Democratic Services by noon on the day of the meeting, or at least 3 hours before the meeting, whichever is the sooner. (Composition to be Councillors B Alcock, G R Aley, F Biggadike, C J T H Brewis, A Casson, R J H Creese, R Gambba-Jones, M Howard, H R Johnson, S Keeble, R M Rudkin and D J Wilkinson.)

b) Housing Allocations Appeal Panel

That the Housing Allocations Appeal Panel be re-established for the municipal year without amendment to its terms of reference or composition; and no substitution arrangements be permitted other than those already detailed in the composition. (Composition to be the Housing Strategic Lead Portfolio Holder, the Leader of the Opposition and one other councillor selected by the appropriate officer (currently the Housing Manager).)

c) Discretionary Housing Payments Review Board

That the Discretionary Housing Payments Review Board be re-established for the municipal year without amendment to its terms of reference or composition; and no substitution arrangements be permitted other than those already detailed in the composition. (Composition to be the Housing Strategic Lead Portfolio Holder, the Leader of the Opposition and one other councillor selected by the appropriate officer (currently the Assistant Director Democratic Services).)

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d) ICT Member Working Group

That the ICT Member Working Group be re-established for the municipal year without amendment to the terms of reference and without amendment to the composition; that substitution arrangements apply (including for the Portfolio Holder for Internal Services Performance and Business Development) where members form part of a political group subject to (i) substitutions applying for individual meetings only and (ii) the group leader or nominated representative submitting details to the Assistant Director Democratic Services by noon on the day of the meeting, or at least 3 hours before the meeting, whichever is the sooner. (Composition to be Councillors G R Aley, M G Chandler, A Puttick, Portfolio Holder for Internal Services Performance and Business Development, S M Booth, R Perkins and S Wilkinson.)

e) Internal Drainage Board (IDB) Liaison Arrangements Sub-Group

That the IDB Liaison Arrangements Sub-Group be re-established for the municipal year without amendment to its terms of reference or composition; that substitution arrangements apply (including for the Portfolio Holder for Strategic Finance and Democratic Services) where members form part of a political group subject to (i) substitutions applying for individual meetings only and (ii) the group leader or nominated representative submitting details to the Assistant Director Democratic Services by noon on the day of the meeting, or at least 3 hours before the meeting, whichever is the sooner; and that Councillors E J Sneath, A M Newton and the Portfolio Holder for Strategic Finance and Democratic Services be appointed to the Sub-Group.

f) Corporate Equalities Working Group

That the Corporate Equalities Working Group be re-established for the municipal year without amendment to its terms of reference or composition; and that substitution arrangements apply subject to (i) substitutions applying for individual meetings only and (ii) the group leader or nominated representative submitting details to the Assistant Director Democratic Services by noon on the day of the meeting, or at least 3 hours before the meeting, whichever is the sooner. (Composition to be the Deputy Leader of the Council (Councillor C N Worth) and appropriate officers.)

(Other options considered:

- Whether or not to re-establish each Panel or Working Party;
- Whether or not to amend each Panel or Working Party's terms of reference;
- Whether or not to amend each Panel or Working Party's composition; and
- Whether or not to allow substitution arrangements to apply.

Reason for decision:

- The Panel and Working Groups recommended for re-appointment have a future role to perform in advising the Cabinet or making decisions under delegated authority.)

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7. Q4 2011/12 PERFORMANCE MONITORING REPORT

Consideration was given to the joint report of the Portfolio Holder for Internal Services, Performance and Business Development and the Assistant Director Democratic Services which provided information on the fourth quarterly performance monitoring report covering the period 1 January to 31 March 2012, a copy of which was attached as Appendix A within the report.

Councillor G J Taylor advised that Breckland District Council were taking on the same format as South Holland District Council regarding performance monitoring.

The Chief Executive stated that, in terms of monitoring performance, when the present Government came into power a lot of the national indicators were stripped. However, the Council was still continuing to use them and he has discussed with managers the possibility of reviewing them. He suggested that the Portfolio Holders may wish to liaise with their managers to review their performance indicators to ensure they remained meaningful.

DECISION:

- a) That the report be received;
- b) That Portfolio Holders and managers liaise and review their performance indicators;
- c) That it be noted that performance monitoring would be reported on by portfolio from now on; and
- d) That future reports would be by exception only, to cover:
 - Projects that were not on track;
 - Performance indicators that were consistently below target;
 - High risks; and
 - Audit recommendations that had not been actioned.

(Other options considered:

- To continue to report at the in-depth level provided in Appendix A within the report;
- To we report by exception, which would also include commentary on any actions/plans put in place by the Programme Board in regard to any areas of concern and include, within the body of the report, 'Good News' on key positive outcomes; and
- To identify a third format for implementation from Q1 2012/13.

Reason for decision:

- As performance was managed:
 - At appropriate intervals by the owners of each project/PI/Risk/Audit Recommendation;
 - Monthly at Service/Portfolio Level by Managers/Executive Members; and
 - Quarterly through the Programme Board.

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- Reporting to Overview and Scrutiny, Audit and Cabinet could focus on exceptions in order to allow the most efficient use of the time available in committee meetings.)

8. QUARTERLY FINANCE MONITORING REPORT COVERING THE PERIOD 1ST JANUARY TO 31ST MARCH 2012

Consideration was given to the joint report of the Portfolio Holder for Strategic Finance and Democratic Services and the Assistant Director Finance (S151) which provided information on the on the fourth quarterly financial monitoring report covering the period 1 January to 31 March 2012.

DECISION:

That the report be received;

RECOMMENDED TO COUNCIL:

- a) That the draft year end position on the 2011/12 revenue budget be noted and approved;
- b) That the recommendations and note the year end position on the 2011/12 Housing Account be approved;
- c) That the recommendations be approved and the 2011/12 year end position for the Council's specific reserves be noted;
- d) That the year end position for the Council's 2011/12 Treasury outturn be noted;
- e) That the Capital recommendations shown for the Capital programme Outturn 2011/12 and Capital Programme 2012/13 be approved; and
- f) That the Spalding Special Expenses draft outturn and the transfer of the draft proposed underspend to the Spalding Special Reserve be approved.

(Other options considered:

- To approve the recommendations with amendments; and
- Not to approve the recommendations.

Reason for decision:

- Retrospective report for financial year 2011/12.)

9. WRITE OFFS

Consideration was given to the joint report of the Portfolio Holder for Strategic Finance and Democratic Services and the Assistant Director Finance (S151) which sought approval to write off irrecoverable debts.

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Members considered that the decision be delegated, and the report should be discussed fully and in confidential session, during the meeting of full Council on 27 June 2012. Legal advice was sought on the reason why write-offs could not be discussed openly.

DECISION:

That legal advice be sought, explaining the reason why write-offs could not be discussed openly.

RECOMMENDED TO COUNCIL:

That the following debts be approved for write-off:

- Council Tax - £8,085.21
- Non Domestic Rates - £6,643.22
- Sundry Debtors - £19,100.25
- Former Tenant Arrears - £17,762.47
- Housing Benefit Overpayment - £2,886.21
- Total - £54,477.36

(Other options considered:

- To approve the recommendations; and
- To approve the recommendations with amendments.

Reason for decision:

- All recovery methods available had been considered and where appropriate pursued before making the decision to write-off.)

10. EXCLUSION OF PRESS AND PUBLIC

DECISION:

That, under Section 100A(4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 3 of Part I of Schedule 12A of the Act.

11. GYPSY AND TRAVELLER SITE

Consideration was given to the joint report of the Portfolio Holder for Housing Landlord and the Interim Housing Manager which sought consideration of the available options for providing a site as a replacement for the existing unauthorised site at Broad Drove, Gosberton Clough.

DECISION:

- a) That officers investigate an alternative parcel of land to the north of the site proposed but served by the same highway and, if such land was available, to pursue as detailed within the report;

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- b) That delegated authority be granted to the Asset and Property Manager to enter into an Option Agreement for the conditional purchase of the site, and for any matters arising, following discussion with the Portfolio Holder for Economic Development, Commercial Assets and Strategic Planning, subject to the conditions stated in Appendix B within the report, and the Option Agreement to be conditional upon Planning Permission for the site being granted;
- c) That delegated authority be granted to the Housing Manager, following discussion with the Portfolio Holder for Housing Landlord, to submit a planning application for the site and for any matters arising;
- d) That subject to planning permission being granted for the site, delegated authority be granted to the Asset and Property Manager to exercise the Option Agreement and to complete the purchase of the site, and for any matters arising, following discussion with the Portfolio Holder for Economic Development, Commercial Assets and Strategic Planning, subject to the conditions stated in Appendix B within the report;
- e) That, subject to planning permission being granted for the site, delegated authority be granted to the Housing Manager, following discussion with the Portfolio Holder for Housing Landlord, to award a works contract for the development and construction of the new site and for any matters arising, subject to the following:
 - A compliant and robust procurement process being followed for the award of the contract;
 - The accepted price for the work being within budget; and
 - The development of the site to be on a “like for like” basis, as set out in the “Development Options” section within the report.
- f) That the development proposals, as detailed within Option 2 within the report, be adopted; and
- g) That upon completion of the new site the land be conveyed to the Travellers currently living on the unauthorised site at Broad Drove, Gosberton Clough, and/or with a legal interest in it, in exchange for the land they currently occupy and/or have a legal interest in at Broad Drove, Gosberton Clough. The relocation of residents to be conditional upon the legal exchange having taken place. The relocation of residents to take place on one day. Final arrangements to be delegated to the Housing Manager through discussion with the Portfolio Holder for Housing Landlord.

(Other options considered:

- To approve the recommendations with amendments; and
- Not to approve the recommendations.

Reason for decision:

- To enable the Council to acquire land suitable for the development of a Gypsy and Traveller site to replace the existing unauthorised site at Broad Drove, Gosberton Clough;

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- To enable a specification of work to be agreed prior to acquiring the land in order that all associated risks could be identified and acknowledged;
- To avoid the need for land acquisition by means of a Compulsory Purchase Order in order to reduce the timescales and costs involved; and
- To ensure sufficient budget was available for the delivery of the remaining sites.)

12. COUNCIL HOUSE BUILDING

Consideration was given to the joint report of the Portfolio Holder for Housing Landlord and Interim Housing Manager which sought consideration of options available for a programme of building new homes.

DECISION:

- a) That delegated authority be granted to the Property Asset Manager (HRA), following discussion with the Portfolio Holder for Housing Landlord, to make compensation payments to existing tenants for the removal of an area of their garden land from their tenancy, provided that:
 - It had been established that the land had development potential;
 - The tenancy agreement was amended to reflect the reduced area of garden land;
 - That in the case of compensation payable to tenants with rent arrears, the compensation be credited to the rent account, with only the remaining funds being paid to the tenant;
 - The payment of such compensation would not exceed the allocated budget for land acquisition; and
 - Compensation payments be set at, the rate detailed within the report plus RPI, regardless of the size of land being acquired.
- b) That the provisional 5 year programme of “new build” contained within the report be approved, subject to the levels of surpluses predicted being available and subject to Full Council approving the HRA Capital budgets;
- c) That the HRA Capital budgets, as detailed within the report, be approved and recommended for approval by full Council;
- d) That officers explore the possibility of bringing forward some of the expenditure into the current financial year;
- e) That the dwellings to be developed in 2012/13 and 2013/14 be constructed to meet current Building Regulations only;
- f) That build standards for dwellings to be developed after 2013/14 be delegated to the Housing Manager in discussion with the Portfolio Holder for Housing Landlord and the Portfolio Holder for Strategic Finance and Democratic Services;

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- g) That delegated authority be granted to the Housing Manager in discussion with the Portfolio Holder for Housing Landlord to procure contracts for the construction work for each site for 2012/13 to 2013/14 through advertisement on suitable web-based publications, subject to the scheme costs being within budget, and within Official Journal of the European Union (OJEU) threshold limits to enable a list of contractors to be developed to be invited to tender for future schemes, and the Housing Manager be authorised to deal with any matters arising;
- h) That contractors, with whom the Council has had previous positive experience for new build properties, be alerted to such advertisements;
- i) That delegated authority be granted to the Housing Manager in discussion with the Portfolio Holder for Housing Landlord to review and amend the annual programme of new build, provided that the schemes each year remained within budget;
- j) That prior to inviting tenders for construction work, a ground investigation be carried out to establish what type of foundations were required for each site;
- k) That officers explore opportunities to work closely with Parish Councils and other partners;
- l) That officers explore opportunities to work in partnership with private sector developers for Council owned sites within existing development boundaries;
- m) That the Housing Manager consider the resource implications for the Property Services team in light of the proposed new build programme;
- n) That the Housing Manager review the benefits of using South Holland Homes in connection with future schemes; and
- o) That the agreement with the Secretary of State for Communities and Local Government relating to Right To Buy receipts be signed and returned forthwith, by 12 noon on 27 June 2012.

(Other options considered:

- To approve the recommendations with amendments; and
- Not to approve the recommendations.

Reason for decision:

- To enable a programme of new build Council housing to commence as soon as possible;
- To enable the acquisition of Council house garden land for future developments;
- To provide budgets to enable a rolling programme of new Council house building; and
- To enable the Council to retain an element of Right To Buy receipts to fund future new build Council housing.)

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(The meeting ended at 7.30 pm)

(End of minutes)

These minutes are published on Friday 22 June 2012. In accordance with the Council's Constitution the DECISIONS detailed above will, unless otherwise stated, come into force and may then be implemented on Monday 2 July 2012 (i.e. after the expiry of 5 working days from the date of publication of these minutes), unless during that period a notice which is signed by at least one member of the Council and complies with the requirements of Rules 15(b), (c) and (d) of the Overview and Scrutiny Procedure Rules is served on the Assistant Director Democratic Services requesting that the decision be called-in and the Assistant Director Democratic Services approves the request for call-in. Where a decision is called-in it will firstly be considered by the Performance Monitoring Panel on a date to be fixed.

Any FINAL DECISIONS and any URGENT DECISIONS take effect immediately.

Any RECOMMENDATIONS TO COUNCIL detailed above will be submitted for consideration to the meeting of the full Council on Wednesday 27 June 2012.

SOUTH HOLLAND DISTRICT COUNCIL

Report of: The Community Interest and other Local Authority Companies Task Group

To: Cabinet – 24 July 2012

(Author: Vicky Thomson – Assistant Director Democratic Services)

Subject: Final Report of the Community Interest and other Local Authority Companies Task Group

Purpose: To present the Final Report of the Community Interest and other Local Authority Companies Task Group

Recommendation:

That the recommendations of the Community Interest and other Local Authority Companies Task Group be considered.

1.0 BACKGROUND

1.1 The Performance Monitoring Panel established the Community Interest and other Local Authority Companies Task Group on 5 July 2011. It commenced its work on 17 October 2011.

1.2 The aim of the Task Group was to review the Council's involvement in Community Interest and other Local Authority Companies, with particular reference to:

- When is it appropriate for the Local Authority to establish a company and which type of company?
- How are Directors appointed to the Company and for how long should appointments be?
- Are Directors' appointments reviewed, and if so how?
- Training, preparation and remuneration for Councillors appointed as Directors (including declarations of interest)
- Responsibilities and liabilities of Directors
- Role of Members as shareholders
- Mechanism for reporting Company performance
- Process for accountability to the Council
- What are the potential risks to the Council?
- Inter-relationship between the interests of the Companies and those of the Council.
- Responsibility of the Board
- How are Directors appointed to a Company, and by whom?
- At what stage were Directors appointed?

and to make recommendations, if necessary, to the Cabinet.

- 1.3 The membership of the Task Group consisted of Councillors B Alcock (Chairman), C J T H Brewis, R Clark, A M Newton, R Perkins and R M Rudkin.
- 1.4 At a meeting of the Performance Monitoring Panel on 10 July 2012, consideration was given to the Task Group's final report and recommendations. The final report is attached as Appendix 1. The recommendations in Section 8 of the report were approved by the Panel for submission to the Cabinet.

2.0 **OPTIONS**

- 2.1 The Cabinet may:
- a) Approve the Task Group's Final Report and recommendations;
 - b) Not approve the Task Group's Final Report and/or suggest that some or all of the recommendations be amended; or
 - c) Do nothing.

3.0 **REASONS FOR RECOMMENDATION**

- 3.1 That if approved by the Cabinet, the report and its recommendations be taken on board to improve processes and procedures in the future, as identified.
- 3.2 If agreed by the Cabinet, the timelines for implementation of the recommendations will be considered and monitored by the Panel.

4.0 **EXPECTED BENEFITS AND TIMELINES**

- 4.1 That if approved by the Cabinet, the report and its recommendations be taken on board to improve processes and procedures in the future, as identified.
- 4.2 If agreed by the Cabinet, the timelines for implementation of the recommendations will be considered and monitored by the Panel.

5.0 **IMPLICATIONS**

5.1 **Carbon Footprint & Environmental Issues**

- 5.1.1 In the opinion of the report author, there are no implications.

5.2 **Constitution & Legal**

- 5.2.1 The report recommends, based on its findings that some Council processes, when considering the setting up of companies, are amended. It also suggests that governance arrangements within council owned companies are debated and clarified, as are the accountability arrangements between the council and said company. Should the recommendations be accepted this may require constitutional amendments.

5.2.2 The report needs to be read in conjunction with that of the Red Lion Quarter Task Group recommendations, which also has constitutional and legal implications.

5.3 **Contracts**

5.3.1 In the opinion of the report author, there are no implications.

5.4 **Crime and Disorder**

5.4.1 In the opinion of the report author, there are no implications.

5.5 **Equality and Diversity & Human Rights**

5.5.1 In the opinion of the report author, there are no implications

5.6 **Financial**

5.6.1 The recommendations within the report, should they be accepted, have financial implications. This relates to the additional resource and time that will be spent in adopting a more structured approach to setting up companies.

5.6.2 There is also a specific recommendation on remunerating Company Directors within Council owned companies at a 'reasonable' level. Should this be accepted the financial burden would ultimately fall on the Council.

5.7 **Risk Management**

5.7.1 The recommendations suggest a more robust approach to risk management in the process of setting up a council owned company is adopted.

5.8 **Staffing**

5.8.1 In the opinion of the report author, there are no implications.

5.9 **Stakeholders / Consultation**

5.9.1 In the opinion of the report author, there are no implications

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 None.

Background papers:- None

Lead Contact Officer

Name/Post: Vicky Thomson – Assistant Director, Democratic Services
Telephone Number: 01775 764437
Email: vicky.thomson@breckland-sholland.gov.uk

Key Decision:

No

Appendices attached to this report:

Appendix 1 – Final Report of the Community Interest and other Local Authority
Companies Task Group



South Holland District Council

Review of
Community Interest and other Local Authority Companies

An Overview and Scrutiny Review undertaken by a Task Group on behalf of
Performance Monitoring and Policy Panel

JUNE 2012

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Appendices

A – Background note on companies

B – Guidance on governance of community interest companies

1. Introduction and background

1.1 In the drive to find more innovative ways of delivering services a number of options are available for Local Authorities to consider. As per the powers to trade under the 2003 Local Government Act¹ these include the setting up companies, such as:

- Limited companies
- Social enterprises
- Trusts
- Industrial and provident societies
- Charities
- Community Interest Companies
- Unincorporated associations

1.2 A general note on company forms can be found at Appendix A, prepared by the Lead Officer for this task group prior to their first meeting. Company options are relatively new to Councils and experience is limited across the sector, but growing. SHDC have set up four such companies:

- South Holland Local Housing Community Interest Company
- Compass Point Business Services (East Coast) Ltd
- Compass Point Trading (the trading arm of Compass Point)
- Red Lion Quarter Community Interest Company

2. Scope of the Review

2.1 The Performance Monitoring Panel agreed on 28 September 2011 to look at the Council's involvement in Community Interest and other Local Authority Companies with particular reference to:

- When is it appropriate for the Local Authority to establish a company and which type of company?
- How are Directors appointed to the Company and for how long should appointments be?
- Are Directors' appointments reviewed, and if so how?
- Training, preparation and remuneration for Councillors appointed as Directors (including declarations of interest)
- Responsibilities and liabilities of Directors
- Role of Members as shareholders
- Mechanism for reporting Company performance
- Process for accountability to the Council
- What are the potential risks to the Council?
- Inter-relationship between the interests of the Companies and those of the Council.
- Responsibility of the Board

¹ General Power for Local Authorities to Trade in function related activities, through a company – guidance on the 2003 Local Government Act, published 29 July 2004, Department for Communities and Local Government

2.2 At an initial meeting of the Task Group on 17 October 2011, Members felt the above terms of reference were adequate but that background into many of the issues listed needed to be looked into. It was agreed that the following points be added to the Terms of Reference:

- How are Directors appointed to Company, and by whom?
- At what stage were Directors appointed?

