

Report of: Planning Services Business Manager

**Title: Confirming the Distinction between the Executive and
Regulatory Functions of the Council**

Ward: All

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Key Decision: No

Lead Member: Mary Clarkson

Scrutiny responsibility: Environment

RECOMMENDATIONS

That the Executive Board agrees to:

1. Ask all Group Leaders to ensure that there is no overlap of membership between the Executive Board and the Strategic Development Control Committee in the next Municipal Year.
2. Recommends to Council that the Council's Constitution confirms that there is a distinction of membership between the Executive Board and the Strategic Development Control Committee.

1. **Summary.** The West Gate planning application could be received before the end of the year. The City Council has two roles in this proposal, namely that of landowner and of Local Planning Authority. This report suggests, in line with Government guidance, that there should be a clear distinction between the Council's executive role (landowner) and its regulatory role (LPA). Such a distinction will necessitate ensuring that any Members of the Executive Board and its working groups are not also Members of SDCC.
2. The confirmation of such a distinction, whilst precipitated by the West Gate development, will also represent good corporate governance in

other areas where executive and planning functions might have been confused.

3. **Council's Vision and strategic aims.** This report is most closely related to the strategic aim to improve our services. However it could also be argued that the West Gate proposal itself particularly meets the strategic aim of creating local prosperity and sustaining full employment.
4. **Background and context.** National legislation expressly prevents certain functions from being carried out by the Executive. Most notably amongst these are a Council's regulatory functions such as Planning and Licensing.
5. It is considered that for the West Gate scheme in particular the Council must maintain the distinction required by the legislation and, in addition, such a distinction must be seen by the general public to be maintained. It is suggested that the best way for such a distinction to be established beyond any doubt is for no member of the Executive Board to sit on the SDCC at the same time.
6. As a result it is suggested that as the political groups prepare nominations for committees for the next Municipal Year, such a potential overlap be taken into account and the Group Leaders ensure that it is avoided.
7. It is also suggested that it would be prudent to confirm such an arrangement by making it a requirement in the City Council's constitution.
8. **Details of others who have been consulted.** None necessary.
9. **Response to Forward Plan consultation.** None necessary.
10. **Advantages and disadvantages of the options considered (including risk assessment).** Some Councils ensure that no Executive Board Member participates in any of the Council's planning decisions. Such an arrangement at Oxford would be impractical in the extreme since every Councillor participates in making planning decisions through the Council's Area Committees. However, it is suggested that as the most important planning applications are determined by the SDCC it would be both practical and appropriate for the composition of SDCC to be altered, to achieve the necessary distinction of responsibilities. There are a number of options that can be considered.
11. The most important applications where this distinction is of paramount importance is where the City Council is the landowner, applicant or has some other interest in the planning proposal. Without the measures suggested being put in place, it is considered that the Council could be

at risk of having its decisions challenged in the Courts. It could also increase the likelihood of the Secretary of State calling-in an application for his determination, rather than leaving it with the Council to determine.

12. An addition to Westgate, there are a number of other Council proposals in the pipeline where it will be prudent to establish a distinction between executive and planning functions.
13. One option is to increase the number of Councillors on SDCC from 12 to 15, to permit Executive Board Members to be on SDCC, but for these Members to retire from the meeting whenever there is a planning application where the Council has some interest. So, for example, for the Westgate development there would be no member, who has been involved in Executive Board decisions on the property matters, sitting on SDCC at the time when it is considering the planning application.
14. A Second option is to leave SDCC at 12 Members, to permit Executive Board Members to be on SDCC but to require these Members to secure substitutes for those SDCC meetings that are due to consider planning applications where the Council has some interest.
15. A Third Option is to leave SDCC at 12 Members but not to permit Executive Board Members to be on SDCC.
16. **Financial implications.** None
17. **Legal implications.** A letter of guidance on this matter has been received from the solicitors, Lawrence Graham and Partners, who have been appointed to advise the City Council specifically on the Westgate negotiations. Their advice is that:

“ in controversial or sensitive planning applications, such as that as Westgate, it is desirable for there to be no common membership by City Council elected members on those working groups considering the nature of the development and the SDCC”.
18. **Staffing Implications.** None
19. **The grounds for recommending a particular option.** It is suggested that it is prudent and good practice to ensure that the necessity for a distinction between Executive Board and SDCC membership is considered at a broader level than just Westgate. So rather than the distinction simply being established for the Westgate development, it should be a basic principle established in the constitution.
20. In line with Government regulations and the legal advice received, it is recommended that option three above is implemented, as the most

straightforward, practical and clear indication that the Council understands the significance of this issue.

21. **The timetable for action following the decision.** The distinction between SDCC and Executive board membership should commence with the new municipal year 2005/06 as the committee membership is agreed.

THIS REPORT HAS BEEN SEEN AND APPROVED BY:
Portfolio Holder: Cllr Mary Clarkson - local environment
Strategic Director: Sharon Cosgrove
Legal and Democratic Services: Lindsay Cane
Financial Management: Sarah Fogden

Background papers: Letter from Lawrence Graham dated 11 Mar 05.

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