

**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

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**Author: Cabinet Member for Culture, Regeneration and Economic Development  
and the Chief Executive**

**Parish / Wards Affected: All**

**Purpose**

In December 2009 Cabinet resolved to establish 'a new arms length Borough wide delivery vehicle' better able to deliver regeneration, place marketing, economic development, inward investment and cultural development in Swindon.

This report outlines progress made towards the December 2009 decision and sets out for Cabinet approval the key principles and terms that will underpin the working arrangements for the new 'arms length' delivery vehicle, proposed name 'Forward Swindon Limited' (FSL) and the associated implementation plan that will bring it into operation on the 1<sup>st</sup> April 2010.

Cabinet is requested to consider these key principles and terms, the associated business case and implementation plan and subject to being satisfied, to agree to the establishment of FSL as a wholly owned, "arms length" company limited by shares.

**Recommendation**

Cabinet is requested to:

1. Note the heads of terms agreed with the Homes and Communities Agency (HCA) and the South West of England Regional Development Agency (SWRDA) in which they commit themselves to assist financially and otherwise, with the transfer of undertakings from The New Swindon Company (TNSC) to Forward Swindon Limited (FSL) and the winding down of TNSC's operations.
2. Authorise the Director of Law and Democratic Services to establish FSL as a company limited by shares, with the Council as sole shareholder, on the basis set out in the Report.
3. Authorise the Chief Executive and the Cabinet Member with portfolio responsibility for Economic Development and Regeneration to be appointed as Directors of FSL.
4. Authorise the Deputy Chief Executive of SBC, in consultation with the Shareholder Panel, to manage the relationship with, and the annual financing of, FSL as set out in Appendix 4 of this Report.

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*Further information on the subject of this report can be obtained from Gavin Jones on 01793 463010 or Email [gjones@swindon.gov.uk](mailto:gjones@swindon.gov.uk).*

**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

5. To authorise the Director of Law and Democratic Services, in consultation with the Deputy Chief Executive, the Director of Finance, the Director Human Resources and Change and the Cabinet member for Culture, Regeneration and Economic Development to complete any necessary documentation on such terms as he considers necessary to give effect to the matters set out in this report and in accordance with the following principles:
- **Governance arrangements**
    - To confirm that SBC indemnify their representatives on the FSL Board in respect of their actions or omissions arising from the powers conferred or duties placed upon them to the extent permitted by law and to secure insurance cover in respect of this Indemnity.
  - **SBC Client arrangements**
    - To approve membership, purpose and operating arrangements for the proposed team, Investment Panel and Shareholder Panel as set out in paragraph 2.4 of this Report.
  - **Transfer of Undertakings**
    - To approve the transfer of the undertakings specified in Schedule 4 from SBC, TNSC and the Cultural Partnership Limited (CPL) together with the relevant employees.
  - **Finance arrangements**
    - To review and approve the funding arrangements for FSL as identified in 2.1.1 to 2.1.8.
  - **TNSC and CPL**
    - To agree to the winding down of TNSC's operations subject to agreement with the other stakeholders and the terms regarding final invoicing as set out in this report, and the winding down of CPL.

**1. Reasons**

- 1.1 The Council (SBC) has an ambitious agenda to improve the quality of life for all the people in Swindon. We want to develop a dynamic and thriving Borough by stimulating business innovation, learning, regeneration, and inward investment for the benefit of the existing communities and in developing new areas of growth. The funding for TNSC comes to an end at the end of the current financial year. There is need to refocus and maximise the impact of the limited resources currently invested in the Council's economic development service and TNSC, to meet our wider objectives for

**Appendix 2 (Related Report)**

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**CABINET**

**Date: 10<sup>th</sup> March 2010**

---

Swindon. A Cabinet paper laying out the principles for this new vehicle was presented on the 9<sup>th</sup> December 2009 and is attached at Appendix 1.