2.3 The Task Group discussions ranged across a number of other areas raising several issues for further investigation:

- When members were asked to consider the formation of companies, did the Authority lay out all the relevant information and expectations in order for members to come to a correct decision? – Why were companies set up, how were they set up and what responsibilities were there, particularly for Councillors as shareholders?
- How were Directors appointed etc? Were members' skills in particular areas considered when making appointments? What was the appraisal system for these decisions to be made?
- When decisions were being made to set up companies, reports to Councillors had to be straightforward and easy to understand. The guidance/information provided within reports in the past, where decisions were ultimately made, had to be looked at.
- Members had to be brought up to speed with the respective responsibilities of shareholders, Directors and Managing Directors, and the differences between a normal Limited Company and a Community Interest Company.
- The mechanism for reporting company performance – was this done internally or externally?
- Why did Councillors, as shareholders, have to delve into how the company performed – surely this was the role of the management?
- The reporting of data was rigorously based on what was in the contract – there was a need to know what was behind this.
- If the Authority, when originally setting up the companies, had made errors and contracts needed to be changed, there needed to be a provision to do this.
- There was more than one type of Community Interest Company, and the Task Group needed to establish which type each of the companies were.

2.4 Members also commented that although the Community Interest Company set up with regard to the Red Lion Quarter was within the scope of this Task Group, a separate Task Group had been set up to look at the more specific issues around the Red Lion Quarter.

3. Membership of Task Group

Councillor Bryan Alcock (Chair)
Councillor Chris Brewis
Councillor Roger Perkins
Councillor Angela Newton
Councillor Robert Clark

Councillor Rita Rudkin

Ben Wood – Lead Officer
Christine Morgan – Member Services

4. Method of Review

- 4.1 The review began with desktop research and analysis of publicly available literature on the four companies. Various stakeholders were then interviewed by the Task Group, and the evidence and information received was analysed collectively to inform the conclusions and recommendations herein.
- 4.2 The terms of reference are large and in many cases open ended. The findings and conclusions have therefore been separated into the key themes of setting up companies, governance arrangements and performance. These three themes cover all the main elements within the terms of reference.
- 4.3 At the time of writing Compass Point Trading is a new company and effectively the trading/ business development arm of Compass Point Business Services (East Coast) Ltd. It has therefore been addressed as part of the wider consideration of Compass Point.

5. Evidence received

- 5.1 15 November 2011 – interview with Mark Stinson (Principal Lawyer, Property, Lincolnshire Legal Services):
- The Task Group considered evidence from Mark Stinson on company forms, the relative strengths/ weaknesses of different approaches and when they are appropriate.
 - The group also heard evidence on the history and background of the companies SHDC are involved in (Mark having been company secretary to the RLQ CIC and South Holland Homes). This related specifically to shareholder and director responsibilities in the case of CPBS and RLQ.
- 5.2 12 December 2011 - interview with Terry Huggins (Chief Executive of SHDC and Breckland District Council, CPBS Director):
- The Task Group heard evidence relating the background and context that led to the formation of the companies SHDC are involved in, hearing that the rationale behind each was different.
 - The group also heard how governance issues and directors responsibilities were not widely understood.
- 5.3 25 January 2012 – interview with Stephen Bayliffe, Managing Director, Compass Point Business Services (East Coast) Limited
- The Task Group heard evidence regarding Stephen's role with the company, the relationship CBPS has with both SHDC and East Lindsey

District Council and comparisons with his previous experience of working in the private sector.

- The group also heard evidence regarding Stephen's plans and expectations for the future of the company

5.4 7 February 2012 – interview with Councillor Jeremy Webb (former CPBS Director) and Councillor Fiona Martin (current CBPS Director) from East Lindsey District Council

- The Task Group heard evidence regarding the rationale behind CBPS creation from the perspective of East Lindsey
- The group heard evidence regarding the challenges around governance, particularly relating to shareholder roles and responsibilities and the dynamics of shared ownership between the two councils

5.5 7 February 2012 – interview with Councillor Paul Przyszlak (SHDC Conservative Councillor, Deputy Leader, CPBS Director, South Holland Homes Director, RLQ CIC Director)

- The Task Group heard evidence from Paul regarding the appointment and roles of Directors, along with future challenges for CPBS

5.6 13 February 2012 - interview with Councillor David Wilkinson (SHDC Independent Councillor and CBPS Director)

- The Task Group heard evidence from David regarding his appointment as Director on CPBS, roles and responsibilities of Board Members and the challenges around governance

5.7 The Task Group subsequently met on 29th February, 11th May and 27 June to analyse evidence and agree recommendations.

6. Findings

6.1 South Holland Local Housing Community Interest Company. Set up stage – findings:

6.1.1 This is a registered CIC, and was converted to such (previously being a local authority company) on 5 February 2009.

6.1.2 It was set up following SHDC consideration of the 2007 Green Paper, "*Homes for the Future*". The Council had previously attempted (via a Pre-Qualification process) to access Social Housing Grant (effectively capital monies to build new homes) via a partnership with Broadgate but was unsuccessful. Setting up a local authority company enables that company to access the grant. Moreover it also avoids pooling of rents and sale proceeds from properties under the government's Housing Revenue Account (HRA) system – the Green Paper proposals enabled such revenues to be used to cover other costs including new development.

- 6.1.3 Legal advice suggested that a CIC model would provide greater flexibility to the council to build new homes (principally the asset lock feature – ensuring the assets are for protected for the community) hence it was approved as the next step.
- 6.1.4 In 2008 Cabinet agreed that a local authority company be set up with the above purpose in mind, to be wholly owned by the Council and limited by shares. It would be set up as a local authority company initially (in order to pass pre-qualification) and to be converted to a CIC at a later date.
- 6.1.5 Essentially South Holland Local Housing was set up for a very pragmatic reason – to provide affordable homes outside of the HRA account and derive income as a result. Key dates in its creation include:
- On 16 October 2007 SHDC Cabinet considered the Green Paper, “Homes for the Future” along with options to manage housing stock and provide new and/ or affordable housing.
 - Legal advice provided to Cabinet on 15 April 2008, and agreement to set up a local authority company (and later a CIC) was approved. The company was registered as South Holland Local Housing Limited at Companies House on 17 April 2008.
 - 23 July Full Council approved nominations for Directors and Memorandum and Articles of Association
 - The first meeting of the company Board was 29 September 2008, and a Cabinet recommendation to convert to a CIC was agreed.
 - 7 Oct 2008 Cabinet agree “phase I” for transferring assets
 - Feb 2011 building of 6 new developments begins

6.2 South Holland Local Housing Community Interest Company. Governance – findings:

6.2.1 The Company Directors are as follows:

- George Aley (Con Cllr)
- Malcolm Chandler (Con Cllr)
- Paul Przyszlak (Con Cllr)
- Gary Porter (Con Cllr)
- Doug Best (not elected in May 2010 but still on Board)
- Michael Booth (Independent Cllr)
- Richard Scorthorne (SHDC officer)
- Mark Stinson (Lincolnshire Legal, Company secretary)
- Nigel Meiklejohn (Tenant’s Association)
- 1x vacancy for Tenant’s Association

6.2.2 The Full Council meeting on 23 July 2008 agreed that the political composition of the Board be 4 Conservative Councillors and 2 Independent Councillors.

6.2.3 The Task Group has found the governance arrangements from an SHDC perspective were believed to be relatively straightforward. It was considered that the company itself had a clear purpose and set of objectives, and was

effectively run 'in house' which meant little or no change in terms of operational decision making, flows of information and accountability (including Scrutiny by Members through the usual channels). It was also able to draw on professional advice from officers within the council as and when required. The day to day management also comes from within SHDC housing team, as part of their 'core' function.

6.2.4 The Task Group have found that the Board are largely inactive and have not met for some time.

6.3 South Holland Local Housing Community Interest Company. Performance – findings:

6.3.1 On 7 October 2008 Cabinet agreed to phase I of the asset transfer to the new company at nil cost: five sites from the HRA with intended development of 13 housing units. £267,000 was secured from the Homes and Communities Agency, to progress this, and supplemented by capital funding from SHDC (approved by Cabinet on 5 May 2009 and Full Council 13 May 2009).

6.3.2 In January 2010 a Cabinet report informed Members that 6 new developments would begin in February

6.3.3 Six housing units have been built and are now managed as SHDC housing stock, outside of the HRA. The day to day management of this stock rests within SHDC's housing team.

6.3.4 The business plan which underpins the company estimates a break-even position in terms of revenue receipts covering initial building costs to be realised within six years. Thereafter, all new monies would be re-invested into building more affordable homes within the district.

6.3.5 The company is effectively a fledging Housing Association with the potential to manage further stock. The Task Group has found that the company itself has undertaken very little business (other than ad hoc sales and repairs) since the six units have been built. The ad hoc activity refers to the acquisition of housing units at Flax Mill from SHDC's housing stock, and subsequent sale on the open market.

6.4 Compass Point Business Services (East Coast) Ltd. Set up stage - findings:

6.4.1 CPBS is a wholly controlled private limited company, delivering merged services under contract to South Holland District Council and East Lindsey District Council. Key dates in its creation include:

- 28 September 2009: SHDC and ELDC considered a report from Sector and Tribal (funded via the East Midlands Improvement and Efficiency Partnership) outlining options and a business case for delivering more efficient joint services

- 18 November 2009: SHDC Full Council voted in favour of merging support services through setting up a jointly managed and owned company
- 21 April 2010: SHDC voted that a private limited company be set up to deliver merged services under contract to both councils
- 19 May 2010: SHDC confirmed appointment of Directors
- 18 June 2010: Compass Point Business Services (East Coast) Ltd incorporated
- 20 July 2011: SHDC Cabinet endorsed amendments to The Council's constitution to accommodate CPBS arrangements

6.4.2 The various business case reports and Council documentation used to inform these decisions cited the following as the chief reasons:

- Scale of savings to be made effectively meant that 'doing nothing' wasn't an option, this model projected savings of £11.4m over 10 years for SHDC
- CPBS would be able to adopt private working practices and culture, allowing it to trade, the role of both Councils would be as strategic clients
- As the company is local authority owned it is exempt from public procurement legislation – the 'teckal' exemption – for delivering council services
- This approach provides more flexibility than a purely outsourced arrangement. CPBS is to be considered to be 'internal, dependent and sub-ordinate' to the Shareholders, governed by way of a constitutional document as oppose to a contract

6.4.3 Interim management arrangements were put in place to manage the set up of the company. Permanent members of staff have subsequently been employed to run the company and realise the aspirations in the original business plans set out by interim management.

6.4.4 Council Members had extensive involvement in shaping the outcomes required for CPBS before it was set up and incorporated. There is then a strong sense of ownership from Councillors.

6.5 Compass Point Business Services (East Coast) Ltd. Governance – findings:

6.5.1 The Board consists of the following Directors:

- Stephen Bayliffe (Managing Director)
- Terry Huggins (SHDC CE)
- Nigel Howells (ELDC CE)
- Paul Przyszlak (SHDC Cllr)
- David Wilkinson (SHDC Cllr)
- Fiona Martin (ELDC Cllr)
- Victoria Ayling (ELDC Cllr)

6.5.2 SHDC agreed amendments to its Constitution in July 2010 that included an additional function within the Chief Executive role stating that individual be a Director of the merged company. Similarly, the constitution was also amended

to include the appointment of two Councillors to be Directors at the Annual Meeting of the Council.

- 6.5.3 The two councils are the sole shareholders of the CPBS and therefore it is legally defined as Local Authority Company. The Shareholders agreement shows that ELDC have 63% shares and SHDC 37% which is proportionate to the size and initial investment from both. However overall control is 50/50 – each Council having one vote each. The Managing Director – the only paid employee of the company on the Board – has no shares or voting rights.
- 6.5.4 The Task Group has found that a key complexity around Board membership is the obligation for Directors to owe a duty of care (fiduciary responsibility) in all respects to the Company (before that of the Local Authority)². The Task Group is of the view that there is an intrinsic tension for those Councillors who are also company Directors of council owned companies: should the Board be considering a decision in the best interest of the company but not in the best interest of SHDC a Director is legally obliged to support the former, or exclude themselves from the decision making process. It is *feasible* that SHDC may not have their interests represented at the Board should a declaration of interest need to be made in this instance. This would appear to undermine some of the original intentions for SHDC helping create CPBS. The Task Group has not found any evidence of this situation in practice however – as far as can be ascertained there have been no examples of company decisions not being in the best interest of council decisions. However, depending upon which authority Directors are responding, there are different views on the potential for this to be a source of tension in future.
- 6.5.5 The Task Group found that initially Board meetings of CPBS were preceded by informal meetings of SHDC and ELDC parties, including non Board Members, to discuss company business. Moreover the Group is given to understand that not all Board Members were invited. This has since been addressed and the Task Group understands all Board members are now invited to pre-meetings.
- 6.5.6 Regardless of that, the purpose of these pre-meetings are not clear and the task group gained the impression that some had been disruptive and potentially damaging to the well being of the company.
- 6.5.7 The Task Group has found that a common theme in discussion has been the issue of remuneration for Board Members. There is a broad consensus that Board Members appointed from both councils should be eligible for adequate remuneration. This would reflect the level of workload required and reduce any reluctance by potential Directors to make themselves available. There is no consensus however amongst those interviewed about whether the company or the council should provide remuneration.
- 6.5.8 The Task Group has found that the issue of SHDC as a corporate shareholder is not widely understood. In a typical private sector company shareholders are

² See the seven duties imposed on company directors in the Companies Act, 2006, Part 10, Chapter 2: <http://www.legislation.gov.uk/ukpga/2006/46/contents>

able to attend annual general meetings (AGMs) and hold the Board to account. In many cases they are also able – through a process and with sufficient support – to remove a Director³. In the case of local authority companies, The Council is a shareholder. This does not mean however in practice that individual Members of The Council are shareholders (ie. each Councillor does not have ‘one’ or more shares).

6.5.9 The Task Group is of the view that this is inconsistent with initial messages concerning Councillors as shareholders, and an expectation that they would have to behave as shareholders would in a private company.

6.5.10 Essentially then, individual Councillors are unable to hold Board members to account. They can only do through so The Council collectively as a corporate shareholder.

6.5.11 SHDC has adopted the solution of a ‘shareholder’s representative’ who, presumably, has a mandate, on behalf of SHDC, to hold the Board to account. That mandate would also cover what areas of discretion the representative has to agree the shareholder position without referring to Full Council (potentially reducing the amount of bureaucracy involved).

6.5.12 SHDC have appointed a shareholder’s representative although the Task Group feel this has not been a totally transparent process, nor is there any evidence or statement of what areas of discretion referred to above the representative has. East Lindsey District Council have not adopted this approach and at time of writing there is no such position within that Council.

6.5.13 The terms of reference of this position needs careful consideration and whilst being one solution it is not the only one. Whilst the Task Group is not suggesting that there has been any abuse of that position it does leave open that possibility especially as it is understood that attendance at the pre meetings has included the shareholder’s representative.

6.5.14 One manifestation of the lack of clarity on the relationship between Councillors and shareholders was negative press coverage following the CPBS AGM in Boston in late 2011. The Task Group heard evidence that the interests of both councils were represented and considerable debate ensued in what was regarded as a public forum concerning the details of CPBS operations. This was not felt to have aided the company in its endeavours. In addition, it is not a typical practice for a privately limited company to have an open AGM⁴. Indeed the task group was informed that there is no obligation to hold an AGM at all. This is clearly an area which needs clarification as well as consideration. An alternative forum for Councillors to be in a position to question and hold the

³ See section 15 of the Law Donuts guide on shareholder and director responsibilities: <http://www.lawdonut.co.uk/law/ownership-and-management/shareholder-and-boardroom-disputes/shareholder-and-boardroom-disputes-20-faqs#15>

⁴ This obligation was abolished as part of the Companies Act 2006 (for privately limited companies only). See guidance from BIS for more details: <http://www.bis.gov.uk/files/file42261.pdf>

Board to account is needed. Whilst there may be no obligation to hold an AGM advice appears to suggest that there is nevertheless a need for an authority company to be open and transparent as well as keeping stakeholders informed.

6.5.15 The Task Group has also found evidence to suggest that the complex accountability arrangements and relationship between SHDC and CBPS has resulted in a tendency for The Council to scrutinise operational decision making within the company. In many cases the assumption is that CBPS are still delivering 'in house' services and should therefore be held to account in the same way, instead of through delivery on outcomes and outputs agreed in the SLAs. The Task Group heard evidence that suggested this has been the case from both Councillors who are Board Members and those who are not. Evidence also indicated that Board Members in the private sector tend to adopt 'advisory' roles – not scrutiny roles.

6.5.16 In discussion, parallels were drawn between CPBS and the Royal Bank of Scotland who received unprecedented scrutiny of management decisions due to the state being a majority shareholder. This has the potential to inhibit the ability of the company to operate as effectively and efficiently as a private sector company.

6.6 Compass Point Business Services (East Coast) Ltd. Performance – findings:

6.6.1 The Management Agreement between both councils and CPBS sets out how the joint services will be provided from 1 August 2010 to 31 July 2020. It covers the provision of:

- HR
- ICT
- Customer Services
- Financial Services
- Revenues and Benefits

and is underpinned by a separate Service Level Agreement (SLA) for each of the above. The Agreement also covers details around production of annual service plans, agreement on adjustment of priorities and performance standards and The Council's role as a strategic client.

6.6.2 CBPS is essentially a successful company as one of its main purposes – the need to deliver significant savings – is being achieved. The Task Group is of the view that this is of paramount importance.

6.6.3 Another aim was for the company to take on new business and generate profit for shareholders by delivering services to other organisations beyond SHDC and ELDC. Compass Point Trading – a separate legal entity and tasked with sourcing new business – is in existence but not yet generated any new business.

- 6.6.4 The Task Group has found that interim management of CPBS had different objectives to the current management. There is a feeling that the former may have raised expectations regarding the ability of the company to take on new business before consolidating the company and its current position within the market. The Task Group heard evidence that suggested the company is still dealing with this legacy. Moreover findings indicate expectations of systems performance was also reported to be greater than reality and shortcomings were inherited by the permanent management.
- 6.6.5 CPBS is still essentially in its infancy as a company, and although every effort should be made to secure outside work, the Task Group recognises that taking on new business is likely to be a medium term goal.
- 6.6.6 The Task Group also considered the relationship between East Lindsey and South Holland. CPBS has faced some political opposition in the former and found itself the subject of various negative articles in the local press. In a practical sense this has not had any impact upon the ability of the company to carry out its business but there has been slight damage done to the CPBS brand and reputation. As 37% shareholder, that may also impact upon the SHDC brand and reputation. At this stage however it is not possible to quantify the impact.
- 6.6.7 There is a risk however that with the passage of time and a different political make up the relationship between the two authorities and between the company could fundamentally change. This may create tensions which have the potential to damage the company.
- 6.6.8 Some risks around future retention of staff have been identified by the Task Group. The recent loss of the ICT Director was cited as one example. Although the reasons behind this particular instance were not explored, the group is of the view that remuneration for employees of the company may not be as competitive as it could be – there is no bonus or incentive scheme in place for the management team to hit its targets. The Task Group is of the view this is unusual in a privately limited company.
- 6.6.9 The Task Group has found that, as widely acknowledged, the restrictions CPBS has on it in terms of being a council owned company instead of privately owned company are an important dynamic. The findings above are largely symptomatic of that relationship. The management team however (with Board support) are putting in place various measures to be innovative within these parameters and the challenges around governance at the Board level are not deemed to be hindering the performance of the company at this time. However unless these issues are satisfactorily resolved (at both Councils) potential damage can occur in the future.

