

AUDIT COMMITTEE

Risk Management 25 June 2008

Report of Head of Financial Services

PURPOSE OF REPORT

To seek Audit Committee's approval of the revised Risk Management Strategy, to provide assurance that the risks relating to Member Decision Making and Luneside East are being actively managed, and to recognise the work that needs to be done to satisfy the Audit Commission's Key Lines of Enquiry (KLOEs) for Use of Resources 2008/09.

This report is public.

RECOMMENDATIONS

1. That the revised Risk Management Strategy be approved.
2. That the Committee notes the risk position and the actions taken regarding:
 - claims relating to the basis on which planning permission is refused, and
 - the Luneside East developmentsand considers whether it wishes any further information or actions to be considered, in order to provide reasonable assurance regarding the future management of these risks.
3. That the Committee recognises the work that needs to be done to satisfy the Audit Commission's Key Lines of Enquiry (KLOEs) for Use of Resources 2008/09.

1 INTRODUCTION

- 1.1 Through the governance framework, the Council has committed to ensuring that risk management plays an integral part in the sound governance of the Council, to support the achievement of its aims and objectives as set out in the Corporate Plan.
- 1.2 The Council's arrangements for managing risk are set out in its associated Policy and Strategy documents. These were last updated in May 2007 and were formally approved by Audit Committee at its meeting on 27 June 2007.
- 1.3 Since the last revision, a number of areas have been identified as being in need of updating.
- 1.4 The Use of Resources assessment undertaken by the Audit Commission, and the recent internal audit report on risk management, highlight the importance of regularly updating the Risk Management Policy and Strategy.

2 PROPOSED CHANGES TO RISK MANAGEMENT STRATEGY

- 2.1 The strategy is attached, highlighting the main alterations as follows;
 - The responsibility for the Head of Financial Services relating to Audit Committee now reads '*To provide a report on the effectiveness of the risk management strategy, on an exceptions basis. Reports would cover major changes in high impact risks and/or areas where remedial action is required.*' This is to reflect the fact that Audit Committee's role is to review assurances that corporate business risks are being effectively managed, and to monitor and review the effective management of risk by officers.
 - The responsibilities of Internal Audit now read '*To develop and deliver a risk based audit plan designed to provide assurance to management and the Audit Committee on the effectiveness of risk management arrangements within the Council*' and '*to provide an annual opinion and assurance statement on the effectiveness of the Council's risk management, internal control and corporate governance arrangements*'. This is to bring Internal Audit's responsibilities in line with those as set out in their Charter and supporting plans.

3 KEY RISK ISSUES ARISING

- 3.1 There have recently been two major insurance claims made under the Officials' Indemnity policy. One relates to the alleged incorrect granting of planning permission and is still under investigation. The other related to a planning appeal but insurers refused to indemnify the Council due to there being no actual "error". The basic circumstances giving rise to the appeal were that Members refused to grant planning permission despite Officers' Recommendations that they should allow it. In the absence of indemnity from the insurers, the Council was still duty bound to pay an award of costs of £78k to the appellant. This incident highlighted that Members' decisions not to follow Officer advice could be a major risk to the Council; depending on the basis of the decisions reached, the impact being significant financial loss and/or reputational damage to the Council.
- 3.2 As a result of this, the Head of Planning Services presented a report to Planning and Highway Regulatory Committee on 12 November 2007 advising Members of the consequences of such decisions and the grounds upon which they fall liable for costs. The report explained that refusing planning permission against Officer advice is not in itself unreasonable behaviour, indeed without the freedom to do so, the democratic element of decision making within local government could not function and all planning decisions would have to be delegated to Officers. In exercising their

freedom, however, Members need to be very careful that they can base their decisions on sound planning grounds which can be defended at appeal.

3.2 In order to help mitigate the risk of this happening again, members of Planning Committee have now been supplied with a copy of an extract from Circular 8/93 “Costs in Planning and other Proceedings” and advised that the extract be kept safely with the Constitution and Planning Protocol for future reference when required. This is in addition to the compulsory training that all members of Planning Committee and their subs receive before they are able to sit on the Committee.

3.3 The Risk and Insurance Manager has discussed the matter with Planning Services and is satisfied with the arrangements in place, but the Audit Committee is requested to consider the above, and determine whether it wishes any further action or information to be provided, in order to support these assurances. Members will note also that a further item on this agenda relates to membership of Planning and Cabinet, which is in response to perceived risks raised by a Member.

4 LUNESIDE EAST REGENERATION

4.1 There are two distinct high risk issues relating to the Luneside East regeneration project, both of which have been subjected to robust risk management considerations. They relate to Housing Developer withdrawal and Land Tribunal claims;

- Housing Developer withdrawal

The first issue has arisen as a result of the housing developer withdrawing from the development project due to market reasons. This has left the Council exposed to a number of risks and important decisions needs to be made regarding the future of the development.

