

**Subject: East Lancashire Railway –
Heywood Branch – Deed of
Indemnity.**

Status: For Publication

Report to: Cabinet

Date: 19th September 2006.

Report of:

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

Portfolio

Holder: Cabinet member for Finance and Risk Management

Key Decision:

NO

Forward Plan
Relevant Box

General Exception

Special Urgency

“X” In

1. PURPOSE OF REPORT

- 1.1 To clarify and update the Cabinet on matters raised in the previous report to the Cabinet meeting on 5th July 2006

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 as detailed below, although the amount of the risk cannot be calculated at this stage.
 - There will be a financial risk to the Council if the covenant is breached as the Council presently have no insurance for this particular matter, the liability will follow 20% of the Council costs.

4. BACKGROUND AND OPTIONS

- 4.1. Enclosed with this Report are copies of a report to the Cabinet Meeting of 5th July 2006 and an extract from the Minutes of that Meeting.
- 4.2 The previous report contained an error in Clause 4.2 relating to the Lease to Rochdale MBC from Network Rail referring to the storage and placing of inflammable, dangerous or explosive substances on part of the Heywood Branch Line.
- 4.3 The Council's Legal and Insurance Staff have now had opportunity to see a copy of the full Lease, and the Clause states that such storage and placing may be permitted in writing from time to time by Network Rail and in accordance with such conditions and stipulations that may be made by Network Rail.
- 4.4 The Deed of Indemnity, requested in the previous report, will be to indemnify the Railway Company against a breach of this covenant, i.e. not obtaining written permission from Network Rail to store and place these items on that part of the Heywood Branch Line.
- 4.5. The Council's Insurers have advised that they will not be able to insure the Council for it's share (20%) of the costs of any breach of the covenant, and that the financial risk will remain within it's own resources.
- 4.6. This Deed also has to be approved by Bury and Rochdale, they have already indicated through their officers that they have no objection to the deed or the reasons behind it and, I understand, since the previous report the two Councils have signed the Deed of Indemnity.

5. COMMENTS OF THE HEAD OF FINANCIAL SERVICES

- 5.1. To be notified to the Cabinet separately.

6. COMMENTS OF THE HEAD OF LEGAL AND DEMOCRATIC SERVICES.

- 6.1 Legal and Insurance staff are checking details about the amount of, access to and storage of the limited explosive material and will report back to members with fuller details.

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 brought 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 Cabinet decide whether to enter into the Deed of Indemnity in light of the receipt of the information from our insurers.

10. CONSULTATION CARRIED OUT

- 10.1 East Lancashire Railway Trust Limited
- 10.2 East Lancashire Railway Company Limited
- 10.3 Bury MBC
- 10.4 Rochdale MBC
- 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

**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 General Exception Special Urgency "X" In
Relevant Box

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

10.6 East Lancashire Railway Trust Limited

10.7 East Lancashire Railway Company Limited

10.8 Bury Metropolitan Borough Council

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

Extract from the Cabinet Meeting Minutes of 5th July 2006.

**2. EAST LANCASHIRE RAILWAY – HEYWOOD BRANCH
DEED OF INDEMNITY AND INCREASED SUBSCRIPTION TO SUPPORT EAST
LANCASHIRE RAILWAY PROJECTS**

The Portfolio Holder for Customer Services presented the joint report of the Head of Legal and Democratic Services and the Head of Community and Partnerships which outlined proposals to provide an Indemnity for the East Lancashire Railway Company together with a 12 month increase in subscriptions to the running of the East Lancashire Railway.

The report outlined that the East Lancashire Railway currently stored explosives in breach of a covenant with Network Rail. The Deed would indemnify the Company against all actions, costs, demands, claims and proceedings in the case of any breach of that covenant. In providing the Indemnity the Council would be liable as any insurance cover which the East Lancashire Railway Company held would not cover known risks.

The Head of Legal and Democratic Services reported that she was awaiting clarification from the Council's insurers in respect of the Council's position relating to cover.

Decisions Made:

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

3. That an additional £1500 of unbudgeted revenue spend for the railway be agreed.
4. That the benefits of the consultancy be monitored and brought back to members for consideration prior to any future years spend being agreed.

Reasons for Decisions:

The 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. The contribution of £1500 will support the delivery of major projects for the Trust and the development of the Railway as a visitor attraction.

Alternative Options Considered and Rejected:

None.