6.7 Red Lion Quarter Community Interest Company. Set-up stage – findings:

- 6.7.1 This was registered with the CIC regulator on 22 June 2009. The purpose of the company was to manage the Red Lion Quarter building for the benefit of the community, specifically letting office space and operating the food hall. It is

limited by shares, initially with SHDC being the principal shareholder but later transferring 33% to Boston College and 33% to Lincolnshire County Council. SHDC retained 34% of the shares (agreed at Cabinet 7 December 2010). In the event however SHDC retained 100% of the shares. Share capital is £100 divided into 100 equal shares of £1.

6.7.2 The East Midlands Development Agency provided capital funding to assist the construction of the building, but sought no interest in sharing CIC equity.

6.7.3 SHDC considerations on setting up a CIC ran alongside the setting up of South Holland Homes. Legal advice to the council suggested, citing South Holland Homes as an example, that creating a CIC provided a more flexible model for running this type of operation, given it provides the necessary legal separation of responsibilities from the Council, distance from operational issues (whilst still maintaining sufficient control) without inhibiting its ability to make swift commercial decisions. Legal advice also suggested the South Holland Homes Memorandum and Articles of Association could be used as a template to set up the company.

6.7.4 Cabinet however asked for further legal advice before making a decision. After receiving Sector advice in February 2009, the CIC model was approved after dismissing a co-operative or an industrial or provident society as a potential approach.

6.7.5 Key dates in its creation include:

- November 2008: SHDC Cabinet receive legal advice on setting up a company to manage the building once constructed. The recommendation was to seek further advice.
- 24 February 2009: Cabinet approve the CIC model following Sector advice.
- 22 June 2009: Food Heritage Centre CIC incorporated (later renamed the Red Lion Quarter)
- 15 June 2010 draft shareholder agreement considered at Cabine, proposal to share equity with Boston College and Lincolnshire County Council agreed, along with structure of the Board.
- December 2010: Cabinet consider further amendments to the shareholders agreement and leasing arrangements, after taking KPMG advice on tax issues

6.8 Red Lion Quarter Community Interest Company. Governance – findings:

6.8.1 The Board is limited to 7 members – as per SHDC Cabinet decision 15 June 2010. 2 from Boston College, 1 from SHDC, 1 from Lincolnshire County Council and 3 others to be appointed in accordance with the Articles.

6.8.2 Since the creation of the Board several members have resigned. Their appointment and resignation dates are detailed below:

Mrs Sue Bolter (resigned 27 July 2010)

Mr Peter Cropley (resigned 9th June 2011)

Mr Kevin Pallister (resigned 29th June 2011)
Mr Stephen Broadbent (resigned 13th June 2011)
Mr Stephen Woolley (resigned 9th June 2011)
Mrs Janet Hemmant (resigned 9th June 2011)
Mr Paul Przyszlak
Mr Howard Johnson

6.8.3 The Management of RLQ has been considered by another task group and it sufficient to say their findings have concluded they were not robust.

6.9 Red Lion Quarter Community Interest Company. Performance – findings:

6.9.1 The case of the RLQ has highlighted that the approach to risk management was sufficient for covering all legal and statutory obligations, but did not address any moral obligations SHDC may have to its residents. These matters are dealt with within the report of the RLQ Task Group Report.

7. Analysis and conclusions

7.1 Set up stage:

7.1.1 Setting up a company is a perfectly appropriate means of achieving council objectives more innovatively and effectively. However, much like building a house, if the foundations are not right then severe problems will occur in due course.

7.1.2 In the case of the companies considered within this report The Council received both internal as well as external advice which was regarded at the time as sufficient for it to make informed judgements on the merits of setting up authority owned companies.

7.1.3 However the Task Group has concluded that this information was not of sufficient depth or breadth to recognise all the implications, nor was it sufficiently understood. In particular, matters around Directors responsibility and training, shareholder and stakeholder expectations, reporting and governance arrangements were vague and consequently not subject to sufficient debate or challenge.

7.1.4 There were in essence insufficient checks or balances to understand what commitment The Council was making, and no common framework or language to understand what the implications for stakeholders would be. This was compounded by an uneven passage through council for each – for example RLQ was only debated at Cabinet level whereas CPBS was debated at Full Council following extensive prior involvement of Members. Giving all Councillors the opportunity to debate and shape the outcomes required from CPBS led to much greater ownership of the company's endeavours.

7.1.5 It is clear that the companies were all set up for different reasons and with different objectives in mind – which is perfectly sensible. This has resulted in different operational cultures – as intended. South Holland Homes tends to

operate much like an in-house service for example, whilst RLQ and CPBS do not.

- 7.1.6 The four companies are different entities and require different skills and behaviours from their Board Members and shareholders. There was no recognition of this at set up stage however. The Task Group has concluded this has manifested itself in a generic understanding of local authority companies and a tendency to assume that Community Interest Companies and privately limited companies operate in much the same way when in fact they are subtly different.
- 7.1.7 The Task Group is of the view this is particularly acute in the case of Director and shareholder responsibilities. It has become particularly evident that the roles and responsibilities of both was not sufficiently understood across The Council prior to set up. Although all the necessary legal advice and information was available, it was not clear what it meant in practical terms – ie. what was expected of Board Members, who the shareholders are and what was expected of them.
- 7.1.8 More consideration should have been given to the ‘softer’ side of setting up the company – ie. alongside the constitutional and governance arrangements, investment should have been made in the skills and behaviours required of Board Members *and* shareholders. Given that what training there was, was restricted to Directors only, it is unsurprising variations in understanding may exist.
- 7.1.9 There has been an inconsistent approach to the provision of training for Directors across the companies considered in this report. It was provided in the case of South Holland Homes. In the case of CPBS some received training upon appointment; some didn’t. In the case of RLQ it was provided some time after appointment. Although training should be tailored to the specific requirements and company form in mind, the Task Group has not found any evidence this has been the case. In short there appears to be no rationale behind the inconsistent approach to provision of training.
- 7.1.10 Notwithstanding this inconsistency, there is a feeling amongst the Task Group that overall training and guidance given was a necessary but not sufficient condition for the role. Many of the individuals appointed to Boards have had to ‘learn on the job’ and clarity around roles and responsibilities have developed over time and through experience. To some extent there is a limit to what training can achieve for new Directors, and previous experience of being on a Board of Directors is perhaps of equal if not more value.
- 7.1.11 Appointments to Boards in the companies considered in this report were pragmatic and not necessarily based on the needs of the company. An obvious deficiency in the appointment process was a lack of consideration of previous Board experience and expertise in running private sector companies or equivalent.

- 7.1.12 Whilst there is now a strong understanding of the roles and responsibilities of Directors from the Directors interviewed, there is a feeling that this is not widely understood by Councillors and officers. Any future training therefore should be extended to capture all stakeholders.
- 7.1.13 Whilst it is reasonable for The Council to rely on external advice, a more robust approach to risk management which addresses potential failure and reputation issues would have helped. The Council did in each case cover all its legal and statutory obligations, but did not give sufficient consideration to political risk and reputational damage. The moral dimension is a key feature which sets local authority companies apart from normal companies. Furthermore guidance clearly suggests that Authority companies should be open and transparent to all stakeholders.
- 7.1.14 The starting point for setting up a company should be clear on outcomes and ask the question, 'what are we trying achieve'? A subsequent investigation of different forms of achieving that (through companies or otherwise) then needs to ensue.
- 7.1.15 There is no generic approach, guidance or template in place for SHDC to consider the above when considering alternative forms of service delivery.
- 7.1.16 Should a trading company form appear to be the most appropriate mechanism, a key question and challenge from the outset should be how much autonomy is the authority prepared to give that company. The biggest test to consider is whether the authority is prepared to let that company fold or go into liquidation (without bailing out the creditors). If the political or reputational risk of doing so is felt to be too great, then there is little point setting up a trading company as it will never operate with the same philosophy as do its private sector counterparts.
- 7.1.17 A similar test applies should The Council wish to exert direct influence over the Board or have a desire to influence operational decision making and day-to-day activity.

7.2 Governance:

- 7.2.1 Local authority trading companies are similar to private limited companies but are subtly different in the reporting and governance activities. There are various interpretations and understanding regarding the complexities of governance in particular.
- 7.2.2 The Task Group found that the nature of The Council as a shareholder in a company has been a source of confusion. This has prompted an inconsistent understanding of accountability arrangements between SHDC and the local authority companies it has involvement in. This is particularly acute in the case of CPBS and RLQ.
- 7.2.3 The shareholder(s) is The Council, as a corporate body. Councillors are Members of the Council and part of the corporate body. Councillors are

therefore stakeholders and not individual shareholders. Stakeholders also covers all those who have an interest in the company or are affected by it (eg. members of the public who receive services).

- 7.2.4 The policy or overall direction of a company is set by the shareholders ie Full Council
- 7.2.5 This relationship between Councillors, the company and the Board is overly complex and somewhat under-developed in relation to CPBS. It is not clear how individual Councillors are able to feel ownership of the company.
- 7.2.6 The role of the shareholder's representative, the mandate they have to make decisions on behalf of the corporate body, compounded with their relationship with the Board is entirely unclear and potentially dysfunctional to company interests.
- 7.2.7 Given shareholders have the ability to influence Board decisions and (in some cases) remove Directors, in the absence of clear terms of reference for the position of shareholder's representative, that individual becomes in essence a de facto Board Member, or 'Shadow Director'.
- 7.2.8 In the case of CPBS pre meetings which have the effect of pre-determining the decisions to be made within the ensuing Board Meetings should be avoided. As far as the task group are aware these have not been authorised by the respective authorities. Involvement of this nature may well create Shadow Directors who would, in law, be subject to the same responsibilities as appointed Directors.
- 7.2.9 The Task Group acknowledges that in the case of CPBS there is no straightforward solution for managing the relationship between the Board and shareholders, and this is new territory for SHDC and East Lindsey District Council.
- 7.2.10 Typically shareholder views would be captured at a company AGM. Although there is no legal obligation to hold such a meeting in the case of a privately limited company, the Task Group is of the view that there is moral obligation to do so, given its owners are democratic institutions. Indeed guidance recommends this.
- 7.2.11 As Full Council meetings are open, they are not an appropriate forum for the corporate shareholder to hold Directors of the company to account. Shareholder's meetings need to be undertaken (jointly with ELDC), but in a closed arena.
- 7.2.12 In order to incentivise Board Members and also reflect the nature of responsibilities it entails, Directors should be remunerated at a reasonable

level⁵. The Task Group is of the view that the cost should be covered by the company as it is the company receiving the benefit of their services.

7.2.13 Board continuity is a challenge for all the companies. This is unlike the private sector where the tenure of Directors is often long term, enabling stability of leadership and strategic direction. The link between the election cycle and Member appointments to the Board potentially builds in a regular turn-over of Directors.

7.2.14 As they are all still new however, it is too early to say what the impact of a future election will be. It may be appropriate to also consider appointing independent Board Members to provide external, non-political leadership for the company. Remuneration would need to be provided.

7.2.15 Many of the issues raised above regarding accountability and conflicts of interest are essentially unavoidable quirks of having local authorities 'owning' trading companies. It is impossible to quantify the impact that these challenges are having on performance within each of the companies for the time being. The Task Group is of the view however it is an important dynamic which could inhibit growth in future unless satisfactorily resolved.

7.3 Performance:

7.3.1 In setting up companies, SHDC finds itself in the position of shareholder, client and owner. It is unsurprising there has been a tendency on the part of officers and Members to micro-manage as if the service was 'in-house'. Whilst close management of operational issues helps to build relationships, it is clear that this level of scrutiny can inhibit the ability of the company – especially in the case of CPBS – to act like a private sector organisation, and reinvents some of the restrictions facing local government which it was designed to move away from. In short, the approach taken so far is ultimately self-defeating.

7.3.2 Lighter touch reporting by the company on outcomes, underpinned by more informal communications and news may be a useful way of managing expectations and performance in the right direction. These need to be built into the Articles of Association for any new company at its inception.

7.3.3 The Task Group is of the view that for CPBS to operate successfully both SHDC and East Lindsey District Council need establish to a consistent relationship with the company. Governance issues must be resolved. Given freedom and lack of interference the Board should ensure the company is successful irrespective of the opinions of some Councillors.

7.3.4 There is confidence in CPBS current management team's capacity to consolidate and ultimately grow the company.

⁵ See section 9 of BIS guidance on Community Interest Companies which covers governance – including remuneration of Directors: <http://www.bis.gov.uk/cicregulator/guidance> Although applicable to CICs, this seems appropriate for CPBS. This is also included at Appendix B.

- 7.3.5 In all the companies considered by the Task Group, there is no process in place to review the performance or appropriateness of Directors. This is not adequate as Directors of companies are ultimately accountable for company performance.
- 7.3.6 The Board of South Holland Homes appears to be adding little value to the overall operations of the company. Moreover it seems excessively large (9 individuals) for the scale of the business.
- 7.3.7 There are risks to The Council as demonstrated by the failure of RLQ to perform. The management and performance of the RLQ is dealt with outside of this report

8. Recommendations:

- 8.1 The following are divided into specific recommendations regarding the companies considered as part of this report and generic recommendations regarding SHDC's approach to setting up companies in future. The recommendations should be read in conjunction with the RLQ Task Group recommendations.
- 8.2 That where an alternative form of delivery is to be considered as a possible means of achieving Council outcomes it is recommended that an outline business case be prepared which covers all of the areas below:
- a. Clearly define what council outcomes are to be achieved
 - b. Consider all options including in house, out sourced and companies
 - c. What are the relative strengths and weaknesses of each in this context?
 - d. Consider the risks involved within each option
 - e. Decide upon the most appropriate vehicle and set out the reasons for that choice
- 8.3 Where a company form is the chosen method of delivery the following template followed as good practice;
- a. Commence consideration and debate early enough to give sufficient time for all stages of development
 - b. Involve Members at all stages from preparation of the outline business case onwards
 - c. Take account of the advice within BIS guidance notes
 - d. Clearly set out what the company is expected to deliver.
 - e. Create specific Articles of Association for the particular company to ensure the outcomes can be achieved.
 - f. Set how and when the company will report to the Council
 - g. Where another party is to be a shareholder ensure that agreement is reached with that party and is recorded in respect of the above points.
- 8.4 Where a company form is the chosen method of delivery Full Council consider the following;

- a. What is the political and reputational risk should the company fail
 - b. Is this acceptable to Council
 - c. What are the tangible benefits over alternative methods of delivery.
 - d. Who are to be the shareholders
 - e. Who will be the stakeholders
 - f. How will Councillors receive information concerning the company.
 - g. Who will appoint Directors (there is a presumption that shareholders will do so unless another reason is relevant)
 - h. Is remuneration for Directors appropriate and if so at what level
- 8.5 Where a company is to be created the following procedures be followed.
- a. Appoint Directors and Company Secretary in a timely manner
 - b. Consider recruiting independent Directors.
 - c. Ensure Directors are aware of their roles and responsibilities prior to confirmation of appointment.
 - d. Provide a program of training for Directors on the roles and responsibilities as well on the Articles of Association before the company becomes operational.
 - e. Ensure the reporting procedures are clearly defined before the company becomes operational.
 - f. Ensure there is capacity to accommodate change notifications where council services are delivered
 - g. Wherever possible avoid interim management arrangements.
- 8.6 When a company is operational matters concerning delivery of a service be channelled through the appropriate Council Director who is the point of contact for Councillors.
- 8.7 Reporting on performance of a service to the Council be done through a quarterly Performance Monitoring Report. Any concerns from individual Councillors should be raised with the relevant Council Director above.
- 8.8 A post of Shareholders Representative be created in respect of each company formed with the terms of reference for that position determined by Full Council. (The intention of this role is to be the conduit between the Council and the company and between the company and the Council)
- 8.9 An Annual Meeting of each company be convened during the month preceding the Council AGM. Attendees; Directors, Secretary, Manager, Shareholders Representative and Councillors in their role as part of the Corporate Shareholding / Stakeholders.
- 8.10 The purpose of that annual meeting is:
- a. To review the Company activities during the preceding year
 - b. To receive an up to date financial statement
 - c. To review the Directors performance and position
 - d. To consider any policy or directional changes and to make recommendations to the Board.

- e. To consider a report to be made public on the companies activities during the year.
- 8.11 Where a company has other shareholders, SHDC hold an annual meeting prior to that company's AGM to discuss the matters mentioned above to reach a common approach for SHDC within the AGM of that company.
- 8.12 That in the case of CBPS, a mechanism for regular dialogue between the shareholders (SHDC and East Lindsey District Council) be put in place, with the intention of reaching (as far as possible) agreement on a common approach within the company AGM. This may be through the shareholder's representative, subject to the terms of reference for that position.
- 8.13 Members and Officers periodically receive training regarding companies, company law, the roles and responsibilities of Directors, shareholders and stakeholders.
- 8.14 That a report on the future intentions for South Holland Local Housing Company be prepared and reviewed by Full Council.
- 8.15 Suggest to Compass Point Business Services that their Articles of Association are amended to accommodate:
- a. The Directors have the opportunity to receive remuneration from the company the amount of which is "reasonable"
 - b. The Chair of the Board has the opportunity to hold the post for longer than one year.
 - c. That the Company holds a closed AGM, during the month prior to Council AGM, to which Councillors in their role as stakeholders are invited.

9. Financial Implications of Recommendations

- 9.1 Stronger project management process in setting up companies will result in increased officer time and costs
- 9.2 "Reasonable" remuneration for Board Members on CPBS agreed. Unclear what this will be but given the company is part owned by SHDC the cost will ultimately fall on The Council

10. List of References

Department for Communities and Local Government. *General Power for Local Authorities to Trade in function related activities, through a company – guidance on the 2003 Local Government Act.* 2004.

Department for Business, Innovation and Skills. Companies Act. 2006

Department for Business, Innovation and Skills. *Guidance on Community Interest Company Regulations.* 2005.

Department for Business, Enterprise and Regulatory Reform. *Companies Act 2006: Private Companies Information.* 2007
The Law Donut. *Guide on Shareholder and Director Responsibilities.* Available at <http://www.lawdonut.co.uk> Accessed 15 March 2012.

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SOUTH HOLLAND DISTRICT COUNCIL

Report of: The Red Lion Quarter Task Group

To: Cabinet – 24 July 2012

(Author: Vicky Thomson – Assistant Director, Democratic Services)

Subject: Final Report of the Red Lion Quarter Task Group

Purpose: To report on the final recommendations within the Final Report of the Red Lion Quarter Task Group

Recommendation:

That the final recommendations of the Red Lion Quarter Task Group be considered.

1.0 BACKGROUND

1.1 The Performance Monitoring Panel established the Red Lion Quarter Task Group on 19 October 2011, and it commenced its work on 31 October 2011.

1.2 The Task Group's scope was agreed as follows:

To undertake a review of the Red Lion Quarter, with particular reference to:

- The original business case;
- The set up, management and operation of the Community Interest Company;
- Governance procedures;
- Performance management of the business

1.3 Membership of the Task Group consisted of Councillors B Alcock (Chairman), A Casson, A M Newton, R Perkins, M D Seymour and D Wilkinson.

1.4 A summary of the Task Group's findings, conclusions and recommendations are included within its report which is attached.

1.5 An interim summary report with recommendations was previously considered by the Performance Monitoring Panel on 21 March 2012 and the Cabinet on 3 April 2012. Those interim recommendations were approved by the Cabinet on 3 April 2012.

1.6 Since the interim report there have been some relatively minor alterations to the recommendations. For ease of reference any additional recommendations within this Final Report are shown in bold. At a meeting of the Performance Monitoring Panel on 10 July 2012, consideration was given to the Final Report, and the recommendations detailed in Section 7.2 of the report were approved by the Panel for submission to the Cabinet.