**1.2 Cabinet Resolved –**

- 1.2.1 That the Chief Executive, in consultation with the Cabinet Member for Culture, Regeneration and Economic Development, be authorised to continue to work and negotiate with the Homes and Communities Agency and the South West of England Regional Development Agency, as co investors, to establish a new arms length Borough-wide delivery vehicle responsible for inward investment, economic projects, cultural development, regeneration and place marketing that is better able to deliver the agenda for Swindon Town Centre and the Borough as a whole.
- 1.2.2 That it be noted that, further to the decision in (1) above, any outcome from discussion will require the approval of all co investors.
- 1.2.3 That the Chief Executive, the Director of Human Resources and Change and the Director of Law and Democratic Services be authorised to implement the proposals, as set out in paragraphs 2.2.5 to 2.2.8 of the joint report, to establish a new delivery vehicle for regeneration, growth, place marketing and economic and cultural development in Swindon, that replaces the current remit of The New Swindon Company, and to commence the recruitment process for a new Chief Executive to this company, in consultation with the Director of Finance and the Cabinet Member for Culture, Regeneration and Economic Development.

**2. Detail**

**2.1 Progress to Date**

- 2.1.1 It is recommended that the new company be called “Forward Swindon Limited” (FSL). The company will be a company limited by shares and the shares will be wholly owned by SBC. The Company’s operational business plan and funding is entirely the responsibility of SBC from 1<sup>st</sup> April 2010 onwards.
- 2.1.2 Subject to final agreements and contracts in winding down TNSC and setting up an effective successor, HCA and SWRDA have been very supportive with transitional arrangements. These contributions take into account the transfer of liabilities and obligations to FSL and SBC as the new funding agency.

**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

- 
- 2.1.3 In supporting SBC in the transition from TNSC to FSL, SWRDA has agreed to SBC retaining the full benefit of the net rents on commercial properties purchased using their funding. In addition, SWRDA has agreed to provide additional one-off funding of £1.3m plus costs in the current financial year for the acquisition of the former Modus properties and that the rental stream on these properties will be left with the Borough to assist with annual funding. The total net rental income after deducting management and other related costs is estimated to be £100,000 p.a. In addition, SWRDA have agreed to 'top up' the rental income in 2010/11 to £200,000. They are unable at this stage to commit to further top up funding beyond 2010/11.
- 2.1.4 HCA has provided for a one-off contribution of £0.5m towards an already committed scheme at the Railway Station forecourt. HCA is also to make reducing contributions to SBC for the three years from 2010/11 onwards of £200,000, £150,000, and £100,000 respectively to assist with the funding of FSL.
- 2.1.5 Having regard to the additional capital contributions from SWRDA and HCA, and the potential for SBC to provide a one-off cash injection of up to £1m from a reserve identified to Cabinet in February 2010 as part of the budget report to ensure an effective transition, it is proposed that FSL be provided with initial capital of £1.5m. As FSL is to be a company limited by shares with a surplus being subject to corporation tax, this approach assists with the objective of minimising transaction costs in coming years
- 2.1.6 As previously reported to Cabinet and discussed with TNSC Board and SBC's co-investors, FSL is being established on the basis that it will be an effective deliverer of economic development, inward investment, place marketing and regeneration. In undertaking these responsibilities it will also seek alternative sources of funding for its operations with the objective of reducing the annual funding from SBC to £0.5m by 2015/16.
- 2.1.7 In its first year, 2010/11, the company is to have a first annual contribution from SBC of £1.2m (which includes the revenue funding from HCA and SWRDA) to cover its first year budget subject to agreeing a robust Business Plan with the Shareholders Panel. The contributions proposed for subsequent years are £1.0m in 2011/12; £0.9m in 2012/13, £0.7m in 2013/14 and £0.7m in, 2014/15. The following table provides a five year summary of capital and operating budgets.
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# Appendix 2 (Related Report)

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CABINET

Date: 10<sup>th</sup> March 2010

	10/11	11/12	12/13	13/14	14/15	Total
<b>Capital</b>	£m	£m	£m	£m	£m	£m
Initial Funding	(1.5)	-	-	-	-	(1.5)
<b>Operational</b>						
Revenue from SBC	(1.2)	(1.0)	(0.9)	(0.7)	(0.7)	(4.5)
Other revenue / capital drawdown	(0.0)	(0.2)	(0.3)	(0.5)	(0.5)	(1.5)
<b>Total Income</b>	<b>(1.2)</b>	<b>(1.2)</b>	<b>(1.2)</b>	<b>(1.2)</b>	<b>(1.2)</b>	<b>(6.0)</b>
Salaries	0.8	0.8	0.8	0.8	0.8	4.0
Office / Admin	0.1	0.1	0.1	0.1	0.1	0.5
Transition / Planning / Marketing/ Projects	0.3	0.3	0.3	0.3	0.3	1.5
<b>Total Costs</b>	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>	<b>1.2</b>	<b>6.0</b>

### 2.2 Business Planning

2.2.1 FSL will deliver Swindon's Economic Development and Regeneration aspirations on behalf of the Council and other investors in a creative, cost effective and high impact way. Drawing on the support, experience and resources of the private sector to assist in the delivery of the strategy, the FSL will also advise SBC on its strategic thinking. Attached at Appendix 2 is a draft of the Objectives and Outcomes for FSL.