Until the Council disposes of the site, it is responsible for site management and security and all the costs associated with this. This is a continuing liability for the Council and a major financial risk. There is also the major strategic risk that, until a beneficial development of the site is achieved, the Council will deliver no regeneration benefits from its investment to date. Also, the site in its present eyesore condition will continue to be a drag on investment into the wider Luneside area. From a reputation point of view, any project failure will impact against the Council’s credibility as perceived by its funders, other partners and the local community.

Planning Services recognised that there were several options that the Council could follow, each with its own distinct risks and opportunities. They were aware that a rigorous options analysis would enable informed decision making and that the Council would want to mitigate what are serious risks and maximise value in the round. As such, a full risk identification exercise was undertaken for each identified option, and this is being kept up to date for any further developments. Each of the risks has been evaluated and scored and mitigating actions identified where appropriate. Having done this alongside a financial implications exercise, it became clear that one of the options identified so far, appeared far more favourable than the others. These findings and any more recent developments will be reported to Cabinet and/ or full Council, as appropriate. An item is now included in the Forward Plan for the Cabinet meeting on 29 July. Attention is also drawn to the references to Luneside East in the draft Statement of Accounts, included elsewhere on this agenda.

- Land Tribunal claims

The Council has successfully completed its land assembly for the Luneside East project, which is a corporate priority. This involved both the negotiated acquisition of land, compulsory purchase proceedings and the decommissioning and removal of an operational gasholder.

When land is compulsorily acquired, matters of compensation are often not settled until quite some time after, as the compulsory purchase does not concern matters of value. It is up to the acquiring authority (in this case, the Council) to seek to agree settlements with the claimants affected.

As was anticipated with the Luneside East project, negotiations for some acquisitions have been very protracted and several are still outstanding, including two for which substantial claims are now likely to go before the Land Tribunal. This means that the Tribunal considers the valuation arguments presented by both parties and then decides on a binding settlement figure.

Planning Services are aware that this poses a significant financial risk to the Council and so produced a detailed report to Cabinet (3 June 2008), outlining the risks/ issues arising and how they can be mitigated. They explained in detail how these compensation claims are serious and, if substantiated at Lands Tribunal, will impact very substantially upon the Council's finances.

- 4.2 Given the above, it is felt that Audit Committee can take assurance that effective risk management procedures have been undertaken in relation to both of these Luneside East issues, and that decision making will be/ has been based on a sound awareness of opportunities and risk. Again, however, the Committee is asked to indicate whether it requires any further information in support of that assurance.

5 **AUDIT COMMISSION'S KEY LINES OF ENQUIRY (KLOES)**

- 5.1 The Audit Commission is an independent body responsible amongst other things for ensuring that public money is spent economically, efficiently and effectively, to achieve high-quality local services. Each year, the Audit Commission publishes scored judgements about value for money in the use of resources in respect of local authorities, fire and rescue authorities, police authorities and primary care trusts (PCTs). The use of resources assessment forms part of CAA from 2009 and will also feed into other relevant performance assessment frameworks, as appropriate.
- 5.2 The use of resources assessment considers how well organisations are managing and using their resources to deliver value for money and better and sustainable outcomes for local people. It is structured into three themes that focus on the importance of sound & strategic financial management, strategic commissioning & good governance, and the effective management of natural resources, assets & people.
- 5.3 The scores for each theme are based upon the scores reached by auditors on the underlying KLOE. These KLOE are generic and applicable equally to all organisations subject to use of resources judgements under CAA. This promotes consistency and demonstrates that all organisations within a CAA area are being treated in exactly the same way and to the same standards.
- 5.4 From 2008/09, the KLOE are more broadly based than previously and embrace wider resource issues such as people and workforce planning, and the use of natural

resources. The KLOE focus more on value for money achievements, outputs and outcomes rather than on processes, and are more strategic and less detailed.

5.5 Risk Management is featured in the second theme entitled 'Governing the business'. The new KLOE (reference 2.4) states '*Does the organisation manage its risks and maintain a sound system of internal control?*' Its focus will be based on the following areas;

- Effective risk management which covers partnership working;
- Clear strategy and effective arrangements, including allocation of appropriate resources, to manage the risk of fraud and corruption;
- Sound system of internal control including internal audit.

5.6 The details of these KLOEs have not yet been published but a close eye will be kept on developments in this area, in order that future Risk Management improvements can be tailored in the most effective and appropriate ways.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None directly arising from this report.

FINANCIAL IMPLICATIONS

No implications arising directly from this report.

DEPUTY SECTION 151 OFFICER'S COMMENTS

The deputy s151 officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

Legal Services have been involved in considering the exposure to risk in relation to Luneside East and have agreed the approach being considered by Cabinet.

MONITORING OFFICER'S COMMENTS

The Deputy Monitoring Officer has been consulted and has no comments to add

BACKGROUND PAPERS

Risk Management Policy and Strategy
Audit Committee Terms of Reference (The Constitution)

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