2.0 **OPTIONS**

2.1 The Cabinet may:

- a) Approve the Task Group's Final Report and recommendations;
- b) Not approve the Task Group's Final Report and/or suggest that some or all of the recommendations be amended; or
- c) Do nothing.

3.0 **REASONS FOR RECOMMENDATION**

3.1 That if approved by the Cabinet, the report and its recommendations be taken on board to improve processes and procedures in the future, as identified.

3.2 That if agreed by the Cabinet, the timelines for implementation of the recommendations will be considered and monitored.

4.0 **EXPECTED BENEFITS AND TIMELINES**

4.1 That if approved by the Cabinet, the report and its recommendations be taken on board to improve processes and procedures in the future, as identified.

4.2 That if agreed by the Cabinet, the timelines for implementation of the recommendations will be considered and monitored.

5.0 **IMPLICATIONS**

5.1 **Carbon Footprint & Environmental Issues**

5.1.1 There are no Carbon Footprint or Environmental issues arising from this report.

5.2 **Constitution & Legal**

5.2.1 All of the recommendations and actions are expected to conform to the legal framework. Legal Services Lincolnshire have been consulted on the contents of the Task Group's report and advised accordingly.

5.2.2 A number of the recommendations, if implemented, should improve the Council's governance arrangements.

5.3 Contracts

5.3.1 There are no Contract issues arising from this report.

5.4 Crime and Disorder

5.4.1 There are no Crime and Disorder issues arising from this report.

5.5 Equality and Diversity & Human Rights

5.5.1 There are no direct Equality and Diversity or Human Rights issues arising from this report.

5.6 Financial/Staffing

5.6.1 There are no specific financial implications arising out of this report although there will be some staffing implications in implementing some of the recommendations. The Task Group believes that these can be implemented within current existing staffing resources. Efficiencies resulting from implementation of the recommendations should at least result in the cost implications being cost neutral in the long term although this cannot be quantified.

5.7 Risk Management

5.7.1 The review was undertaken as a result of the problems encountered by the Red Lion Quarter Community Interest Company and the recommendations contained within the Task Group's final report are intended to assist the Council in learning from its experiences. If the recommendations contained within the report are not accepted, there is a risk that the Council will not have learnt from the experience.

5.8 Stakeholders / Consultation

5.8.1 All witnesses spoken to during the work of the Task Group have had sight of the Final Report and have been consulted on it, and any comments which were considered to be appropriate have been taken into account.

6.0 WARDS/COMMUNITIES AFFECTED

6.1 None

Background papers:- No background papers have been used in preparing this covering report.

Lead Contact Officer

Name/Post: Vicky Thomson – Assistant Director, Democratic Services
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Email: vicky.thomson@breckland-sholland.gov.uk

Key Decision:

No

Appendices attached to this report:

Appendix 1 – Final Report of the Red Lion Quarter Task Group



South Holland District Council

Review of
Red Lion Quarter

An Overview and Scrutiny Review undertaken by the Red Lion Quarter Task Group
on behalf of the Performance Monitoring Panel

June 2012

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Chairman's Foreword.

The report of the Task Group is the culmination of an extensive period of work and numerous meetings. The report has itself been the subject of intense scrutiny.

The final working draft report of the Task Group has been made available to the witnesses for their comment. Quite understandably their comments have been diverse and somewhat contradictory being based on their individual experience and opinion. The Task Group considered all responses individually and where practical have incorporated the sentiment or made appropriate amendments. In the final analysis the Task Group has based its findings on the totality of evidence, both written as well as verbal, it has had to consider.

I would like to take the opportunity to thank all members of the Task group for their dedication, patience and contributions. I would also like to thank the witnesses for their input as well as the support officers for their work and help. Particular thanks go to Jim Scarsbrook, our lead support, who has on many occasions been between a rock and a hard place, on the one hand the Task Group insisting to their flavour within the report and on the other legal advice.

It is, in my opinion, a pity that the Authority so nearly 'got it right' but unfortunately failed to pick up the warning signs throughout the process. The result could have been so different.

Bryan Alcock
Chairman of the Task Group.

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Spalding and District Chamber of Trade and Commerce

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APPENDICES

1. Accommodation Proposals – Changes between February 2008 – July 2010
2. Key Tasks of the General Manager of the Red Lion Quarter (as set out in the Business Plan dated 07 August 2010)
3. South Holland District Council Funding of Red Lion Quarter
- 4A. Questions from the Spalding and District Chamber of Commerce dated 7 November 2011
- 4B. Responses to Questions from the Chamber of Trade and Commerce

1.0 INTRODUCTION/BACKGROUND

- 1.1 As long ago as December 2002, the Cabinet considered a report from the Chief Executive on the concept of a Food Heritage Centre in Spalding, which had been identified through the Market Towns Project. The vision was to improve the viability and vitality of Spalding town centre, and encouraging a proportion of visitors to Springfields to visit the town centre.
- 1.2 A Feasibility Study was subsequently commissioned, the outcome of which was reported to Cabinet in September 2003. The Cabinet agreed to recommend to Council to put money into the capital programme and officers were requested to work with the East Midlands Development Agency (EMDA) over funding.
- 1.3 Subsequent revisions were made to the Business Plan, funding for the project was secured, the land was purchased and building works were ultimately commenced in late 2009 following the granting of planning permission.
- 1.4 In February 2009 the Cabinet had considered the options for managing the building and decided that this would be through a Community Interest Company (CIC). In June 2009 the CIC was incorporated. For the purpose of incorporation a sole Director was appointed but more permanent Directors were subsequently appointed in July 2010 and subsequent to that.
- 1.5 The building was completed in February 2011 and handed over by the contractor. The premises were opened on 5 April 2011.
- 1.6 At the time the building was opened the Red Lion Quarter (RLQ) was operated by the CIC which managed the building, food court and retail and office tenancies. Boston College, as an occupier, was providing educational facilities and operating the Sage Restaurant. The CIC was directly operating the food hall.
- 1.7 Within a very short time of opening the CIC was experiencing financial problems and was seeking financial assistance from South Holland District Council. This culminated in a report to Cabinet on 11 October 2011 which in turn resulted in recommendations to full Council on 19 October 2011. The Council decided:
 - (a) To fund:
 - company liabilities of £45,957;
 - council liabilities of £40,250;
 - operating budget of £5,390 per month until completion of procurement.
 - (b) To fund a contingency budget up to £50k to cover any unforeseen or unquantifiable liabilities;
 - (c) That the food court be closed temporarily; and

(d) That the provision of a Steering Group be supported in order to achieve a new management vehicle through the procurement process.

1.8 The situation resulted in a considerable amount of adverse publicity from the Spalding and District Area Chamber of Commerce and from the public through the local press.

1.9 A special meeting of the Performance Monitoring Panel was held immediately following the meeting of Council on 19 October 2011. The Performance Monitoring Panel agreed to establish a Task Group to undertake this review.

2.0 **SCOPE OF THE REVIEW**

2.1 The purpose of the review and terms of reference of the Task Group were "To review the set up, management and operation of the Red Lion Quarter and make recommendations, if necessary, to Cabinet.

2.2 The Task Group's terms of reference were "To undertake a review of the Red Lion Quarter, with particular reference to:

- The original business case
- The set up, management and operation of the Community Interest Company
- Governance procedures
- Performance management of the business.

2.3 The future of the building is not within the remit of the Task Group and is being dealt with elsewhere.

3.0 **MEMBERSHIP OF TASK GROUP**

3.1 The membership of the Task Group was:

Councillor B Alcock (Chairman)
Councillor A Casson
Councillor A M Newton
Councillor R Perkins
Councillor M D Seymour
Councillor D Wilkinson

3.2 The Lead Officer was Jim Scarsbrook and officer support was provided by the Member Services Team.

4.0 **METHOD OF REVIEW**

4.1 The review has been undertaken by way of:

- Interviews
- Questionnaires
- Inspection of relevant documents

4.2 Interviews

4.2.1 The following were interviewed:

<u>Name</u>	<u>Position</u>
Mark Stinson	CIC Company Secretary
Jacqui Berridge	CIC Assistant Secretary
Mark Stanton	Economic Development Manager (SHDC)
Councillor Howard Johnson	Portfolio Holder for Economic Development (SHDC) and CIC Director (appointed by Lincolnshire County Council)
Councillor Paul Przyszlak (SHDC) and CIC Holland District	Portfolio Holder for Finance Director (appointed by South Council)
Mr Peter Cropley (College)	CIC Director (appointed by Boston College)
Mr Kevin Pallister	CIC Director (External appointment)
Mark Stokes	Deputy Chief Executive (SHDC)
Terry Huggins	Chief Executive (SHDC)
Janet Hemmant	CIC Director (appointed by Boston College)
Bruce Wakeling	Former Economic Development Manager
Jayne Shale	Economic Development Assistant
Nigel Burch	Economic Development Officer
Richard Baggaley	Former Economic Development (Capital Projects) Officer and former CIC General Manager (Note: not interviewed in respect of CIC operations).

4.2.2 The original list of interviewees was extended as the review progressed because of:

- Conflicting evidence received
- The need to research deeper than originally anticipated because of the number of issues
- The lack of clear documentary evidence

4.3 Questionnaires

4.3.1 The following former officers, having moved away from the area, were invited to respond to questions in writing:

<u>Name</u>	<u>Position</u>
Andrew Petcher	Former Corporate Director (SHDC)
Sue Bolter	Former Head of Economic and Community Development (SHDC) (Note: not responded)

4.4 Research

4.4.1 Extensive research was undertaken, including the following:

- Reports and decisions submitted to Cabinet, Committees and the Council.
- Financial information
- Records relating to the Project Board
- Red Lion Quarter CIC Board minutes
- Appropriate files
- Feasibility studies and business plans

4.4.2 There were significant staff changes in early 2011 at senior management level which did hamper the investigation. The Task Group also found that the minutes of the Project Board and of the CIC Board in particular were not always detailed enough to confirm one way or another some of the information provided by witnesses.

5.0 SUMMARY OF FINDINGS

5.1 Positive Findings

5.1.1 As has already been mentioned, the development has resulted in a considerable amount of adverse publicity and criticism from the public and from the Spalding and District Area Chamber of Commerce. The Task Group considered much of this to be justified and it damaged the Council's reputation.

5.1.2 Notwithstanding this adverse publicity and damage to the Council's reputation, the Task Group is keen to point out that there are a number of positives resulting from the project, particularly:

1. The project has regenerated a run down part of central Spalding.
2. The Council has a modern quality building as an asset.
3. There has been an inward investment of several million pounds into South Holland.

4. An increase in Further Education and Training has been created in a first class facility.
5. Needed serviced office space has been made available.
6. Top quality meeting rooms for local & regional business are available.
7. It has provided the potential to create businesses and jobs.
8. There is a potential to establish a food centre to celebrate local & regional food.
9. Three 'shops' offer the opportunity for food orientated businesses to work in conjunction with the food centre.
10. An opportunity exists for Boston College and the food centre to work with each other for each parties benefit.
11. It has potentially increased the choice available to South Holland shoppers.
12. It has increased the opportunity for tourism to the Town Centre
13. It has created additional good quality restaurant facilities.

5.2 Other Findings

5.2.1 During the investigation a number of key issues emerged which the Task Group considered contributed to the initial failure of the project which has resulted in the temporary closure of the food hall. The key issues are summarised below and individually dealt with thereafter. Many of the issues are interrelated:

- Feasibility study and business plans
- SHDC management/staff
- Project Board
- Project Management & Risks
- Design and construction
- CIC Board/Directors
- CIC Employees
- Finance
- Leases – Community Interest Company & Boston College
- Governance
- Boston College
- Letting of commercial units
- Marketing

5.3 Feasibility Study and Business Plans

5.3.1 The initial feasibility study conducted on behalf of South Holland District Council by Promar International in association with Peakhill Associates was completed in April 2003. The concept was for a Food and Craft Heritage Centre (F&CHC) of around 15,000 sq ft ground floor plan designed as a street and two storey premises. The cost was estimated to be in the region of £3.5m. This increased considerably before the project was completed. The building design also changed considerably in the intervening years.

5.3.2 Key aims identified in the Feasibility Study were:

- town centre regeneration
- assistance to locally based small - medium agri food producers
- boosting the attractiveness of the region to visitors
- promoting and providing locally produced food to local customers

5.3.3 Other potential businesses were also envisaged, such as:

- Tourist Information Centre
- Restaurant facility
- Local craft stalls

5.3.4 Subsequent business plans were prepared at various stages over the next few years, the first in June 2004 by FMC who also prepared a later one in February 2008. Subsequent plans were essentially updates of this 2008 Business Plan.

5.3.5 The Feasibility Study and 2004 and 2008 Business Plans were prepared by external consultants, the feasibility study in part being prepared for the purpose of attracting external funding from the East Midlands Development Agency (EMDA).

5.3.6 From the Task Group's investigations there is little evidence that anyone at officer or member level critically challenged or stress tested the feasibility study or the business plans. The fact that they were prepared by consultants appears to have been sufficient to accept them without challenge. The Task Group considered this to be surprising bearing in mind they carried warning signs (e.g. relating to siting, lack of parking and the need for a strong attraction to drive footfall). Notwithstanding that, the Council was inclined to look at the more positive aspects of the reports.

5.3.7 The relevant portfolio holders, when interviewed, confirmed that they had left it to officers to examine the Business Plans, although it was suggested that this was done through the Project Board. There is evidence in the minutes of the Project Board meeting in April 2008 that the members of the Project Board were invited to submit comments on the Business Plan. However, the minutes of the Project Board do not reflect any detailed challenge or discussion.

- 5.3.8 One officer advised that the feasibility study had gone to the funders. As the County Council and EMDA had come back with questions the officer considered that this showed that they must have considered it but must have been happy with it as they put up most of the funding.
- 5.3.9 One member of the Project Board advised the Task Group that the Project Board expressed very little interest in the business plans and could not recall the Board vetting them at any time. The Task Group found no evidence within the minutes of the Project Board that it considered the Business Plans.
- 5.3.10 Responsibility for the project and hence the Business Plan was subsequently transferred from the Project Board to the Red Lion Quarter CIC in July 2010. There is little evidence within the minutes of the CIC Board to show that the Board was any more proactive in this although there did appear to be some concern expressed over the viability of the Food Hall by at least one Director. However, the majority of the Directors appeared to have had confidence in its success. Requests for certain information also appeared to be ignored and was not pursued with sufficient vigour until too late. To be fair to the CIC Board of Directors, they were not appointed until late in the day and accordingly they had a considerable amount to do in a very short timescale.
- 5.3.11 By way of example:

- (a) The Business Plans of June, July and August 2010 all required the retail and office units to be let prior to opening. When this was excluded from the November 2010 Business Plan there appeared to be no challenge. There is no evidence of challenge in the minutes of the CIC Board of Directors.
- (b) The Business Plan of 7 July 2010 included a section on Fixed Capital Requirements and provided:

“Costs not otherwise assumed as part of main capital build cost therefore include:

- (i) Coolers and display; £10,000
 - (ii) Freezer units; £10,000
 - (iii) Shelving, point of sale and counter fittings; £100,000
 - (iv) Electronic point of sale and stock management; £30,000
 - (v) Cash management and security items; £20,000
 - (vi) Staff hygiene facilities and miscellaneous items; £30,000
- Total budget; £200,000”

- 5.3.12 The Business Plan of 7 August 2010 contained the same section but omitted items (i) - (iii), reducing the total budget to £80,000. The lack of operating capital has subsequently been identified as a major cause of the failure.

5.3.13 Conclusions

The Task Group has concluded that throughout the project no individual was specifically charged with responsibility for scrutinising Business Plans. There is evidence within the minutes of the Project Board (9 April 2008) that members of the Project Board were invited to comment on the Business Plan. Although the minutes further indicated that the Business Plan would be an agenda item at the next meeting, there is no evidence within those minutes or the minutes of subsequent meetings that the Project Board did scrutinise the Business Plan.

- Business Plans, Feasibility Studies and similar documents should always be independently challenged at officer / member level, particularly financial forecasts even when prepared by expert consultants. Responsibility for this needs to be clear and understood but must be by person(s) not involved in the original preparation.
- At member level the Overview and Scrutiny was not involved at any stage although it would have been within its remit. In view of the value of the project, with hindsight this may have been useful.

5.3.14 Recommendations

- The Council should adopt a policy requiring any business plans, feasibility studies or like documents, together with subsequent revisions, to be independently stress tested by professionally qualified persons and this should be built into the project management system, ensuring that responsibilities are clear.
- Overview and Scrutiny should be encouraged to review feasibility studies and business plans for significant projects.
- Both of the above recommendations should be implemented both at the early stages of any major project as well as prior to the letting of any contract.

5.4 **South Holland District Council Management and Staff**

- 5.4.1 From the beginning the project sat with the Economic Development Team. Despite the project being a major one for the Authority, the Task Group received information that advising that the most senior levels of management appeared to have little involvement with the project even at a strategic level, although the Task Group acknowledges that highlight reports were being submitted to Senior Management Team on a regular basis. The Corporate Director was not initially a member of the Project Management Board until late on when he replaced the Head of Service who was removed from the project and the Project Board due to a perceived conflict of interest between SHDC and the CIC. The Corporate Director advised that until this point he was not a member of the project management board and had no involvement with the project. However, as advised below, he was Project Sponsor for the corporate priority which encompassed the development of the Red Lion Street project.

- 5.4.2 The Corporate Director became actively involved following what has been described as some internal conflict between staff members working on the project. The first Project Board that the Corporate Director attended was on 25 March 2010. The minutes of that meeting indicated that the change was due to conflict of interest between SHDC and the CIC.
- 5.4.3 The Task Group has been advised that the internal friction between some members of staff on the Project Board was due to what can be described as line management issues. Because of the good reputation of certain individuals who were apparently highly thought of and appeared to enjoy the support of senior management and certain members it meant that they were allowed to work to them directly and bypass the established and approved staff management structure. A fairly severe disagreement related to the timing for signing legal documents which the Head of Service wanted done early. This was an example of a different approach and of priorities being viewed differently.
- 5.4.4 The Task Group has heard from operational staff that higher levels of senior management did not appear to be particularly interested in the project. One individual expressed both considerable surprise and concern at the lack of interest and supervision compared to their experiences in the private sector. Notwithstanding this view that was expressed, Senior Management Team was receiving regular highlight reports in respect of the project.
- 5.4.5 During this period the Council had identified its corporate priorities, one of which was 'A Secure and Diverse Economy'. A priority action within this was to 'help create an environment in which new businesses can start and existing businesses can grow', a strand of which was to 'Develop the Red Lion Street project including Boston Colleges FE facility'.
- 5.4.6 The Corporate Director was designated as the Programme Sponsor for this corporate priority with the Economic Development Manager as the outcome lead and the Portfolio holder for Economic Development as the portfolio lead.
- 5.4.7 Being a strand of a corporate priority should have ensured that problems with the Red Lion Street project were reported to Senior Management Team through a monthly reporting process and through quarterly reporting to Cabinet and Performance Monitoring Panel, thereby enabling appropriate action to be taken.
- 5.4.8 Although regular reporting of the corporate priority did occur, the problems being experienced with the project did not appear to get reported. For example, the highlight reports for quarters 2 and 3 of 2010/11 reported:
- "Quarter 2 (July – September 2010)
 - Roof completed
 - Stonework completed
 - Glazing commenced
 - "First fix" ME completed

- Building practically watertight – crane removed.”
- Quarter 3 (October – December 2010)
 “Despite poor weather the project remains on time and on budget. Practical completion is still planned for the end of January 2011. Lincolnshire County Council are resurfacing Red Lion Street and the planning application for the extension to Herring Lane Car Park is being submitted in early January 2011 with, again, a scheduled opening in early March”

5.4.9 During these periods there were known problems in respect of various matters such as VAT, state aid, stamp duty land tax and the restrictive covenant. However, the highlight report concentrated on the project build. This may have been because the priority action was not sufficiently well defined. Therefore, whilst there was a performance management system in place, the evidence strongly suggests that it was not smart enough to identify when incorrect or incomplete information was being reported.

