

**Subject: East Lancashire Railway –
Heywood Branch – Deed of Indemnity
and Increased Subscription to support
East Lancashire Railway projects**

Status: For Publication

Report to: Cabinet

Date: 5th July 2006

Report of:

Head of Legal and Democratic Services and Head of Community and Partnerships

Portfolio

Holder: The Leader of the Council and Portfolio Holder for Customer Services

Key Decision:

NO

Forward Plan
Relevant Box

General Exception

Special Urgency

“X” In

1. PURPOSE OF REPORT

- 1.1 To seek the approval of the Cabinet to provide an Indemnity for the East Lancashire Railway Company.
- 1.2 To seek approval for a twelve month increase in subscriptions to the running of the East Lancashire Railway of £1,500.

2. CORPORATE PRIORITIES

- 2.1 The matters discussed in this report are linked to and support the following corporate priorities:
- Promoting Rossendale through tourism.

3. RISK ASSESSMENT IMPLICATIONS

- 3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:
- There is a financial risk to the Council in providing this indemnity although the amount of the risk cannot be calculated at this stage. It would very much depend on the nature of any incident . However the risk should be highlighted to Cabinet .
 - The East Lancashire Railway Company currently store explosives in breach of a covenant with the Network Rail. In providing this indemnity the Council will be

liable as any insurance cover which the East Lancashire Railway Company hold will not cover known risks .

- The Council will look into the release of this covenant as a possible way forward .The Council should look to limit any liability to exclude liability for death or personal injury.
- The increased subscription will cost the Council an additional £1,500.

4. BACKGROUND AND OPTIONS

- 4.1 As a member of the East Lancashire Railway Trust (the Trust), Rochdale Metropolitan Borough Council leased part of the Heywood branch line from Network Rail Infrastructure Limited (Network Rail) and then underleased the line to the East Lancashire Railway Company Limited (the Company)
- 4.2 The Lease to Rochdale contains a clause that “no inflammable dangerous or explosive substance liquid or gas shall be stored or placed upon the premises.....” This clause is also contained in the Underlease to the Company.
- 4.3 By virtue of the operation of the Railway, it is imperative that inflammable and a small amount of explosive material are used, although the explosive material is contained in suitable storage away from the Heywood Branch line.
- 4.4 The Company have now asked that the three Councils comprising the Trust – Rochdale, Bury and Rossendale and the Trust as a single entity, enter into a Deed indemnifying the Company against “all actions costs demands claims and proceedings” in the case of any breach of this covenant.
- 4.5 Due to the make-up of the Trust, the liability of Rossendale will be limited to 20% of any costs (Bury and Rochdale will bear 40% of any costs each).
- 4.6 The Company say they have insurance to cover any breach of the clause, included with their general liability. This is questionable . Any full financial risks cannot, of course, be estimated at this stage.
- 4.7 This Indemnity also has to be approved by Bury and Rochdale, they have already indicated through their officers that they have no objection to the indemnity or the reasons behind it.
- 4.8 Bury have lead on the projects to take forward the East Lancashire Railway Company since the inception of the project. Rossendale Borough Council supports Bury with an annual payment which covers one third of the cost of administering the Trust. However, this does not cover the cost of staff time for the project management of major activities such as the delivery of improvements to the visitor attraction.
- 4.9 Bury are no longer able to lead on these major projects on behalf of the Trust because of capacity issues, however, the major projects still require project managing.

4.10 It is proposed that the four parties to the Trust divide the cost of the employment of a consultant to deliver the major projects for the Trust. The cost in total is £12,000 and the proposed Rossendale contribution is £1500.

4.11 This post would be for one year duration with a review after 12 months.

5. COMMENTS OF THE HEAD OF FINANCIAL SERVICES

5.1 Based on the insurance cover of the company, it would seem reasonable to conclude that the Council is not exposed to any significant financial risk.

6. COMMENTS OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES

6.1 The Head of Legal and Democratic Services has provided comments on the indemnity within section 3 of this report. The risks to the Council have been outlined. Neither the Company or the Council can insure against a known risk. Therefore the financial risk to the Council has been highlighted .

7. COMMENTS OF THE HEAD OF HUMAN RESOURCES

7.1 There are no human resources implications.

8. CONCLUSION

8.1 This Deed of Indemnity will be necessary for the already planned new Lease and Underlease relating to the Railway Line and for the development and safety of the Railway operations.

8.2 Rossendale as a Borough benefits from visitors borough to the valley by the railway and as such we should continue to invest in the development of the Railway as a visitor attraction.

9. RECOMMENDATION(S)

9.1 That the purpose of the Deed of Indemnity be approved.

9.2. That the Head of Legal and Democratic Services be authorised to sign the agreed Deed of Indemnity for and on behalf of the Council.

9.3 That members support an additional £1500 of unbudgeted revenue spend for the railway.

9.4 That the benefits of the consultancy are monitored and brought back to members for consideration prior to any future years spend being agreed.

10. CONSULTATION CARRIED OUT

10.1 East Lancashire Railway Trust Limited

10.2 East Lancashire Railway Company Limited

10.3 Bury Metropolitan Borough Council

- 10.4 Rochdale Metropolitan Borough Council
- 10.5 Head of Community and Partnerships

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Background Papers	
Document	Place of Inspection
Legal File Z.26/484	Legal Services Department