

ITEM NO: 13

DECISION-MAKER:	CABINET		
SUBJECT:	PARTNERSHIP FOR URBAN SOUTH HAMPSHIRE (PUSH): CONSTITUTIONAL ARRANGEMENTS AND BUSINESS PLAN 2010-12		
DATE OF DECISION:	6 SEPTEMBER 2010		
REPORT OF:	SOLICITOR TO THE COUNCIL		
AUTHOR:	Name:	Mark Heath Solicitor to the Council	Tel: 023 8083 2371
	E-mail:	mark.heath@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY:

None

SUMMARY

The purpose of this paper is to seek approval for a change in the Constitutional arrangements relating to the Partnership for Urban South Hampshire (PUSH). This change has already been considered by the PUSH Joint Committee on 23rd June where it was approved. Each of the constituent local authorities will now be considering a report recommending that they support this change. The proposed change concerns the role of the lead authority when entering into contractual arrangements on behalf of the partnership as a whole.

RECOMMENDATIONS:

- (i) That a short supplementary legal agreement is entered into in accordance with Appendix 1 to this report.
- (ii) To approve the PUSH Business Plan 2010-12 in accordance with Appendix 2 of this report as a basis for the operations of the PUSH Joint Committee.

REASONS FOR REPORT RECOMMENDATIONS

1. This is to ensure that the constitutional arrangements are fit for purpose and the lead Authority entering into contractual arrangements on behalf of PUSH has appropriate indemnification protection.
2. PUSH is required to produce a Business Plan each year to set out its proposed actions and priorities, which in turn must be individually approved by the eleven Local Authority partners, to provide the mandate for the Joint Committee to take the necessary decisions and actions to implement the Business Plan.
3. This refresh of the PUSH business plan updates the previous plan (2009-11) incorporating the targets and actions arising from the South Hampshire Agreement signed in July 2008, the recent refresh and taking into account progress made and significant changes in circumstances over the last 12

months. It does not seek to be a comprehensive review of previous plans (which will be undertaken for the plan to be adopted in 2011). Prior to that review PUSH has not sought to revise its short term targets preferring instead to develop a sound evidence base for doing so. Nevertheless, we recognise that the current economic crisis will mean that a number of the current short term targets and outcomes are simply no longer valid or achievable (including a number set out in the South Hampshire Agreement).

4. Those targets considered to be unachievable as a result of the recession are highlighted in the Plan.

CONSULTATION

5. This report was shared and consulted upon with all the constituent local authorities contained in PUSH and was also considered by the PUSH Joint Committee which is constituted of all the Leaders of all the local authorities in PUSH. All endorsed the proposals set out in this report.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

6. None.

DETAIL

Background

7. The current partnership arrangements commenced in November 2007 with the confirmation of the Joint Committee as the decision making body. The PUSH Joint Agreement introducing this and other constitutional arrangements was completed on 15th August 2008 after it had been signed by all participating authorities.
8. The organisational structure of PUSH has developed further over time, in the light of experience in operating the Partnership, and evolving needs. PUSH governance arrangements were approved by Joint Committee on 18th November 2008 and revised Financial Protocols have improved the governance of budget and financial management and transactions.
9. As the aims of PUSH develop and extend from policy making to delivery, an increasing need to enter into contracts arises. Such contracts will normally set out responsibility for the receipt of funding, and for the distribution or investment of this in accordance with the prescribed terms of the contract. As PUSH is not a legal entity with ability to enter into contracts, one of the Partner authorities acts as "lead authority" in this regard. Thus, the lead authority incurs primary contractual responsibility to the funding agency for the use and application of the funds in accordance with the contract's terms. However, the lead authority will often be in a position where the use and application of the funds is not under its control, but that of another PUSH local authority. It is important, therefore, that should the lead authority incur any liability to the funding agency as a result of another authority's failure to comply with the contractual terms, the lead authority has recourse to a contractual indemnity from that authority.
10. The PUSH Joint Agreement acknowledges the principle that, in general, liabilities should be shared pro rata to the budget formulation. However, the current absence of a clear contractual indemnity to a lead authority, is an

inhibitor to a partner authority taking on that role, as it gives rise to an element of risk exposure that is unnecessary.