5.4.10 Conclusions

1. The Task Group has concluded that performance management systems were in place. At senior management level this was particularly through the designation of programme sponsors for the Council’s corporate priorities and programme leads for priority actions, and the regular submission of highlight reports to SMT, Cabinet and the Performance Monitoring Panel. However, the system was not effective as matters which were known to have been causing concerns at the time were not being identified in those reports. This needs to be addressed and is further considered in section 5.6 (Project Management and Risks).
2. From the evidence received the Task Group has also concluded that member involvement led to operational staff bypassing approved management structures and processes and working directly to them. This had potential dangers, not least being that they did not have the necessary professional expertise to manage the project. The Head of Service, on the other hand, was qualified and the overseeing of projects should have been a significant part of her role.

5.4.11 Recommendations

- The roles of senior management and of the Senior Management Team should be clarified and processes introduced and documented to ensure clarity of responsibility.
- The clarified roles of senior management should also ensure that there is a process for information to flow both up and down with appropriate checks within the system.

- Management structures and processes should be adhered to. Members should not encourage staff to do otherwise and should ensure that appropriate managers are kept informed of any issues that endanger this.

5.5 The Project Board

5.5.1 The Project Board for the 'Red Lion Street Food Project' was established in June 2007. Its remit was “to facilitate and coordinate the project, to ensure that the Council achieved value for money in implementing the project.” The Task Group considered that this was not sufficiently defined or broad enough.

5.5.2 The composition of the Project Board was quite comprehensive and included the relevant Head of Service (Head of Economic & Community Development) who chaired the meetings and the Portfolio Holder for Economic Development and the Portfolio Holder for Capital Projects. The complete composition was:

Head of Service – Economic & Community Development (SHDC)
 Economic Development Officer – Capital Projects (SHDC)
 Portfolio Holder for Economic Development (Councillor)
 Portfolio Holder for Capital Projects (Councillor)
 Economic Development Manager (SHDC)
 Environmental Health Practitioner (SHDC)
 Building Control Manager (SHDC)
 Planning Manager (SHDC)
 Legal Services Manager (SHDC)
 Senior Accountant (SHDC)
 Communications Manager (SHDC)
 Director of Corporate Services (Boston College)
 Programme Manager, Enterprise & Innovation (Lincolnshire Enterprise)
 Head of Economic Regeneration Policy (Lincolnshire County Council)

5.5.3 Others (e.g. Architects and Employer’s Agent) were invited to attend the Project Board meetings when appropriate.

5.5.4 Notwithstanding the number of persons on the Project Board it is far from clear as to what each individual's role or the collective role was except for the Economic Development (Capital Projects) Officer and the Economic Development Manager. Their roles were clearly defined, but initially no one was formally assigned risk responsibility:

Capital Projects Officer

Controls Programme management
 Controls Project operations plan
 Maintains Project Board site on Shine
 Liaises with major stakeholders
 Manages Project Board Meetings
 Liaises with Legal, Procurement Lincolnshire, Finance and other Service Departments

Economic Development Manager

Manages Programme management

Manages Project operations plan

Reviews Project Board on Shine

Liaises with major stakeholders

Attends Project Board Meetings

Reviews liaison with Legal, Procurement Lincolnshire, Finance and other Service Departments

- 5.5.5 The minutes of the Project Board did generally allocate responsibility for actioning its decisions.
- 5.5.6 Some members of the Project Board informed the Task Group that they were unaware of their roles. However, one member of the Project Board has advised that Project Board members were verbally advised of their roles. There is no evidence of this within the minutes and therefore, on the evidence available, the Task Group has concluded that individuals were not specifically advised of their roles.
- 5.5.7 The Project Board initially met on a monthly basis. However, at its meeting on 13 October 2009 the Head of Service (Chairman of the Project Board) recommended that “because the Project Board was set up to oversee the build and get the project out of the ground, and as the project was entering the construction phase the Board need only meet quarterly.” This was agreed by the Project Board and documented in the minutes.
- 5.5.8 The Task Group’s investigation has revealed that from October 2009 through 2010 was a critical period for the project. Also the initial remit of the Project Board was more extensive than was advised, albeit not as wide as what the Task Group considered it should have been. The Task Group felt that the Project Board’s remit should have been defined to also ensure that the project delivered a quality building that was fit for purpose. It is felt by the Task Group that the reduced frequency of meetings was introduced prematurely.
- 5.5.9 From the minutes of the Project Board there were regularly a number of apologies submitted. Most significantly though, a representative of the Finance Team attended only one of eight meetings between May 2009 and September 2010. Even though the Portfolio Holder for Finance attended meetings, this lack of presence is of concern to the Task Group in view of the value of the project and issues involved (e.g. VAT). The minutes of the Project Board did not give reasons for absences. Failure to attend meetings may have been a result of lack of clarity of roles and responsibilities. The Task Group concluded that members of the Project Board were not taking collective responsibility for the project.
- 5.5.10 Despite some important omissions, the Task Group felt that the Project Board did play a very important role in the delivery of the building.

5.5.11 Conclusions

The Task Group has concluded that:

- despite having an extensive membership, the roles of individuals on the Project Board was unclear.
- Members of the Project Board were not accepting collective responsibility for the project.
- The failure of a finance representative to attend meetings on a regular basis was a major issue. There should have been a senior finance officer representative at all meetings of the Project Board.
- The decision for the Project Board to only meet on a quarterly basis from September 2009 was premature. The period following was of considerable importance, many key issues still remaining outstanding (e.g. leasing arrangements, VAT, state aid, restrictive covenant and heads of terms with Boston College), although the Heads of Terms with Boston College had been practically agreed for some time according to a report to the Project Board in January 2010.

5.5.12 Recommendations

- That all project boards and similar groups should be made clear of their terms of reference, reporting procedures and expected outcomes.
- The terms of reference of project boards and similar groups should be carefully considered at the time they are established
- Individuals appointed to Project Boards and similar groups should, unless otherwise advised, be individually and collectively responsible for the project and should be expected to attend meetings on a regular basis.
- Upon the formation of project boards and similar groups a Director or appropriate Head of Service should ensure that all members are clear on their roles and responsibilities.

5.6 **Project Management and Risks**

- 5.6.1 Project management appears to have been essentially through the Project Board and monthly/quarterly highlight reports to SMT, Cabinet and Performance Monitoring Panel, as referred to previously. There is no evidence that a recognised project management system such as Prince 2 was used, although one member of staff that was involved in the project advised the Task Group that he was using Prince 2 albeit unknown to others. An internal audit report dated June 2008 into economic development was considered by the Governance & Audit Committee in September 2008. The report identified issues with the project management approach to the Red Lion Project and concluded:

- The Project Initiation Document was quite basic and supporting documents where available were not comprehensive;
- The Communications Plan covered public relations rather than reporting arrangements to manage the project;
- Risks were identified but a Risk Log had not been produced to actively monitor and manage risks and record new ones as they arose;
- Management should introduce a more robust approach to project management to ensure outcomes could be achieved within the available budget;
- SHDC guidance, documentation and software for project management should be fully utilised.

5.6.2 The Task Group has been advised that these matters were all addressed following the Audit report. The minutes of the Project Board meeting of 3 July 2008 state that the Council's Project Management paperwork was now being used. Highlight reports and Gantt Charts were certainly used and regularly submitted to the Project Board meetings.

5.6.3 There is no evidence within the minutes of the Project Board that they considered the Business Plans to the extent that they challenged the viability of the project.

5.6.4 As project management was essentially through the Project Board, the weaknesses identified with the Project Board in the previous section had a knock-on impact on the project management:

- Lack of clarity of roles; and
- Infrequency of meetings from September 2009.

5.6.5 As has already been identified, even though the Corporate Director was the project sponsor for the corporate priority which encompassed the development of the Red Lion Street project, the higher levels of senior management did not appear to have a significant involvement in the management of the project. Neither did the Senior Management Team, other than through the monthly and quarterly highlight reports which were discussed more fully in section 5.4. The Head of Service's role appears to have been weakened through the bypassing of approved structures.

5.6.6 Risk Register and Issues Log

5.6.6.1 As identified by the Internal Audit investigation in June 2008, project risks had been identified but a Risk Log had not been produced to actively monitor and manage risks and record new ones as they arose.

5.6.6.2 Presumably in response to the findings of the Internal Audit investigation, the Project Board was advised at its meeting in July 2008 that one of the Economic Development (Capital Projects) Officer's roles was to keep a risk and issues log up to date. This had not previously been within his list of responsibilities. This, it is understood, was subsequently regularly submitted to

the Project Board meetings. However, there is no evidence to show who was charged with the identification of risks or whether this was the collective responsibility of the Project Board.

5.6.6.3 Although the Risk and Issues Log was quite extensive, certain important risks were not captured. It concentrated on the build project with little consideration being given to the establishment of the CIC, leasing arrangements and trading. For example, the March 2010 Log failed to identify any of the following which were known at the time and were to have a key impact on the project:

- VAT issue
- State aid issue
- Failure to let retail and office units before building opened
- Failure to agree service charges
- Failure to have leases in place

5.6.6.4 There is in fact evidence within the minutes of the Project Board that there were concerns about state aid regulations and the leasing of the building to the CIC as early as September 2008. However it was not until two years later that specialist advice was sought on this.

5.6.6.5 These issues had still not been resolved when the building was handed over to the Red Lion Quarter CIC in early 2011.

5.6.6.6 This alone placed the CIC in a very difficult and unfair position from the outset.

5.6.6.7 The Task Group have found no evidence that the CIC maintained a risk register or issues log. Nothing is recorded in the minutes of the CIC Board. However there is evidence that papers were presented to the Board on some key risk issues. For example, a report was submitted in December 2010 on the VAT issues which it was advised could affect the structure of the leases to the Company and Boston College and the lease of units. The state aid issue did not appear to have been conveyed to the CIC Board or Directors of the Board until very late in the day (April/May 2011) even though known well before this.

5.6.6.8 The Task Group has been advised that the problems relating to VAT arose due to changes to the VAT regulations in 2008 which had not been realised because there was no system in place for identifying such changes. The changes were not picked up until 2010, some two years later, causing considerable problems.

5.6.7 Conclusions

1 With any scheme of this nature, and also with smaller schemes, project management is essential.

- 2 The Task Group has concluded that project management was essentially through the Project Board, the use of simple management tools such as Gantt Charts and a Risk Register and Issues Log and quarterly highlight reporting to Senior Management Team, Cabinet and the Performance Monitoring Panel. Although this operated adequately in some areas, the operation of some aspects were not ideal or simply did not work:
- The Risk Register and Issues Log failed to identify some significant risks, concentrating on the build project;
 - The frequency of the Project Board meetings was reduced from monthly to quarterly at a time when some key issues needed to be resolved;
 - The quarterly highlight reports to Senior Management Team continually indicated that the project was on track but there was no additional text to highlight any issues of concern. ;
 - The Head of Service's management role was hampered because management structures were bypassed.
- 3 The Task Group found no evidence that the CIC had structured project management processes or a risk register to assist Board members to actively manage the project.
- 4 The evidence received indicates that the Council's systems and processes for identifying changes to legislation affecting the work of the Council were not robust.
- 5 The failure was not just about weaknesses in the the project management protocol but also results from failure to follow good practice, highlighting a need for training.

5.6.8 Recommendations

- Senior Management Team must ensure that a review of project management is undertaken to address the issues highlighted and that reviews are regularly undertaken thereafter to ensure that they remain effective. In particular, the systems must be smart enough to ensure that correct information is being reported.
- Robust project management must be introduced for any new social enterprise companies that may be established by the Council.
- On establishing any new project board the project management tools and processes to be used should be defined.
- Senior Management Team should review its systems and processes to ensure that they identify changes to legislation affecting the work of the Council.

- Senior Management Team should ensure that there is training and awareness for appropriate staff and members on the importance of project management and on the corporate systems in use.

5.7 Design and Construction

- 5.7.1 The land for the development was purchased in 2006. The Transfer imposed a restrictive covenant on the land which provided that for a ten year period from the purchase the purchaser would not:

“use the property or any part thereof or permit or suffer the same to be used or occupied for any purpose other than as a Food Heritage Centre selling and promoting the products of the region together with any appropriate ancillary activities and/or a facility that promotes and attracts visitors and tourists to Spalding and the district PROVIDED THAT the use of not more than one third of the total floor area (not on the ground floor) for educational purposes and/or as managed office space shall not be deemed to be a breach of this proviso(the Permitted Use).”

- 5.7.2 The Spalding and District Area Chamber of Commerce have commented that “there have been serious concerns raised about the design of the building, e.g. the “retail units” being at the back. The accommodation schedule was a developing element since the original Feasibility Study and Business Plan. Appendix 1 shows how the accommodation proposals changed between the February 2008 Business Plan and the July 2010 Business Plan which was based on the planning application.
- 5.7.3 Much of this work was either done at Project Board meetings or overseen by the Project Board which had a good representation of relevant officers including planning, building control and environmental and by the Project Manager.
- 5.7.4 Because the site was in a conservation area the planning issues were not straightforward and involved the architect, English Heritage, the Civic Society, the Conservation Officer, Planning Officers and even the local MP. Considerable debate was held on whether or not to keep the cottages that existed on the site. The Project Board favoured demolition. The final layout and design was a compromise to satisfy the differing opinions, the user’s requirements and the physical site constraints. Time was a pressure on reaching an acceptable solution.
- 5.7.5 The minutes of the Project Board in June 2009 recorded that the food hall and restaurant would be drivers to get people in to the building with the main entrance being in Red Lion Street. However, the needs of the retail operations appear to have been subordinated.
- 5.7.6 Planning permission was granted by the Development Control Committee on 7 October 2009. There is no evidence of any representations in respect of the internal layout but these would not have been material planning considerations.

5.7.7 Conclusions

- Developing in this particular location meant the design of the building was perhaps always going to raise problems.
- Trying to satisfy so many different constraints and changing user requirements on a site where a restrictive covenant existed was always likely to take time even without the pressure created by funding requirements.
- Although there is no doubt that the proposals were fully consulted upon and received due consideration the particular needs of the retail operations were not specifically consulted upon.

5.7.8 Recommendations

- Ensure design, layout and planning issues are resolved well before projects are committed to start.
- Where appropriate local expertise relating to a project should be consulted.

5.8 **Community Interest Company Directors and Board of Directors**

5.8.1 The Task Group has not considered whether or not a CIC was the most appropriate management vehicle. A separate task group is looking into that. However, the Task Group does feel that there are lessons to be learned on how such companies should be established.

5.8.2 When the CIC was first incorporated in June 2009 there was one Director, the Head of Economic and Community Development. This was not intended to be a permanent appointment and in June 2010 the Corporate Director reported to Cabinet on the structure of the CIC, dealing with shareholdings, director appointments and shareholder agreements. The report stated that "The Board of Directors will be responsible for the operational management of the Company. As the Company must be self-sufficient, and remain solvent, it is very important that a number of appointees have suitable business and commercial experience."

5.8.3 Cabinet agreed in June 2010 that the Board should comprise not more than seven directors:

- SHDC - 1
- LCC - 1
- Boston College - 2
- External - 3

5.8.4 The external directors were to have suitable experience. However, what represented suitable experience was not defined within the report to Cabinet.

- 5.8.5 Notwithstanding the fact that it had been recognised that the Board and the individual directors would have a very important role, the Task Group have found no evidence that this was conveyed to the Directors either before or after the appointments.
- 5.8.6 The Memorandum and Articles of Association of the CIC are clear and provide that the functions of Directors are:
- To manage the Company's business; and
 - To exercise all the powers of the Company for any purpose connected with the Company's business.
- 5.8.7 This did not always appear to have been fully understood by Directors.
- 5.8.8 All of the Directors interviewed advised that there had been no training or briefing on what was expected of them or what their responsibilities were. There appeared to have been an expectation that the individuals would know what was expected of them and what their responsibilities were.
- 5.8.9 There is also evidence within the minutes of the Project Board in September 2009 that it was proving difficult to attract suitable external directors. This resulted in the first meeting of the Board of Directors being delayed.
- 5.8.10 The first meeting of the Board of Directors was held on 25 February 2010, at which time the Head of Economic & Community Development was the sole Director.
- 5.8.11 The Portfolio holder for Finance was nominated as the Council's appointed Director by Cabinet in June 2010. At the meeting of the Directors of the CIC on 19 July 2010 the directors nominated by South Holland District Council (1), Lincolnshire County Council (1) and Boston College (2) were appointed. Two external directors were appointed by the Board on 29 July 2010 and the third in March 2011.
- 5.8.12 The first meeting of the CIC Board of Directors at which the partner and external directors were in attendance was therefore held on 1 December 2010, approximately four months before the building opened. In the minutes of the Project Board it is recorded that "the Board needs to be in place after Easter" 2009. The Gantt Chart plotted the appointment of directors for May 2009.
- 5.8.13 Between August 2010 and the opening of the Red Lion Quarter in 2011 the CIC Board met on four occasions on:
- 1 December 2010
 - 24 January 2011
 - 14 February 2011
 - 28 March 2011

5.8.14 It is recorded in the minutes of the CIC Board that at both the December 2010 and January 2011 meetings concern was expressed by the Directors over the way profit/loss of the food court was being represented. At the January 2011 meeting one of the directors abstained from the vote to adopt the Business Plan "as he was of the opinion that there was insufficient information to enable him to make a decision."

5.8.15 The minutes of the CIC Board do not show that key issues such as stamp duty land tax, VAT and the restrictive covenant were being reported in detail and considered by the Board leading up to the opening, even though these were having a considerable impact on the leases.

5.8.16 The Task Group acknowledges that there were differences of opinions within the CIC Board. However, the Board was collectively the responsible body and corporately responsible for decisions.

5.8.17 Conclusions

The Task Group concluded that the CIC Directors were appointed much too late in the day with insufficient time to get to grips with all of the issues surrounding the project. As a consequence, and out of necessity, the General Manager was permitted considerable authority with little supervision/control by the CIC Board. Although the Directors were either councillors or were all professional individuals, there appeared to be differences of opinion and understanding as to their roles and responsibilities which had not been made clear to them.

5.8.18 Recommendations

If the Council should in future establish a company of a similar nature it should:

- Ensure that there is clarity over the roles and responsibilities of directors before recruitment and they are made aware of them.
- Recruit directors in a timely manner to ensure the full Board takes responsibility for the operations of the company.
- Provide training and guidance to the directors on their roles and responsibilities and on the company's Articles of Association before the company is operational.
- Ensure the reporting procedures are clearly defined before the company is operational.
- Ensure that the constitution of the company also addresses the above issues.

5.9 Community Interest Company Employees

5.9.1 General Manager

5.9.1.1 There was clearly a need for the CIC to appoint staff to operate the Red Lion Quarter. In respect of the General Manager the Business Plan prepared in February 2008 (and subsequent updates) said that "Recruiting the "right person" for the role of General Manager is absolutely critical to the success of the Red Lion Street Food Court."

5.9.1.2 The Business Plan then went on to list various competencies which the person would need to demonstrate. It also said that it was vital that the General Manager was in post nine months before the opening date and that this implied starting the recruitment at least twelve months before the opening date.

5.9.1.3 In May 2010 the Economic Development Manager submitted a report to South Holland District Council's Senior Management Team advising that the post of Economic Development (Capital Projects) Officer was on a 4 year fixed term contract which expired in May 2011. It was suggested that the role of the CIC Centre Manager (General Manager) be undertaken by this post holder for a period of 12 months from August 2010 but continue to work for SHDC for 2 days a month. The Senior Management Team supported the proposal which was subsequently reported to the CIC Board on 29 July 2010 (ten days after the first meeting of the Board of Directors) and the Economic Development (Capital Projects) Officer was appointed General Manager.

5.9.1.4 There is evidence that some of the Project Board wanted to retain the Project Manager as General Manager and felt that they could not afford to lose him.

5.9.1.5 When interviewed, there was a general feeling amongst the CIC Directors that they had no option. One of the Directors even advised that the General Manager was appointed by SHDC's Corporate Director, rather than by the Board. None of the external Directors were in post at this time.