2.2.2 Core to the funding and working relationship with FSL will be the annual review and agreement of a robust, challenging and outcome focussed five year business plan. The Business Plan will be further considered and developed with the Shareholder Panel as described in paragraphs 2.4 and 2.5 below.

### 2.3 Governance of FSL

#### 2.3.1 Constitution

2.3.1.1 FSL is to be a company limited by shares rather than guarantee. Profits will be subject to corporation tax. The year end is to be 31<sup>st</sup> January. FSL will shortly be in existence and is intended that there be two initial directors; namely, Gavin Jones (SBC Chief Executive) and Cllr Phil Young, Cabinet Member with portfolio

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**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

---

responsibility for Economic Development and  
Regeneration.

- 2.3.1.2 FSL is intended to be fully operational from 1st April 2010 and all transfer and winding down activities with regard to TNSC and CPL will be completed as soon as practicable thereafter.
- 2.3.1.3 FSL and the name will shortly have been registered. SBC's Director of Law and Democratic Services is leading the work, with external and internal support, on the legal and contractual aspects of the TUPE arrangements, the Memorandum and Articles of Association, the Shareholder Agreement and various protocols for working with SBC as the shareholder.
- 2.3.1.4 FSL will be wholly owned by SBC. The operational business plan and funding is entirely the responsibility of SBC from 1st April 2010 onwards.
- 2.3.1.5 It is proposed that the FSL Board will be chaired by the Chief Executive of SBC and, as well as the Cabinet Member with portfolio responsibility for economic development and regeneration, it will also include representatives from the private sector together with the Chief Executive of FSL
- 2.3.1.6 It is considered important that the Private Sector is properly represented on the Board. Businesses are key stakeholders and need to be able to contribute to the future direction of the Borough. They also bring specific skills and experience, will be of enormous benefit to FSL and help to secure its success. It is also proposed that community and cultural experience and skills are represented on the Board. The process for appointments to the Board has yet to be finalised.

## **2.4 Client Arrangement Principles**

- 2.4.1 FSL will build on the well established relationships that have been developed with SBC and across Swindon by TNSC. It is proposed that a limited client resource is established with the Deputy Chief Executive/ Group Director Environment,

**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

---

Regeneration and Community as the principal client supported by the Director of Planning and Transport.

- 2.4.2 SBC will transfer Economic and Regeneration activity to FSL.
- 2.4.3 The client relationship will be supported through the establishment of a set of structured governance arrangements that will comprise an 'Investment Partnership' and a 'Shareholder Panel'. The client will retain the statutory planning functions of Forward Planning and Development Management, this includes research, conservation, enforcement, design, funding/ bidding and regional strategies. Cultural Services is also a retained Council service. The Council will retain overall responsibility for the preparation of statutory Local Economic Assessments and maintain responsibility for the strategic oversight of economic development, but will commission FSL, as the economic development specialists for Swindon, to complete the assessments on the Council's behalf. FSL is expected to work closely with Council officers to ensure a seamless service is provided to all customers. As the sole shareholder for FSL, the Council will retain responsibility for investor relations.
- 2.4.4 The 'Investment Partnership' will be the main vehicle for attracting funding into Swindon. Its terms of reference will be finalised in due course but its essential role will be to oversee and identify opportunities for investment in regeneration and growth in Swindon. It will be a partnership body with members comprising of SBC, HCA, SWRDA, the Government Office for the South West, Arts Council and FSL. The Leader of Council will chair the Investment Partnership and will be supported by the client team and specialist officers as required. The Investment Partnership will meet for a minimum of three times a year, and it will hold an annual conference to communicate with wider stakeholders and partners.
- 2.4.5 The Deputy Chief Executive, in consultation with the 'Shareholder Panel', will be responsible for managing the performance of FSL and ensuring best value for Council investment. The company will deliver against the annual business plan of agreed activity. The business plan will be owned and developed by FSL. The Deputy Chief Executive, in consultation with the Shareholder Panel will be responsible for negotiating the content of the business plan, instructing FSL to deliver, and assessing performance against the business plan. At panel meetings the