Risks

11. The risk arising from a lead authority contracting on behalf of the Partnership without an indemnity from its PUSH partners is that the lead authority alone is exposed to financial liability. This may be particularly onerous where the contract is to secure external funding for which the terms and conditions invariably contain stringent clawback arrangements. The lead authority could be faced with the liability to repay substantial sums without the legal right to recover contributions from the other authorities under a contractual indemnity.
12. It is also important that the lead authority's legal services team is involved from the outset in any new Partnership initiative that could result in the lead authority being asked to enter into contractual obligations on behalf of PUSH. Otherwise, unascertained risks may arise for the lead authority if it enters into contracts which have been negotiated or approved by others within PUSH, but which may be on terms where its interests, as the primary party to the contract, are not sufficiently protected.

Options

13. The Joint Agreement is working well and there is no need for any fundamental revision of it. The issue highlighted is one of a technical legal nature, but which nevertheless has an important impact in practice upon the delivery of business objectives through the securing of funds via contractual agreements.
14. It is proposed that the authorities in PUSH enter into a short supplementary legal agreement embodying the following principles:
 - the lead authority is indemnified against all liability it incurs in the course of performing its role by the other PUSH authorities on a pro rata basis according to the proportions of their respective financial obligations; and
 - the lead authority indemnifies the other PUSH authorities in respect of liabilities arising out of its own negligence.
15. Consideration has been given to inclusion of the above in the Partnership's financial protocols. However, as this would not have the legal status of a supplementary agreement, it would not address the risk exposure of the lead authority. To be legally enforceable, an indemnity needs to be by deed and a deed needs to be executed by all partner authorities.

Business Plan

16. The Business Plan follows the same broad style with separate chapters on the four main PUSH themes, a section on Financing the Strategy, which also covers the work of the new External Funding and Resources Theme, and a Transport Chapter summarising the priorities and overall approach of the Transport for South Hampshire Joint Committee, which leads on sub-regional transport matters in South Hampshire, working alongside PUSH.
17. It retains the three main purposes of the previous plan, i.e. to:
 - demonstrate the ambitious vision that PUSH has for South Hampshire

- and the steps being taken to deliver it in challenging circumstance;
 - demonstrate how PUSH is working with partners such as Government Agencies, the business community and others to delivery this vision; and
 - encourage investment in South Hampshire.
18. The Plan does not repeat the background material included in previous plans (unless there have been significant changes in the last 12 months). It sets out the key actions to deliver the South Hampshire Strategy to be undertaken over the next two years by PUSH, its constituent local authorities and its partners both individually and collaboratively. It does not set out to detail existing “mainstream activities” of partner organisations, such as the Skills Funding Agency, Jobcentre Plus, Business Link and local authorities which would take place regardless. Rather, it sets out the transformational, additional actions and opportunities to “re-shape” existing plans and programmes to support PUSH aims and deliver the step change. The high level action plans set out in this business plan stem from, and should be read in the context of, separate strategies for specific themes such as the Green Infrastructure Strategy, the HCA Local Investment Plan, the South Hampshire Transport Strategy developed by Transport for South Hampshire (TfSH) and the emerging Economic Development Strategy refresh.
 19. This plan also outlines the resources required to deliver the plan for 2010-11, where these resources have been secured, how further resources are to be secured and the ways in which PUSH conducts its business to support delivery of the plan. It is clear that the current level of resources committed to PUSH projects is substantially less than that which is required to deliver the strategy and therefore the plan also sets out the innovative mechanisms PUSH is exploring to secure additional resources. It is also recognised that further consideration may need to be given to the Government announcements of £6.2 bn of savings in 2010-11, and their potential impact, as well as the forthcoming spending review that will undoubtedly inform resource allocations for future years.
 20. In particular, it also addresses the key challenges and risks posed to delivery of the South Hampshire Strategy, including those arising from the economic recession, and details PUSH’s approach to adapting to those changes and mitigating/responding to those risks.
 21. Given the current economic uncertainty, now is not considered to be the right time for a comprehensive review of PUSH long term plans. Initial study work to inform a more comprehensive review will be initiated later in the summer to inform next year’s business plan and to feed into Government policy as articulated in Policy statements such as; The Coalition: our programme for government (May 2010) and Planning Policy Statement 3 (PPS3): Housing (June 2010). Equally the forthcoming Spending Review will also provide a platform on which to consider new and different approaches to public service provision. This will challenge Local Government and delivery partners to consider fundamental changes to the way we provide services, whilst ensuring that resources are prioritised within a tighter budgetary framework, whilst securing improvements in value for money.
 22. There is acknowledgement of the promotion of decentralisation by the new