5.9.1.6 Although the Task Group could see the reasoning behind the appointment, for such a key post at such a critical time it did not feel that there was sufficient consideration given to the requirements of the post and the qualifications of the applicant and the justification for not testing the market or not conducting a rigorous interview. The Task Group also had regard to the significant salary that was to be paid. One witness advised that there had always been a presumption that the Economic Development (Capital Projects) Officer would be appointed as General Manager. In view of the proposed opening date, when reported to the CIC Board on 29 July 2010 it is understandable that they felt they had no alternative as it was too late to go through a recruitment exercise. The Task Group's observations relate to the process of engagement. It makes no comment on whether or not there may have been a more suitable candidate.

5.9.1.7 The Task Group found it surprising that the General Manager was not directly employed but his contract appears to have been via a company owned by him. There appears to be no decision making audit trail to indicate how this occurred.

5.9.1.8 The competencies required of the General Manager were set out in the Business Plan as were his key tasks before and immediately after the opening of the building to the public. The key tasks are reproduced in Appendix 2. There is no evidence that these key tasks were detailed in the letter of appointment.

5.9.1.9 From the minutes of the CIC Board, there is little evidence that the Directors consider that it was their responsibility to challenge the General Manager or monitor his progress in the completion of key tasks.

5.9.2 Other Staff

5.9.2.1 Authority to appoint all other staff was delegated to the General Manager in accordance with the submitted details and within the constraints of the approved budget. In addition to the General Manager, between January – April 2011 a total of sixteen staff members were appointed in a variety of roles when the premises opened. Staff that were still in post when the premises closed were made redundant.

5.9.2.2 The Task Group has received evidence that:

- A number of staff were recruited from SHDC
- Many of the posts were not publicly advertised and accordingly the best persons with the most appropriate skills may not have always been appointed.
- Little or no training appears to have been provided for staff.
- The building was fully staffed in readiness for the opening on 5 April 2011 despite the fact that it was not fully occupied because the commercial units had not been let. However, there appeared to be a view that it was usual to appoint a full complement of staff before opening and then shed if not required.

5.9.3 External Appointments

5.9.3.1 In addition to directly appointed staff there were also a number of supply contracts let in respect of cleaning, security, phones, refuse, photocopiers, etc. These also had significant cost implications at a time when there was little income.

5.9.4 Conclusions

- Successive business plans had made it clear that recruiting the right person to the position of General Manager was critical. In effect this seems to have been overlooked because, by the time any consideration was given to the matter, it was too late to undertake an open recruitment exercise. As a consequence, the person who had previously been the project manager was appointed. This is not to say that the same appointment would not have been made following a full recruitment exercise.
- Although successive business plans identified key tasks for the General Manager before the opening, many of these were not achieved. Although the General Manager was only answerable to the Board, the Board did not appear to be monitoring these. The final revised Business Plan reported to the Board on 1 December 2010 omitted these tasks.
- The project was effectively handed over by SHDC to the CIC in July 2010. At that time the Board held its first meeting comprising four appointed Directors and the General Manager was also appointed. However, at that time there were still a number of issues which remained outstanding which the Task Group felt should have been dealt with by the Council, e.g.:
 - VAT issue
 - Restrictive Covenant
 - Heads of Terms with Boston College
 - State Aid
 - Lease for the CIC occupation
- These outstanding issues continued to occupy the time of the General Manager for some time, creating capacity issues and taking him away from his key tasks as General Manager. There was no regular monitoring of these problems. No one person within SHDC appears to have taken responsibility to ensure that those matters were resolved except by apparently leaving it to the Project Manager / General Manager. In hindsight, Senior Management failed to understand the serious nature of the problems and the Task Group consider that it was totally unacceptable to allow the Company to inherit the problems which SHDC had failed to resolve.
- Whilst there was a failure to notify SMT of the nature and seriousness of the issues, it is acknowledged that the new management team quickly identified a concern and raised the alarm with the Chief Executive.
- The General Manager received little supervision. Although he reported to the CIC Board it was not in a position to provide the necessary supervision and its governance arrangements were inadequate, possibly due to time constraints.

- A number of staff were ultimately made redundant, no doubt having a considerable personal impact on those individuals.

5.9.5 Recommendations

- In future, at the time that a project is proposed to be handed over to another body to manage there should be a full assessment of outstanding issues/position statement to enable the receiving company to quickly assess the situation and decide whether to accept it. It should be clearly established how outstanding matters are to be resolved, by whom and within what time frame.
- The process for recruiting staff, including management, should in future be robust and timely and built into project plans.
- Careful consideration should be given before appointing permanent staff through a company, including consideration of the tax and moral aspects.

5.10 **Finance**

5.10.1 It has been said that, despite the problems, the Red Lion Quarter is a welcomed asset to the town and an overall success which has been achieved with relatively very little financial input from South Holland District Council in view of the external funding which has been attracted, principally from EMDA, Lincolnshire County Council and Boston College. The initial funding applications listed the potential contributions for this part of the project as:

- | | |
|---|----------------|
| • East Midlands Development Association | - £1.5m |
| • Lincolnshire Enterprise | - £1.5m |
| • Lincolnshire County Council | - £1.0m |
| • Learning and Skills Council | - £2.0m |
| • South Holland District Council | - £0.5m |
| • Total | - £6.5m |

5.10.2 On balance the Task Group agrees that the building is an asset to the town and will be for many years to come. The return of further education facilities to the town is also extremely welcome.

5.10.3 The cost to South Holland District Council, and to the council tax payers, is not so clear however.

5.10.4 Statements made that the cost to the Council taxpayer was £200,000 appears to be ill founded.

5.10.5 It has been extremely difficult to calculate the actual cost to the Council, because the financial records are not easy to interrogate and appear to differ depending upon which source one examines. However, there is no doubt that the cost to South Holland District Council has been considerably more than £200,000. Some of the costs have been met from Section 106 monies, principally from the Spalding Power Station fund. It has been suggested by members of the Executive that this is not council tax payer's money. The Task Group acknowledges that Section 106 money was not raised through

council tax but, nevertheless, it is equally important and the Council's duty of stewardship should be equally as great as with money raised through the council tax.

5.10.6 As has already been said, the Task Group has not found it easy to interrogate the financial records. The financial management system for the build contract is very basic with little subdivision of cost codes. Nevertheless, it has been possible to compile the following information of contributions made by South Holland District Council:

Year	Purpose	Authorisation	Amount (£)
2002	Contribution towards Feasibility Study	Cabinet - 03/12/2002	3,000.00
2003	Contribution towards land acquisition plus contingency	Cabinet - 09/09/2003 Council - 1/10/2003	200,000.00
2007	Contribution towards the development of the project	Cabinet - 13/11/2007	500,000.00
2010	Contribution towards refurbishment of Red Lion Street	Cabinet - 12/10/2010	80,000.00
2011	Money for advertising campaign	Pfh for Rural Strategy - January 2011	30,000.00
2011	Advertising		10,000.00
2011	Contribution towards apprenticeship at Red Lion Quarter	Pfh for Sustainable Communities - March 2011	5,084.82
2011	Development Overspend	Cabinet - 14 June 2011 Council – 22/6/2011	93,000.00
2011	Company Liabilities	Council - 19/10/2011	45,957.00
2011	Company Liabilities	Council - 19/10/2011	40,250.00
			1,007,291.82

5.10.7 For the sake of completeness, Appendix 3 provides the source of the Council's funding and information on the relevant percentage respectively funded by the Council and externally.

5.10.8 The above figures show that South Holland District Council funded the project by an amount in excess of £1,000,000. This however does not represent the entire funding by the Council as there are other hidden costs, including:

- Legal fees paid to Legal Services Lincolnshire from the corporate Legal Fees budget:
 - 2009/10 – value unknown
 - 2010/11 - £49,275.64;

- Staff salaries (value not known);
- Operating budget of £5,390 per month until completion of the procurement (authorised by Council on 19 October 2011);
- Contingency budget of £50,000 to cover unforeseen and unquantifiable liabilities (approved by Council on 19 October 2011);
- £120,000 loan given to Red Lion Quarter, albeit that this is intended to be paid back through income generated although there is no evidence to support how this will be achieved;
- Bridge funding of Boston College's £2,000,000 capital contribution.

5.10.9 The total project cost is also difficult to ascertain with any degree of certainty and different figures have been quoted. Evidence suggests that the capital spend, including land acquisition costs, was in excess of £7.5 million.

5.10.10 One area of additional expenditure related to a party wall dispute which resulted in payment of compensation. Total costs for this amounted to in excess of £30,000 which was absorbed within the project budget but no doubt contributed to the overspend.

5.10.11 An amount of £120,000 had been allocated for working capital for the Company from the EMDA grant. However, prior to opening for trading £78,000 of this was spent on administrative expenses, £25,000 on fixed assets and £7,000 on costs of sales. In addition £25,000 of stock had been acquired. In effect the Company had run out of money before it opened. This information is from the draft Company accounts.

5.10.12 The Task Group has been told that a verbal undertaking had been given that SHDC would inject working capital although we have seen no evidence to support this.

5.10.13 The Company running out of cash resulted in an overdraft being obtained without it having been sanctioned by the Board.

5.10.14 At the same time a full staffing establishment had been appointed from day one of the opening and, in the opinion of the Task Group, too many contracts for services were entered into for a fledgling business (e.g. cleaning, security, etc). This was previously referred to in the section on CIC Employees.

5.10.15 No account appears to have been taken of the fact that there was no income being generated from the commercial units when appointing staff and entering into the external contracts for services. Funds available to the Company were therefore inadequate to survive through a period of few lettings and very low retail operations.

5.10.16 There is no evidence that serious consideration had been given to what would occur if the units were not let and the shop did not perform. Although this was an area of questioning there did not appear to be a satisfactory plan B.

5.10.17 At the Board Meeting of 28th March 2011 it was noted that two electronic systems were not fully functional although there is no evidence to show what action was to be taken to ensure it was functional for opening.

5.10.18 There does not appear to have been a definitive costing of the fixed costs of running the building. Information supplied by management to the Board of Directors appears to have been limited and inadequate. As advised in the section relating to CIC Directors and Board of Directors, at both the December 2010 and January 2011 meetings of the CIC Board of Directors concern was expressed by the Directors over how the profit/loss of the food court was being represented. At the January 2011 meeting one of the Directors abstained from the vote to adopt the Business Plan "as he was of the opinion that there was insufficient information to enable him to make a decision."

5.10.19 Conclusions

- The precise amount which South Holland District Council funded towards the project is not clear. It is expected to be in excess of £1m. Although part of this was Section 106 funding, there is no reason to consider that this is any less relevant than if it was raised through council tax.
- During the investigation the Task Group has received criticism of the Council's financial management system for not accurately monitoring budget spend. The Task Group has not investigated the validity of these claims. This criticism should be further investigated.
- With hindsight, it appears that opening the building on 5 April 2011 became of greater importance than the financial viability of the Red Lion Quarter. This was due to concern over the potential loss of external funding. Despite the warning in successive business plans that the commercial units needed to be let prior to the opening to the public this was ignored.
- The Board failed to sufficiently challenge the General Manager on this matter but appeared to accept what they were being told, that expressions of interest were sufficient to go ahead with the opening of the building.
- Timescales imposed by EMDA are also believed to be a factor in continuing with the opening in early April 2011 as opposed to deferring until leases were in place. Fear over the loss of funding was a major consideration.
- It is also clear that time and money was used by the CIC in trying to resolve the matters which were, in the opinion of the Task Group, SHDC responsibilities. However it has become apparent that the CIC invoiced the building project for elements of work. The dual roles undertaken by one

person not only confused the issues but was also unreasonable and led to a conflict of priorities.

- A positive aim of the project was the creation of apprenticeships and money was approved for this. Unfortunately this did not appear to happen.

5.10.20 Recommendations

- That the future spending of Section 106 money should be considered as equally important as any other fund;
- That an internal audit should be undertaken on the effectiveness of the financial management system for monitoring project spend against budget and how managers were using the system.
- In consultation with Compass Point Business Services systems must be created prior to expenditure on a similar project to ensure that not only headline expenses are able to easily be interrogated, at any time, but also sub headings.
- All future CIC or similar projects should be adequately financially resourced.

5.11 **Leases – Community Interest Company and Boston College**

5.11.1 The Business Case for the project had long assumed that the building, once constructed, would be owned by the Council but managed by the Community Interest Company (CIC). For this purpose the CIC would be granted a lease of the whole building at a nil (or nominal) value. The Food Heritage Centre Company CIC was incorporated on 22 June 2009. Initially, the company was a wholly owned subsidiary of the Council with a sole director (the Head of Economic and Community Services). The CIC's share capital comprised 100 fully paid £1 shares. The CIC's role was to manage the building, let managed office space, operate a food hall and maintain/manage the exterior and common parts of the building.

5.11.2 The Business Case further anticipated that Boston College's capital contribution to the cost of the project would be £2,000,000, one of the key objectives of the project being the provision of a further education training facility and training restaurant. The project was therefore premised on the grant of a long lease (125 years) by the CIC to Boston College of part of the building for these purposes at a peppercorn rent.

5.11.3 It was not originally intended that South Holland District Council would retain a controlling interest in the CIC. Each funding partner had therefore been consulted on the possibility of becoming a shareholder in the Company, the outcome of which was that the equity in the Company was to be divided between three parties:

<u>Partner</u>	<u>Percentage of Shares</u>
South Holland District Council	34%
Lincolnshire County Council	33%
Boston College	33%

5.11.4 The above leasing and shareholder proposals were intended until the middle of 2010 when a number of matters caused a rethink of the proposals. The issues related to:

- State Aid;
- Stamp Duty Land Tax;
- VAT; and
- Restrictive covenants imposed on the land.

5.11.5 The shareholding and leasing arrangements had a significant impact on the payment of stamp duty land tax (SDLT). Because the CIC was 100% owned by the Council there was scope to get SDLT group relief. However, there was a three year clawback of that relief if control/ownership of the CIC changed within that period. Accordingly there were substantial financial implications if the proposed shareholdings were to be implemented within a three year period.

5.11.6 The significance of the existence of a restrictive covenant on the land was underestimated and had a major impact preventing the granting of leases. Understandably Boston College insisted upon the restrictive covenant being formally released before it signed up to its lease so as not to breach it.

5.11.7 Following receipt of external advice in respect of VAT the proposed leasing arrangements were revised so that:

- (a) the part of the ground floor to be used as a restaurant and training kitchen be leased to Boston College at a peppercorn rent for 125 years, at a time to be determined by the Economic Development Manager;
- (b) the part of the first floor to be used as training space be leased separately to Boston College at a peppercorn rent for 125 years, at a time to be determined by the Economic Development Manager; and
- (c) all of the remaining parts of the Red Lion Quarter be leased to the Red Lion Quarter Community Interest Company at nil or nominal value for 125 years, at a time to be determined by the Economic Development Manager.

5.11.8 The proposed changes were not reported to, and approved by Cabinet until 7 December 2010, just three months before the proposed opening of the building.

5.11.9 The outcome was that:

- the official opening was postponed from 2 March 2011 to 5 April 2011;
- the CIC did not have a lease but was nevertheless allowed to occupy the building to enable it to open, which was subsequently achieved on 5 April 2011;
- Boston College did not have leases but was nevertheless allowed to occupy the premises;
- as Boston College's £2,000,000 contribution towards the cost of the development was tied up to the completion of the leases, this was not paid and has still not been paid; and
- Boston College's failure to pay its £2,000,000 contribution has meant that South Holland District Council has had to cover the cost in the meantime.

5.11.10 Conclusions

- The issues with state aid, stamp duty land tax, VAT and the restrictive covenant on the land were significant issues in terms of the leases and shareholdings. However they had been allowed to go without being dealt with.
- The significance of the restrictive covenant was particularly underestimated. The leases still remain unresolved.
- All of the issues were known at the time the building was passed over to the CIC but, in the opinion of the Task Group, ought to have been resolved before the handover.
- Allowing occupation without a lease will always have potential implications. No risk assessment appears to have been undertaken of the possible implications in this instance although that may not be the case. It is possible that the desire to open the building within the timescale imposed by EMDA was given highest priority as the possible loss of funding was considered to be the greatest risk.

5.11.11 Recommendations

- Unless there are compelling overriding circumstances occupation of any property should not be given unless the appropriate lease or sale has been completed.
- In future, any consideration to allow occupation of the premises prior to the completion of lease formalities should be accompanied with a documented risk analysis. Clear responsibilities for action should be documented together with a time line for achieving the agreed results.

- All such matters must be resolved before handing over to a CIC or similar organisation.

5.12 Governance

5.12.1 The Council is responsible for ensuring that there is a sound system of governance which facilitates the effective exercise of the Council's functions and which includes arrangements for management of risk. It has a duty to prepare an Annual Governance Statement for publication with its published financial accounts. This helps to ensure that the business is conducted in accordance with the law and proper standards, that public money is safeguarded and properly accounted for, used economically, efficiently and effectively.

5.12.2 The draft 2010/11 Annual Governance Statement was considered by the Governance and Audit Committee on 16 June 2011 and the final Statement on 27 September 2011.

5.12.3 The report to the Governance and Audit Committee on 27 September 2011 advised that "management have regularly reviewed governance arrangements throughout the year, including risk management arrangements, service manager internal control assurance statements, as well as finance and performance reports." It also drew on the work of the auditors.

5.12.4 The Annual Governance Statement concluded that "our governance arrangements are both satisfactory and effective." This was the view of the Senior Management Team and Governance and Audit Committee.

5.12.5 Whilst it is pleasing to read such conclusions, it does not reflect the findings of the Task Group. Indeed, the Task Group have been advised or found:

- that the most senior levels of management did not appear to have as much involvement with the Red Lion Quarter Project as the Task Group would have expected other than through the quarterly corporate priority highlight reports which failed to ensure that significant problems were being highlighted and addressed;
- management structures were being bypassed;
- the Project Board responsible for the project had a number of weaknesses;
- operational staff appear to have been allowed to sign off invoices without a second signature, therefore possibly in breach of financial procedures;
- financial management systems were ineffective resulting in the Project Manager establishing his own system;
- the Risk Register was ineffective;

- VAT and SDLT risks were not identified and appropriately dealt with in a timely manner;
- there were legal issues which were not effectively addressed in respect of:
 - potentially breaching a restrictive covenant on the land; and
 - potentially carrying a risk of breaking state aid rules.

5.12.6 Whilst some of these matters were in 2009/10, the Annual Governance Statement for that year reached a similar conclusion i.e. "our governance arrangements were both satisfactory and effective".

5.12.7 Although this may be seen as bringing into question the effectiveness of the Governance and Audit Committee, similar questions could be asked of Overview and Scrutiny. For example:

- Why didn't Overview and Scrutiny scrutinise the Business Plan?
- Why didn't Overview and Scrutiny become aware of the performance issues until late in the day?

5.12.8 These are all aspects of the Council's governance arrangements. Consideration needs to be given to how these bodies can become more effective. How they can become aware of potential problems at an early stage.

5.12.9 Conclusions

- Although the Governance & Audit Committee and Overview & Scrutiny have been specifically mentioned, good governance relies on a combination of individuals, bodies, processes and procedures.
- Although with hindsight a number of issues have been identified which, if addressed earlier, could have avoided problems at a later stage, these appear to have gone largely unnoticed, or their potential implications went unnoticed until very late in the day. The challenge is to identify how such matters can be identified in future.
- The Task Group considered that there were failures in governance despite the 2009/10 and 2010/11 Annual Governance Statements concluding that the Council's "governance arrangements are both satisfactory and effective." It was surprised that these conclusions were not challenged. Although the Council operates a Whistleblowing Policy, this clearly did not work in this instance.

5.12.10 Recommendations

- That Senior Manager Team review the Council's governance arrangements and make recommendations how potential issues can be highlighted in future, including bringing issues to the attention of:

- The Performance Monitoring Panel
 - The Policy Development Panel
 - The Governance & Audit Committee
 - The Senior Management Team
 - The Chief Executive
 - The Monitoring Officer
 - The Section 151 Officer
- Overview and Scrutiny should examine future projects including business plans and feasibility studies at an early stage as well as following receipt of subsequent versions and when amendments are made.