**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

---

Chief Executive of FSL will be required to submit a report covering performance over the last period, delivery against the annual business plan, and forecasted delivery for the remainder of the year. The Chief Executive of FSL will be invited to submit project proposals and opportunities for investment. The business plan will be the basis on which the performance and deliverability of FSL will be assessed. The Shareholder Panel members will be drawn from a core team of Cabinet Members, the Leader of the Council (Chair of the Panel); the Cabinet Member with responsibility for Finance and Benefits, and the Cabinet Member with responsibility for Sustainability, Transport and Strategic Planning. The panel will be supported by the client team.

2.4.6 These arrangements are shown at Appendix 3 and Appendix 4.

2.5 Payment Arrangement Principles

2.5.1 It is envisaged that the payments from SBC to FSL will follow the process below:

2.5.2 In the first year the monies will be transferred to FSL as follows:

2.5.2.1 50% on 1<sup>st</sup> April 2010

2.5.2.2 The balance and its phasing will be subject to final agreement of a robust business plan following the Chief Executive's appointment and full involvement.

2.5.3 Underlying the SBC funding contributions is the intention to agree with FSL an annual rolling five year operational business plan describing its forward programme of work and outputs with a detailed outline of the resource deployment in the first year of each plan. The formal relationship between SBC and FSL is to be managed through meetings of the Shareholder Panel. The Shareholder Panel is to be programmed to meet with company representatives at least three times a year; to agree the Business Plan, to review midyear progress, and to form an Annual General Meeting and receive the Outturn Report.

2.5.4 TNSC termination arrangements regarding invoicing and payments are to be confirmed and will need to be finalised before any undertakings are transferred.



**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

---

**2.6    Transfer of Undertakings**

2.6.1    The undertakings to be transferred from SBC, TNSC and CPL are as set out in Appendix 5. The staff currently involved in those undertakings will be transferred to FSL under the TUPE regulations.

**2.6.2    Staffing Arrangements under TUPE**

The Regulations are designed to protect the terms and conditions of employees when a transfer occurs from one employer to another including continuity of service. The new employer takes over all rights, obligations and liabilities arising from the transferring employees' contracts of employment. There is a statutory obligation to consult with employee representatives in good time before the transfer.

**2.6.3    Staffing Arrangements - Pensions**

2.6.3.1    There is a need to decide how SBC wishes progress in respect of the pension provision for three separate groups of staff that will transfer into FSL, with the principle being that SBC would not wish to inherit any pension financial liabilities unnecessarily. Where current staff are members of the Local Government Pension Scheme (LGPS) staff should transfer on no worse conditions, to the new company.

2.6.3.2    It has been established through ongoing dialogue with TNSC that their Board members have requested a definitive position statement from SBC regarding its pension proposals with regard to the existing Company staff. This pensions' position statement, together with other information on the proposed new company structure/governance issues, was discussed at TNSC Board meeting on 23 February 2010.

2.6.3.3    Whilst the various options are still being explored it is proposed that for ease of transfer and industrial relations the staff at TNSC who are currently in the LGPS with Teesside through a separate Transferee Admission Body (TAB) Agreement should be allowed to continue. This option will require SBC to act as a guarantor and Cabinet should be aware that there is currently a deficit on the fund and crystallisation of this deficit sum, currently understood to be £464,000, will require repayment if the Teesside scheme ceases. SBC will want to avoid this and Wiltshire Pensions (WP) have advised that this will

**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

be achieved if FSL are permitted to become an admitted body in the Teesside Fund as a successor employer.

2.6.3.4 It is proposed that the SBC transferring staff, eligible to be members of the LGPS, continue their membership, however, the approach is still being discussed which may include a separate TAB agreement between SBC, SFL and WP or a transfer to the Teesside scheme if it proves more beneficial to SBC. This will have no direct effect upon the pension provisions for the transferring staff.

2.6.3.5 There will also be a need to make available a group personal pension scheme / stakeholder arrangement within SFL with effect from the transfer date, or very soon thereafter as not all staff are members of the LGPS. Further work will need to be undertaken in securing an appropriate scheme.