Coalition Government, which will give new powers to local councils, including the intention to return decision-making powers on housing and planning to local councils and the intention to provide incentives for local authorities to deliver sustainable development. PUSH accepts the need to adapt to those changes and it welcomes the fact that the Government is seeking to support the creation of local enterprise partnerships that would enable the improved coordination of public and private investment in transport, housing, skills, regeneration and other areas of economic development.

23. Prior to consideration by the PUSH Joint Committee, the draft Plan was also considered by the PUSH (officer and partners) Programme Board, and the PUSH Chief Executives Group, with suggested changes arising from these discussions then incorporated into a revised draft plan. The changes were largely presentational, with particular emphasis on the need to give more prominence to the impact of the recession on Performance Targets and progress against MAA outcomes, to better identify cross cutting links between projects and themes, and to secure greater engagement at the delivery panels.

PUSH JOINT COMMITTEE

24. The Joint Committee met on 23rd June 2010. The Joint Committee is constituted of the Leaders of all the local authorities constituting PUSH, and they considered a report in identical terms to this report and endorsed and supported the proposed constitutional changes set out in this report. However, the constitution of PUSH requires that each of the individual local authorities give their approval to any change in the constitution before it can be given effect to.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

25. The Report to the 7th July PUSH Joint Committee approved the Capital Programme for 2010/12. The projects directly applicable to the City Council are the Southampton Local Energy Network (£240,000 in 2009/10 and £200,000 in 2010/11) and Southampton Estate Regeneration (£1,45m in 2009/10 and £1,24m 000 in 2010/11).

Revenue

26. The City Council makes a contribution as a 'subscription' to PUSH of £72,493. Other partners also make contributions which are pro-rata to the population of the PUSH areas. In addition, the City Council contributes across all policy areas by way of officer time, recognising the importance of securing appropriate developments and interventions.

Property

27. None

Other

28. None

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

29. The Partnership for Urban South Hampshire is constituted under the Local Government Act 1972 and 2000, the joint arrangements entered into, which include the Terms of Reference for the Joint Committee as well as the Overview and Scrutiny Joint Committee will require proposed amendment by virtue of this report, if it is endorsed by the City Council and all the other Constituent Local Authorities comprising PUSH. That will be dealt with by a simple supplementary legal agreement which will be prepared by the Solicitor to the Council.
30. The new 2010-12 PUSH Business Plan is not currently one of the Council's Policy Framework documents. However, it is a major strategic document designed to ensure that local authorities and other agencies within the urban South Hampshire area are collectively engaged with, and benefit from, the delivery of the South East Plan and Regional Economic Strategy. The key aim of the PUSH Business Plan is to secure the delivery of sustainable economic growth in the sub region and its endorsement by partner authorities will therefore help to align the economic development, infrastructure, housing, transportation and cultural activities of individual local authorities to help secure this objective. The PUSH Business Plan will inform the development of relevant City Council's key Policy Framework Plans as well as Local Development Documents, the Local Transport Plan, Housing Strategy and will be reflected in council's overall business planning arrangements.

Other Legal Implications:

31. None.

POLICY FRAMEWORK IMPLICATIONS

32. None

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Indemnity provisions for PUSH Joint Agreement
2.	Business Plan 2010-12

Documents In Members' Rooms

1.	None.
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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Background documents available for inspection at:

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	All Wards
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