5.13 Boston College

5.13.1 Interest from Boston College was first registered in November 2004, with the possibility of leasing the top floor of any development as an Outreach Training Centre for the College. There was also an interest in taking one of the retail outlets on the ground floor to provide students on food orientated courses with experience in the reality of business/customer relationships. The Project Board, which was established in June 2007, included a representative of Boston College.

5.13.2 By November 2007 it was reported to Cabinet that the project included a higher education/further education provision delivering catering and business qualifications, fulfilling a local requirement to improve skills in the District. A restaurant and demonstration area was incorporated in the proposals “which would, in turn, link with a higher education/further education provider to deliver food, catering and business qualifications.” At this stage the Learning and Skills Council was identified as a potential funder of £1,500,000.

5.13.3 The February 2008 Business Plan listed as an objective:

“to work with a higher education/further education provider to deliver food, catering and business qualifications, in order to increase skill levels in the district and sub region.”

5.13.4 Funding for the project was finalised in June 2009 with confirmation from Boston College that their contribution of £2,000,000 was available subject to agreement of Heads of Terms for the lease to include:

- a 125 year sub-lease from the CIC at a rental of £1 per annum;
- retaining exclusivity in terms of educational and learning provision within the building;
- requiring pre-emption rights to purchase the freehold interest in the building at any time within the lease period (i.e. should the Council wish to sell).

- 5.13.5 The agreed Heads of Terms for Boston College's lease contained a formula that would result in approximately 33% of the shares in the Company being transferred to the College.
- 5.13.6 Boston College were to appoint two of the seven Directors to the CIC, one as a funding partner and one in its capacity as tenant.
- 5.13.7 After seeking tax advice from KPMG it became apparent that the proposed leasing arrangements placed the Council at significant risk of VAT exposure. To overcome this it was proposed that the Council granted leases:
- to Boston College of that part of the ground floor to be used as a restaurant and training kitchen;
 - to Boston College of that part of the first floor to be used as training space; and
 - to the Red Lion Quarter CIC of the remaining parts of the building.
- 5.13.8 Although the VAT issue was resolved, albeit at a late stage, there were four other issues which were still unresolved at the time of opening the building to the public on 5 April 2011:
- state aid;
 - lease;
 - restrictive covenant on the land; and
 - service charge.
- 5.13.9 The outcome was that, in the desire to open on time and avoid a further postponement and possible loss of EMDA funding, Boston College were allowed occupation of the parts of the building for the restaurant and training kitchen on the ground floor and the training space on the first floor without completion of formal leases.
- 5.13.10 As the £2,000,000 funding was conditional upon the completion of the leases, their contribution remains unpaid. The Council is having to fund this in the meantime. Should the College decide to pull out without paying its contribution it would place the Council at significant financial risk.
- 5.13.11 The reality is that there was little food heritage within the building and the development of the foodcourt left little scope for the planned synergy between it and the restaurant. Despite this the College did support the use of the meeting rooms in the building. It also catered for the Flower Parade lunch shortly after opening and stepped in to run the South Holland Food Festival when the event was in jeopardy.
- 5.13.12 Stamp Duty Land Tax issues created problems in the granting of shareholdings to the College.

5.13.13 Conclusion

- Perhaps understandably, Boston College appears to have exercised a high degree of influence. SHDC should have understood the implications of the risk earlier and resolved the lease issue before agreeing to occupation. The result of failing to do so has left the Council in a weak position.
- The area occupied by Boston College appeared to be in contravention of the restrictive covenant. Despite the fact that this had been highlighted early, the significance of it was not fully appreciated by those working on the project.
- The disagreement about the level of service charge proposed further weakened the Council's position.
- Co-operation between Boston College and the food heritage proposal did not develop because there was little food heritage within the building.

5.13.14 Recommendations

- A satisfactory risk assessment process should be introduced to ensure the Council is made aware of the consequences of potential risks before it is too late to avoid the consequences.
- The responsibility for ensuring this is carried out in all circumstances be clearly identified and recorded.

5.14 **Letting of Commercial Units**

5.14.1 The February 2008 Business Plan prepared by FMC allowed for the following allocation of space to users in addition to the Food Hall and further education accommodation:

Ground Floor

- Retail/production units for let (3-6 units); 300m²
- Exhibition and common areas; 350 m²

First Floor

- Common areas, including reception area for College and managed workspace; 200 m²

Second Floor

- Managed workspace up to 30 units, average size 18.6 m²; 558 m²
- Lettable meeting rooms; 92m²
- Common areas; 100m²
- Refreshment area; 11m²

5.14.2 The final scheme which gained planning permission in November 2009 had the following;

- Managed workspace (14 units); 388.5m²
- Common areas; 1383.6m²
- Retail units (up to 3); 107m²
- Exhibition area
- Meeting rooms; 159.1m²

5.14.3 The Business Plan was updated on several occasions in June 2009, February 2010, July 2010, August 2010 and November 2010. The June 2009 update was clear that it was essential that all retail units were tenanted and operational when the Centre opened for business and that there was a credible offering from a range in the food hall. The February 2010, July 2010 and August 2010 Business Plans all required that:

“All retail/production units to be let upon opening of the Centre; this is to:

- ensure the Centre has a strong draw to drive footfall in the initial periods and establish a regular customer base;
- contribute in the initial years to organisational overheads whilst managed workspace lets and other revenues grow.

5.14.4 The 19 November 2010 Business Plan made no reference to this requirement. However, it did say that it was “anticipated that service charges and rental parameters will be determined to ensure that active marketing will take place from the commencement of December 2010.”

5.14.5 Minutes of the Board of the CIC do not make any reference to this change although the Business Plan was submitted to its meeting on 1 December 2010.

5.14.6 As previously stated, the key tasks for the General Manager included:

- to ensure that, from day one, three retail units are let and the tenants are open for business; and
- to ensure that, from day one, at least 12 units of the nurtured office units are let (representing at least 60% of the lettable space).

5.14.7 The building was due to open on 5 April 2011 and the meeting of the CIC Board of Directors on 28 March 2011 were advised that:

- service charges and rentals for the offices and retail units had now been calculated;
- the sub-leases (ie offices and retail units) were now being actively marketed by employees of South Holland District Council, although they

would be subject to the head lease from the Council to the CIC being completed;

- three firm expressions of interest and five significant expressions of interest had been received in respect of the offices; and
- no tenants were likely to be in occupation on the opening day.

5.14.8 Conclusions

- Although the key tasks of the General Manager including the letting of the retail and office units before the building was opened and despite the Business Plan calling for all offices and retail units to be occupied at the time of opening to fulfil the cashflow requirements of the Business Plan, little appears to have been done to ensure that occurred. As a result funds available to the Company were inadequate to survive through the period of the first few weeks.
- The Task Group did not get any clear explanations as to why the building was allowed to open before the retail and office units were let. It was advised:
 - the Board were always advised that there were many expressions of interest in taking office space and that leases and rental were being worked on;
 - we were set on opening - Boston College were moving in and the shop staff had all been employed; and
 - there was over optimism in terms of letting the retail units and doubt was expressed as it takes a long time for legals to be completed.
- The Task Group believes that this was a critical issue. No-one appears to have been taking control of it and the CIC Board either failed to realise the significance or take any firm action or critically challenge what they were being advised.
- Boston College could not be blamed for not agreeing the service charges.
- The CIC did not appear to maintain a Risk Register and there does not appear to have been any project management (eg simple gantt chart) identifying critical activities and dates. Certainly nothing was being reported to the Board of Directors.
- The Task Group believes that too much responsibility was placed in the hands of one individual without adequate supervision, control or support. This was, to a large extent, necessitated by time factors.

- It is difficult to understand why SHDC employees were marketing the space and we are advised that any interest that was being expressed was being frustrated by the continuing lease and restrictive covenant problems resulting in no commitment.
- In the circumstances it appears unreasonable to expect that the CIC, within its own resources, would resolve issues that SHDC had been unable to do prior to the CIC taking over. The Council would not expect a third party company to have to do so and it is totally unreasonable to expect that, in this instance, despite it being a wholly owned company.

5.14.9 Recommendations

- The Council should in future critically examine the structure of any company that it proposes to establish to ensure that the management is both effective and efficient and adequate support is provided.
- Should issues remain to be resolved, when handing responsibility over to a company, that the Council ensures that the company is adequately resourced and funded to finalise outstanding matters, agree a time line and monitor progress.

5.15 **Marketing**

5.15.2 During the course of the project there was expenditure for marketing, a large amount of which was paid to Boston College. In June 2011 the Portfolio Holder for Rural Strategy approved the sum of £30,000 from the Springfields Section 106 Marketing Fund "for a major advertising campaign across surrounding counties". This to be used on the basis that both the Red Lion Quarter and Springfields provided an additional £10,000 each.

5.15.3 At a meeting of the CIC Board on 14 February 2011 a Director asked how marketing of the food hall was to be handled and was advised by the General Manager that local marketing could be handled in-house quite cheaply, with the joint Springfields television advertising providing additional coverage. At the subsequent meeting on 28 March 2011, just one week before the opening, it was reported to the Board that:

- Springfields – A leaflet had been produced in association with Springfields and contact made with various organisations including parish councils, Spalding Gentlemen's Society and the Water Taxi who would assist in distributing the leaflet. The filming of the TV advertisement had been completed the previous week.
- Flower Parade – The civic luncheon would be held in the restaurant.
- Farmers Market – Negotiations were currently underway to move the Farmers Market to Red Lion Street.

- Town Banners – Banners had been erected in the market place advertising the Red Lion Quarter.
- Select Lincolnshire Conference – This was to be held on Wednesday 30 March 2011 at the Red Lion Quarter and would be attended by several small and medium sized businesses. The Sage Restaurant would be providing food for the event which would provide an opportunity to network with the businesses attending.
- The website, operated by 04RB would be launched on 31 March 2011.

5.15.4 Conclusions

- Despite what appears to be a substantial budget the results of that expenditure had little effect on the success of the project.

5.15.5 Recommendations

- In similar circumstances SHDC must ensure that a satisfactory and credible marketing plan is in place. Such proposals should be subject to scrutiny.

6.0 **SPALDING AND DISTRICT AREA CHAMBER OF COMMERCE**

6.1 As previously mentioned in the report, the Spalding and District Area Chamber of Commerce has raised concerns about certain aspects of the scheme. During the review a number of specific questions were received from the Chamber. Those questions and the Task Group's responses are attached at Appendix 4A and Appendix 4B respectively.

7.0 **CONCLUSIONS AND RECOMMENDATIONS**

7.1 **Conclusions**

7.1.1 The Task Group has provided detailed conclusions to each section of this report. It will therefore serve little purpose to reproduce those in their entirety. The following conclusions therefore represent the key findings of the Task Group's investigation.

1. The original concept evolved over the years into a somewhat different animal than originally envisage. The building grew as did the activities anticipated. The retail element remained a major part as it was a significant driver for funding. Feasibility Studies and Business Plans highlighted risks of no on site parking and a need to create a special attraction to pull visitors and shoppers in. A wow factor was seen as essential. They also highlighted the risks associated with the socio economic make up of South Holland being unable to support a venture of the nature proposed. They furthermore highlighted the lack of agricultural variety in this area compared with that found in other areas of the country

where similar comparable projects had been established. Reliance was placed upon attracting a proportion of the 3 million Springfield visitors although no serious attempts appear to have quantified how that might be achieved. By the time opening was imminent the General Manger had been left to create the wow factor within the retail element. However we have been told that paper bags had to be filled to fill the shelves to avoid empty spaces being visible. It is clear that risks were not fully appreciated, insufficient sources of produce had been found, insufficient wow factor had been created and the retail part of the business was not funded to withstand poor trading compared with the over optimistic budget.

2. The land was acquired at a reduced value to reflect the restrictive covenant required by the vendor to ensure the aims of the vendor were to be realised. Although the restrictive covenant had been highlighted early, the significance of it does not appear to have been fully appreciated by those working on the project which later resulted in delays in legal processes as Boston College understandably required a formal release of the covenant before signing the lease. A better understanding and appreciation of the consequences of ignoring the covenant would have avoided much of the delays in the legal processes.
3. The systems within the Council have been found not to be robust enough to manage a project of this nature from inception to outcomes. Superficially the Council put in place a system which should have worked. Despite the shortcomings the build project was delivered. However risks were either underestimated or ignored which has helped to make it difficult for the Council to fulfil its ambitions and to celebrate what should have been a flagship success. Without the need for this investigation it is likely that similar systems would have continued to be relied upon.
4. During any build project unforeseen problems are likely to be encountered and this one was no exception. A party wall problem occupied a great deal of time, professional cost and compensation. Although not yet quantified it amounted to a considerable sum but was absorbed into the budget. However it may well have contributed to an overspend.
5. The development has resulted in a considerable amount of adverse publicity and criticism. Much of this is considered to be justified and the Council's reputation has consequently been damaged.
6. Notwithstanding the adverse publicity and damage to the Council's reputation, there are a number of positives resulting from the project. These were identified more fully in the Summary of Findings.
7. Throughout the project no individual was specifically charged with responsibility for scrutinising Business Plans. A great deal of reliance appears to have been put on the fact that the Business Plans were prepared by external consultants. Responsibility should have been clear and understood.

8. Performance management systems were in place. At senior management level this was particularly through the designation of programme sponsors for the Council's corporate priorities and programme leads for priority actions, and the regular submission of highlight reports to SMT, Cabinet and the Performance Monitoring Panel. However, the system was not effective as matters which were known to have been causing concerns at the time were not being identified in those reports.
9. Operational staff had the opportunity to bypass approved management structures and processes and work with the support of portfolio holders who were not directly responsible for the management of the project. This contributed to internal conflict.
10. The Project Board essentially worked adequately but the roles of individuals on the Project Board were unclear. Equally collective responsibility was not enforced. The decision for the Project Board to only meet on a quarterly basis from September 2009 was premature as there were a number of key issues still to be resolved at that stage.
11. Whilst the potential failure of such a company was acknowledged during the project the full ramifications both politically and morally were not understood or appreciated
12. Project management was essentially through the Project Board and this worked reasonably well although there were some aspects that were not ideal. For example, the Risk and Issues Log did not identify some of the key issues facing the project.
13. No evidence was found that the CIC had structured project management processes or risk register to assist members of the Board to actively manage the project.
14. Developing in this particular location meant the design of the building was perhaps always going to raise problems. However, there is no doubt that the proposals were fully consulted upon and received due consideration, although the retail element was not subject to specific consultation.
15. The evidence received indicates that the Council's systems and processes for identifying changes to legislation affecting the work of the Council were not robust.

16. The CIC Directors were appointed much too late in the day with insufficient time to get to grips with all of the issues surrounding the project. As a consequence, the General Manager was permitted considerable authority with little supervision/control.
17. Although the Directors were either councillors or were all professional individuals, there appeared to be differences of opinion and understanding as to their roles and responsibilities which had not been made clear to them.
18. Successive business plans had made it clear that recruiting the right person to the position of General Manager was critical. In effect this seems to have been overlooked because, by the time any consideration was given to the matter, it was too late to undertake an open recruitment exercise. As a consequence, the person who had previously been the project manager was appointed.
19. Although successive business plans identified key tasks for the General Manager before the opening, many of these were not achieved. Although the General Manager was only answerable to the Board, the Board did not appear to be monitoring these.
20. The project was effectively handed over by SHDC to the CIC in July 2010. However, at that time there were still a number of issues which remained outstanding which the Task Group felt should have been dealt with by the Council. These outstanding issues continued to occupy the time of the General Manager for some time, creating capacity issues and taking him away from his key tasks as General Manager.
21. Senior management failed to understand the serious nature of the problems and it was totally unacceptable to allow the company to inherit the problems which SHDC had failed to resolve.
22. The General Manager received little supervision. Although he reported to the CIC Board it was not in a position to provide the necessary supervision and its governance arrangements were inadequate.
23. A number of staff were ultimately made redundant as a result of the failing, having a considerable personal impact on those individuals.

24. The precise amount which South Holland District Council funded towards the project is not clear. It is believed to be in excess of £1m.
25. With hindsight, it appears that opening the building on 5 April 2011 became of greater importance than the financial viability of the Red Lion Quarter. Timescales imposed by EMDA were also a factor in continuing with the opening in early April 2011 as opposed to deferring until leases were in place. Fear over the loss of funding was a major consideration.
26. The issues with state aid, stamp duty land tax, VAT and the restrictive covenant on the land were significant issues in terms of the leases. However they had been allowed to go without being dealt with and perhaps without anyone appreciating the significance of them.
27. Permitting Boston College to occupy the premises without a lease has potential implications. No risk assessment appears to have been undertaken.
28. Boston Colleges £2,000,000 funding contribution remains unpaid and the Council is still having to fund this.
29. Good governance relies on a combination of individuals, bodies, processes and procedures. A number of governance issues with this project went largely unnoticed until very late in the day. The challenge is to identify how these can be identified in future.
30. Perhaps understandably Boston College appears to have exercised a high degree of influence. SHDC should have understood the implications of the risk earlier and resolved the lease issue before agreeing to occupation. The result of failing to do so has left the Council in a relatively weak position.
31. Although key tasks included the letting of the retail and office units before the building was opened and despite the Business Plan calling for all offices and retail units to be occupied at the time of opening so as to fulfil the cashflow requirements of the Business Plan, little appears to have been done to ensure this occurred. As a result funds available to the Company were inadequate to survive through the period of the first few weeks. The CIC Board either failed to realise the significance or take any firm action or critically challenge what they were being advised.

32. The CIC did not appear to maintain a Risk Register and there does not appear to have been any project management identifying critical activities and dates. Certainly nothing was being reported to the Board of Directors.
33. Too much responsibility was placed in the hands of one individual without adequate supervision, control or support.

7.2 Recommendations

7.2.1 Each section of the report contains recommendations based on the findings and conclusions. The Task Group is of the opinion that it is vitally important that the recommendations are received and fully considered and accepted and they are reproduced in their entirety for that reason.

7.2.2 Feasibility Study and Business Plans

1. The Council should adopt a policy requiring any business plans, feasibility studies or like documents, together with subsequent revisions, to be independently stress tested **by professionally qualified persons** and this should be built into the project management system, ensuring that responsibilities are clear.
2. Overview and Scrutiny should be encouraged to review feasibility studies and business plans for significant projects.
3. Both of the above recommendations should be implemented at the early stages of any major project as well as prior to the letting of any contract.

7.2.3 South Holland District Council Management and Staff

1. The roles of senior management and of Senior Management Team should be clarified and processes introduced and documented to ensure clarity of responsibility.
2. The clarified roles of senior management should also ensure that there is a process for information to flow both up and down with appropriate checks within the system.
3. Management structures and processes should be adhered to. Members should not encourage staff to do otherwise and should ensure that appropriate managers are kept informed **of any issues that endanger this**.

7.2.4 The Project Board

1. That all project boards and similar groups should be made clear of their terms of reference, reporting procedures and expected outcomes.

2. The terms of reference of project boards and similar groups should be carefully considered at the time they are established.
3. Individuals appointed to project boards and similar groups should, unless otherwise advised, be individually and collectively responsible for the project and should be expected to attend meetings on a regular basis.
4. Upon the formation of project boards and similar groups a Director or appropriate Head of Service should ensure that all members are clear on their roles and responsibilities.