### **Alternative Options**

- To continue with the current TNSC format. This option would not allow for the extension of the scope of the geographical remit of the company, neither would it provide the opportunity to address the governance issues. This option is unlikely to deliver the desired outcomes for Swindon and it is unlikely that the HCA and SWRDA would continue to fund the existing model.
- To bring all activity in-house. By bringing the company in-house it is likely that the 'delivery' would become diluted and we would be unable to attract the external resources that the company has the capability of attracting, especially from the private sector. There is also the critical element around perception and the usefulness that a company can serve in bridging the gap between the public and private sectors.

### **Risk Management**

#### *Financial and Procurement Implications*

- A combination of existing SBC economic & cultural development budgets, funding from external partners and a potential one-off cash injection of £1m from the Council's Town Centre reserve will provide sufficient funding for FSL for the 5 years ending 31st March, 2015.
- In the first year of operation, the following amounts are anticipated to be contributed to FSL from SBC:-
  - £500k capital funding that can be released due to the contribution from HCA to SBC towards an already committed scheme at the railway station forecourt. This will be added to the £1m from SBC's Town Centre reserve to provide initial capital of £1.5m

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**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

- £760k from existing SBC economic & cultural development budgets
  - £200k contribution from HCA to SBC – as described in 2.1.5 above
  - £200k contribution from SWRDA to SBC – as described in 2.1.4 above
  - £30k funding from The Arts Council to SBC for cultural development
  - £10k Other external parties to SBC in relation to cultural development
- 
- The operational funding of £1.2m broadly represents the current level of activity for economic and cultural development taking into account the impact of savings achieved within the SBC economic development section as part of the 2010/11 budget round. The figure comprises salary budgets of £800k, office and administration costs of £130k and marketing/project budgets of £270k.
  - As annual funding will be reducing during this period, FSL will be required to source and generate sustainable income streams from its activities and manage its costs in order to finance any potential shortfalls in its budget.
  - Annual Arts Council funding to the value of £30k has been agreed for 2010/11 for the Swindon Cultural Partnership Ltd. Discussions are ongoing to transfer this to SBC to assist in the funding of FSL. This level of funding will be reviewed with The Arts Council on an annual basis. If they do not allow this transfer of funding to SBC in 2010/11 or if funding ceases in future years, there will be a requirement for FSL to manage this within its overall budget or find an alternative source of external funding.
  - Discussions are ongoing with other external funding partners to agree to fund FSL for £10k for cultural development. If funding is not agreed, there will be a requirement for FSL to manage this within its overall budget or find an alternative source of external funding.
  - The transition costs for FSL, estimated at £93k, will be paid from the funding provided to the company.
  - Work is ongoing to assess which assets and liabilities FSL will take over as a result of the closing down of both TNSC and the Swindon Cultural Partnership Ltd.

*Legal / Human Rights Implications*

- The legal power to establish the company is anticipated to be the economic, social and environmental well being powers set out in section 2 of the Local Government Act 2000. The use of the 2000 Act power is subject to the Council having regard to its Sustainable Communities Strategy which has been amended to specifically refer to this exercise.
- It is recommended that staff will transfer to FSL under TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006) in accordance with the Code of Practice on workforce matters. TUPE applies where there is a transfer of an undertaking, business or part of an undertaking or business from one body to another. The employees which are in scope have been identified from SBC, TNSC and CPL and are anticipated to total 12 people. Continuity of service for employees

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**Appendix 2 (Related Report)**

**The Forward Strategy for Delivering Economic Development and  
Regeneration in Swindon**

**CABINET**

**Date: 10<sup>th</sup> March 2010**

transferring will remain unbroken and employees will transfer on their existing terms and conditions of employment.

*Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)*

- The proposals complement the current work of the emerging Corporate Plan and support the delivery of the Swindon Community Strategy 'A Shared Vision for Swindon 2030'
- The proposals help the delivery of Promise 35 – Town Centre Regeneration

**Consultees**

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

**Background Papers and Appendices**

- Appendix 1 -Cabinet Report dated 9<sup>th</sup> December 2009.
- Appendix 2 – draft FSL Objectives and Outcomes.
- Appendix 3 - Strategic Growth and Regeneration Investment.
- Appendix 4 – Shareholder Panel.
- Appendix 5 – Undertakings to be transferred.

**Key Decision / Decision in Forward Plan**

- This is a key decision and is included in the Cabinet Forward Plan for March 2010