7.2.5 Project Management and Risks

1. Senior Management Team must ensure that a review of project management is undertaken to address the issues highlighted and that reviews are regularly undertaken thereafter to ensure that they remain effective. **In particular, the systems should be smart enough to ensure that the correct information is being reported.**
2. Robust project management must be introduced for any new social enterprise companies that may be established by the Council.
3. On establishing any new project board the project management tools and processes to be used should be defined
4. **Senior Management Team should review its systems and processes to ensure that they identify changes to legislation affecting the work of the Council**
5. **Senior Management Team should ensure that there is training and awareness for appropriate staff and members on the importance of project management and on the corporate systems in use.**

7.2.6 Design and Construction

1. Ensure design, layout and planning issues are resolved well before projects are committed to start.
2. Where appropriate local expertise relating to a project should be consulted

7.2.7 Community Interest Company Directors and Board of Directors

1. If the Council should in future establish a company of a similar nature it should:
 - Ensure that there is clarity over the roles and responsibilities of directors before recruitment and they are made aware of them
 - Recruit directors in a timely manner to ensure the full Board takes responsibility for the operations of the company.

- Provide training and guidance to the directors on their roles and responsibilities and on the company's Articles of Association before the company is operational.
- Ensure the reporting procedures are clearly defined before the company is operational.
- Ensure that the constitution of the company also addresses these issues

7.2.8 Community Interest Company Employees

1. In future, at the time that a project is proposed to be handed over to another body to manage there should be a full assessment of outstanding issues/position statement to enable the receiving company to quickly assess the situation and decide whether to accept it. It should be clearly established how outstanding matters are to be resolved, by whom and within what time frame.
2. The process for recruiting staff, including management, should in future be robust and timely and built into project plans.
3. Careful consideration should be given before appointing permanent staff through a company, including consideration of the tax and moral aspects.

7.2.9 Finance

1. That the future spending of Section 106 money should be considered as equally important as any other fund;
2. That an internal audit should be undertaken of the effectiveness of the financial management system for monitoring project spend against budget and how managers are using the system.
3. In consultation with Compass Point Business Services systems must be created prior to expenditure on a similar project to ensure that not only headline expenses are able to be easily interrogated, at any time, but also sub headings.
4. All future CIC or similar projects must be adequately financially resourced.

7.2.10 Leases – Community Interest Company and Boston College

1. Unless there are compelling overriding circumstances, occupation of any property should not be given unless the appropriate lease or sale has been completed.
2. In future, any consideration to allow occupation of premises prior to the completion of lease formalities should be accompanied with a documented

risk analysis. Clear responsibilities for action should be documented together with a time line for achieving the agreed results.

3. All such matters must be resolved before handing over to a CIC or similar organisation.

7.2.11 Governance

1. That Senior Manager Team review the Council's governance arrangements and make recommendations as to how potential issues can be highlighted in future, including bringing issues to the attention of:
 - The Performance Monitoring Panel
 - The Policy Development Panel
 - The Governance & Audit Committee
 - The Senior Management Team
 - The Chief Executive
 - The Monitoring Officer
 - The Section 151 Officer
2. Overview and Scrutiny should examine future projects including business plans and feasibility studies at an early stage as well as following receipt of subsequent versions and when amendments are made.

7.2.12 Boston College

1. A satisfactory risk assessment process should be introduced to ensure the Council is made aware of the consequences of potential risks before it is too late to avoid the consequences.
2. The responsibility for ensuring this is carried out in all circumstances be clearly identified and recorded.

7.2.13 Letting of Commercial Units

1. The Council should in future critically examine the structure of any company that it proposes to establish to ensure that the management is both effective and efficient and adequate support is provided.
2. Should issues remain to be resolved, when handing responsibility over to a company, the Council should ensure that the company is adequately resourced and funded to finalise outstanding matters, agree a time line and monitor progress.

7.2.14 Marketing

1. In similar circumstances SHDC must ensure that a satisfactory and credible marketing plan is in place. Such proposals should be subject to scrutiny.

8.0 FINANCIAL IMPLICATIONS OF RECOMMENDATIONS

8.1 There are no specific financial implications arising out of the recommendations contained within this report. There will be some staffing implications in implementing some of the recommendations but the Task Group considers that these can be undertaken within existing staffing resources.

9.0 ABBREVIATIONS

CIC	-	Community Interest Company
EMDA	-	East Midlands Development Agency
F&CHC	-	Food & Craft Heritage Centre
FHC	-	Food Heritage Centre
RLQ	-	Red Lion Quarter
SHDC	-	South Holland District Council

**ACCOMMODATION PROPOSALS
– CHANGES BETWEEN FEBRUARY 2008 – JULY 2010**

(Table 1: Original Calculation by FM^c Limited - Business Plan February 2008)

Floor Area – m²	Total		Ground	First	Second
Retail	727	21%	727	0	0
Office	751	22%	106	0	645
College	1,082	32%	0	1,082	0
Common	846	25%	495	246	105
Total	3,406	100%	1,328	1,328	750

Business Plan March 2008
(Revised calculation by SHDC 7.3.2008)

Floor Area – m²	Total		Ground	First	Second
Retail	979	29%	979	0	0
Office	691	20%	30	0	661
College	1,086	32%	0	1,086	0
Common	650	19%	350	200	100
Total	3,406	100%	1,359	1,286	761

Business Plan June 2009
(Calculation based upon FM^c Calculation 24.6.2009)

Floor Area – m²	Total		Ground	First	Second
Retail	599	19%	599	0	0
Office	641	20%	0	146	395
College	975	31%	363	612	0
Common	925	29%	338	360	427
Total	3,140	100%	1,200	1,118	822

Business Plan July 2010
(Calculation based upon FM^c planning application – November 2009)

Floor Area – m²	Total		Ground	First	Second

Retail	670	18%	670	0	0
Office	548	15%	0	115	433
College	1,174	32%	378	796	0
Common	1,268	35%	338	360	427
Total	3,660	100%	1,200	1,118	822

**KEY TASKS OF THE GENERAL MANAGER
OF THE RED LION QUARTER**

(Extract from the Business Plan dated 07/08/2010)

1. The Board appointed the General Manager at its meeting on 29th July 2010 and instructed him to:
 - To prepare and circulate cash flow projections;
 - To update and circulate the business plan;
 - To prepare an options report on the use of the food hall evaluating in particular the pros and cons of the Company operating the food hall directly, or, instead, franchising.

2. The key tasks for the general manager before and immediately after the opening of the Red Lion Quarter to the general public will be:-
 - to ensure the on-time handover of a workable and viable building, together with all documentation on the building, its specification, manuals for the operation of all plant, equipment, access and control systems, etc;
 - to develop and execute a marketing plan aimed at promoting the CIC to:-
 - potential tenants of the retail units;
 - potential users of the local food outlet and exhibition space;
 - potential occupants of the offices;
 - to develop and execute a marketing plan to promote and raise expectations of the Red Lion Quarter in the local community;
 - to develop and implement a launch programme to ensure maximum publicity for the centre;
 - to ensure that, from day one, the three retail units are let and the tenants are open for business;
 - to ensure that, from day one, the local food outlet is sufficiently stocked to provide potential customers with a real choice of produce, goods and services;
 - to ensure that from day one, at least 12 units in the nurtured office units are let (representing at least 60% of the lettable space);
 - to establish and develop strong and productive relationships with the board and stakeholder organisations, Boston College, tenants and likely tenants, customers and potential customers.

- to recruit a first class administrator/marketing assistant, also the key administrative staff for the nurtured office facilities;
- to set up appropriate management information and reporting systems.

3. Key post launch activities will include:-

- managing and developing the on going business of the CIC;
- actively working towards full occupancy of the nurtured office accommodation and active lets of the food hall stalls;
- identifying and exploiting new business opportunities for the Centre;
- continuing to strongly market the Red Lion Quarter to the local community and beyond;
- developing for the benefit of the Centre a wider range of key regional contacts such as Tastes of Anglia, Tastes of Lincolnshire and the like;
- reviewing the business plan in the light of early operating experience and making recommendations to the board for the future development of the business based on that review.

4. The general manager will be supported by a part time administrator/marketing assistant, and by administrative staff supporting the nurtured office facilities.

**SOUTH HOLLAND DISTRICT COUNCIL
FUNDING OF RED LION QUARTER**

PURPOSE	AUTHORISATION	AMOUNT (£)	FUNDING SOURCE	% OF TOTAL FUNDED BY SHDC	
				TOTAL (£)	SHDC %
Contribution towards Feasibility Study	Cabinet - 03/12/2002	3,000	General Fund	41,000	7.3%
Land acquisition costs	Cabinet - 09/09/2003 Council – 1/10/2003	200,000	S106 - Intergen Economic Development Fund	675,000)	29.6%
Development of Project	Cabinet - 13/11/2007	500,000	S106 Intergen Economic Development Fund	5,585,000	8.95%
Refurbishment of Red Lion Street	Cabinet - 12/10/2010	80,000	General Fund S106 - Springfields	120,000	66.67%
Advertising Campaign	Pfh for Rural Strategy - January 2011	30,000	S106 - Springfields Marketing Fund	50,000	60%
Apprenticeship at Red Lion Quarter	Pfh for Sustainable Communities - March 2011	5,084.82	S106 - Spalding Energy Expansion Fund	?	?
Company and Council Liabilities	Council - 19/10/2011	96,207	General Fund	96,207	100%
Contract Overspend	Cabinet - 14/06/2011 Council – 22/6/2011	93,000	Crease Drove Underspend - £57,000 + S106 Funds	93,000	100%

Questions for Red Lion Quarter Independent Internal Enquiry

From Spalding & District Area Chamber of Commerce 7th November 2011

1. What business case/research was completed before the development was commenced?
2. We were told at the Cabinet meeting that the business plan was created and reviewed by “outside professionals”, and that SHDC “did not sign it off”, i.e. it was completely entrusted to these “professionals”. Who is ultimately responsible for the failures in the business plan?
3. Similarly, there have been serious concerns raised about the design of the building, e.g. the “retail units” being at the back of the entrance foyer (and largely out of site) and the frontage not lending itself to retail. Who is to be held responsible for these design issues and how do they justify the final design?
4. Were realistic budgets on trading profit produced prior to the commencement of trading? Was a realistic cash-flow forecast drawn up, and if so, what went wrong once trading commenced (it seems there was insufficient budget/cash available for marketing and even buy sufficient stock for the food court)?
5. How were the Board Members selected of the CIC? How many of them had current commercial and/or retail experience?
6. How was the CIC allowed to become insolvent before SHDC were aware and it was clear that action (i.e. the “bail out”) was required?
7. Was advice sought from local estate agents on the requirements and rental values of the serviced offices prior to the building? If the advice was obtained, why was it not taken?
8. Was advice sought from local estate agents on the requirements, rental values and position of the retail shops prior to building? If the advice was obtained, why was it not taken?
9. Why was the development not conditional on the availability of additional car parking in the immediate area?
10. Were the opinions of senior community business leaders sought prior to the design and build?

11. What truth is there to the statement made by a senior Council employee during the first week of opening, when concern was expressed as to the financial viability of the shops and offices - there is a fall-back position that Boston College will take the space?

**Replies to questions from Spalding & District Area Chamber of
Commerce
of 7th November 2011**

1. Both Feasibility Studies and Business Plans were commissioned by the Council over the whole period of the project from 2002 to 2011. The initial Feasibility Study was dated April 2003 with Business Plans being prepared in June 2004 and June 2008. There were subsequent revisions to the 2008 Business Plan in June 2009 and in February, July, August and November 2010. The revisions were done internally.
2. Business plans were created by outside professionals but were considered by officers, reported to cabinet, the project team as well as being available to Portfolio Holders. Latterly the responsibility was with the Board and General Manager of the CIC. No individual is responsible for the failures of the various business plans but there is a collective responsibility within the parts of the organisation mentioned above as well as across the whole management structure.
3. The final design and layout of the building was a compromise. Time pressures to get planning permission to commence building, the potential users requirements, site shape and size constraints, architectural input, the fact that the development is within a conservation area, the input of English Heritage, the domestic nature of Red Lion Street, being adjacent to a listed building, the involvement of the Member of Parliament, the professional planners' opinions and the opinions of Members of the Planning Committee all contributed to a compromise as a final design. All involved bear some responsibility but it would have been infinitely better had a planning application been developed at a much earlier stage. However other factors like certainty of funding may well have made that difficult.
4. Budgets, cash flow and profit and loss accounts were produced as the project evolved and up to opening. Trading failed to reach the projected level and income was not achieved from letting the office space. The projected level of cash flow was not achieved from day one resulting in the company exhausting what little funds remained available to it. In reality the Company had run out of working capital before it started trading in April 2011.
5. As sole shareholder the Council considered the appointment of directors at a meeting of the Cabinet on 15 June 2010 and agreed that the number of Board members should be limited to 7, appointed as follows:

- 2 - Boston College (one as a funder and one as a tenant)
- 1 - South Holland District Council (as a funder)
- 1 - Lincolnshire County Council (as a funder)
- 3 - External appointments with suitable experience

The four nominations from Boston College (2), SHDC and LCC were appointed to the CIC Board at a meeting of the Board of Directors on 19 July 2010. Following the making of some enquiries a further two were appointed by the Board of the CIC at a meeting held on 29 July 2010 making six in total. Further enquiries and invites were made but it was not until 28 March 2011 that the CIC Board was able to make the third external appointment.

Directors had a range of experiences but none appear to have had direct retail experience.

6. The CIC was intended to be a stand alone company being self financing and self governing. There was a failure within the management of the Company to have sufficient information available to appreciate the speed with which the situation deteriorated. In the event the Company had insufficient working capital to fund itself through a period when it failed to achieve the requirements of the business plan with no contingency plans or a plan B.
7. Advice was taken but other factors prevented space within the building being let, although there was interest to take tenancies prior to opening. In particular, issues with a restrictive covenant attached to the land, the head lease and service charges had not been resolved and prevented prospective tenants from signing up.
8. Some advice was taken together with some market research by officers although the position was not regarded as being a detriment as it was considered that the operation would have a sufficient wow factor to be a draw in itself.
9. There is no easy answer to why. However those involved did not see it as a pre condition. Attempts were made to increase the number of parking spaces in the centre of Spalding but were frustrated by other unforeseen constraints. There appeared to be a general feeling within those involved that there are sufficient spaces within easy reach of the site.
10. The short answer is not as far as we can ascertain in any formal sense.
11. Boston College may or may not have future requirements for additional space but at this time they had not expressed interest to be the operator for the building.

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Portfolio Holder for Internal services, Performance and Business Development and the Assistant Director Democratic Services

To: Cabinet – 24 July 2012

(Author: Samantha Dancer – Joint Performance Team Leader)

Subject: Refresh of Corporate Plan for 2012/13

Purpose: For approval

Recommendation:

That the proposed updates to the Corporate Plan 2011-2015 be approved by cabinet.

1.0 BACKGROUND

1.1 The Corporate Plan 2011-15 was adopted by Council on the 19th October 2011 on the understanding that the plan would be refreshed annually to update the areas of particular focus for that year.

2.0 OPTIONS

2.1 Do nothing.

3.0 REASONS FOR RECOMMENDATION(S)

3.1 Under each Corporate Priority within the plan we outline 'Our particular focus in x year – x year will be to:', these sections require updating annually.

4.0 EXPECTED BENEFITS AND TIMELINES

4.1 That our stakeholders are aware of the work the council is doing each year to achieve the corporate priorities.

5.0 IMPLICATIONS

5.1 Carbon Footprint & Environmental Issues

5.1.1 There are no implications as a result of this report.

5.2 Constitution & Legal

5.2.1 There are no implications as a result of this report

5.3 **Contracts**

5.3.1 There are no implications as a result of this report

5.4 **Crime and Disorder**

5.4.1 There are no implications as a result of this report

5.5 **Equality and Diversity & Human Rights**

5.5.1 There are no implications as a result of this report

5.6 **Financial**

5.6.1 There are no implications as a result of this report

5.7 **Risk Management**

5.7.1 There are no implications as a result of this report

5.8 **Staffing**

5.8.1 There are no implications as a result of this report

5.9 **Stakeholders / Consultation**

5.9.1 We have a statutory obligation to publish our key plans and provide performance reports against these.

5.10 **Other**

5.10.1 There are no implications as a result of this report

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 There are no implications as a result of this report

Background papers:- Corporate Plan 2011-2015

Lead Contact Officer

Name/Post: Samantha Dancer / Joint Performance Team Leader

Telephone Number: 01775-764805

Email: sdancer@sholland.gov.uk

Key Decision:

No

Appendices attached to this report:

Appendix – Proposed changes

SHDC Corporate Plan refresh for 12/13:

P2 Introduction

Change is inevitable in any organisation but we are drivers not passengers in that process. Rather than change being thrust upon us, South Holland has, in a resourceful, creative and innovative way, built a reputation for taking the lead and ensuring we shape our own future. This is a reputation we carry forward to meet the challenges that lie before us.

~~We have established Compass Point Business Services with ourselves and East Lindsey District Council, and introduced a shared management arrangement, with ourselves and Breckland Council, both of which are important examples of how we are driving forward to meet our corporate priorities.~~

Deleted: It has been a year of change, with the establishment of

Deleted: the introduction of the

Deleted: as two

While the names of our priorities have changed our focus has not, and our values remain implicit in everything we do as a council, our corporate planning reflects our unwavering focus on empowering our members, ensuring our communities continue to thrive and in delivering efficient and effective services which the people of South Holland can rely upon.

P4-5

Our particular focus in 2012 – 2013 will be to:

- ~~Maintain occupancy levels above 90% on the Council's Commercial Property Portfolio~~
- ~~Take back financial control of our housing stock from central government~~
- ~~Assess which services and functions could be delivered in a different way to meet customer needs and reduce costs~~
- ~~Reduce red tape and bureaucracy by simplifying how we manage and deliver our services through service and process reviews.~~
- ~~Continue the development of staff and councillors to ensure the best delivery of services for our residents~~
- ~~We will seek to promote the Localism agenda through all council services, including the implementation of the new Standards Regime, The Community Right to Challenge, The Community Right to Bid, and the Social Housing Reforms.~~

Deleted: <#>Implement the use of Solar Panels at our Priory Road offices to generate guaranteed index linked income over the next 25 years and to offset our carbon footprint!]

P6

Our particular focus in 2012 – 2013 will be to:

- ~~Provide each Councillor with a minimum budget of £5,000 for 2012/13 to support local services within their communities~~
- ~~Enable communities to take an active part in all aspects of local 2012 celebrations for the Queen's Diamond Jubilee and the Olympic Games~~
- ~~Give more priority to local people and local priority groups for social housing.~~
- ~~We will ensure our tenancies respond to local needs and circumstances~~
- ~~Ensure our supported housing services provides the right types of services to meet our residents' expectations~~
- ~~Actively seek opportunities to transfer community assets to local groups or parish councils.~~

Deleted: 4

Deleted: 1

Deleted: 2

Deleted: <#>Implement a new community engagement tool for our website that will enable residents to contribute and comment on ideas for local projects]]

P7

Our particular focus in 2012 – 2013 will be to:

- ~~Increase the percentage of waste that is recycled and reduce the amount that is sent to landfill~~
- ~~Make our enforcement of environmental crime more effective~~

- React positively to the Localism agenda, by promoting sustainable planned growth, that will improve the employment and housing prospects of our residents
- Reduce our own Green House Gas emissions
- Develop innovative technology solutions to maximise efficiency and minimise our carbon footprint.

P8

Our particular focus in 2012 – 2013 will be to:

- Influence and encourage private sector regeneration, to include the Holland Market Area in Spalding and the Rail Freight Interchange (RFI)
- Identify and secure funding for the Market Towns Initiative
- Support new businesses, or new offshoots of businesses, by offering them a period of reduced rent in our industrial units
- Work with local food businesses to raise hygiene standards
- Promote sustainable business development opportunities which do not impact adversely on our residents

Deleted: <#>Secure the long term viability of the Red Lion Quarter¶

Deleted: Road

Deleted: Hub

Deleted: Food Port

P9

Our particular focus in 2012 – 2013 will be to:

- Work with partners to enable effective, co-ordinated, measurable response to anti-social behaviour
- Review and update CCTV coverage in the district
- Produce a programme of cultural and sporting activities, which are accessible to all.

Deleted: <#>Improve on the local food hygiene standard by implementing the new national food rating system by 2012.¶

Deleted:

Deleted: <#>Complete a thorough business case on the options available regarding the future of the Castle Sports Complex, and have an action plan in place for 2012/13¶

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

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