



**BRIGHTON & HOVE CITY COUNCIL
WORTHING BOROUGH COUNCIL**

**REPORT OF THE
SHOREHAM AIRPORT LANDRAISE JOINT SCRUTINY
PANEL**

MARCH 2007

MEMBERS OF THE PANEL:

Councillor David Watkins (Brighton & Hove City Council) (Chair)
Councillor Kevin Allen (Brighton & Hove City Council)
Councillor Geraldine Lissenburg (Worthing Borough Council)
Councillor Bill Randall (Brighton & Hove City Council)
Councillor Bryan Turner (Worthing Borough Council)
Councillor Jan Young (Brighton & Hove City Council)

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CONTACT DETAILS

John Adams, Scrutiny Support Officer, Brighton and Hove City Council
Kings House, Grand Avenue, Hove, BN3 2LS
John.adams@brighton-hove.gov.uk
(01273) 291084

Mark Lowe, Scrutiny and Improvement Officer, Worthing Borough Council
Town Hall, Chapel Road, Worthing, West Sussex, BN11 1HA
Mark.lowe@worthing.gov.uk
(01903) 221009

1. EXECUTIVE SUMMARY

Context of the Joint Scrutiny

- 1.1 This report sets out the views of the Shoreham Airport Landraise Joint Scrutiny Panel which was set up to review landraising activities at Shoreham Airport and associated events between 2000 and 2004.
- 1.2 In February 2004, the former Chair of the Shoreham Airport Joint Committee raised concern at landraising activities taking place on Airport land which was within the ownership of Brighton and Hove City Council and Worthing Borough Council.
- 1.3 Matters were investigated by Brighton and Hove Council's internal audit team and subsequently referred to the District Auditor for investigation. The District Auditor reported his findings in 2006. (A summary of those findings is set out at Section 5 of this report). The Overview and Scrutiny Committees of both Councils received this report and resolved to set up this Joint Scrutiny Panel.
- 1.4 The Panel has sought to address the issues which the District Auditor has set out in his report. Set out below are the Panel's key findings from this review which are explained in more detail later on in the Panel's report together with recommendations.

Summary of conclusions of the Panel

- 1.5 The Panel has found no evidence of any valuation of the landraise transaction. No professional valuer was engaged in making a professional judgement on the value of the land purchase of the landraise operations. The decision to treat the landraise as cost neutral had no sound foundation and has led to a potential loss of income to the owning Councils of up to £1 million based on the District Auditor's calculations.
- 1.6 The Panel has observed that a number of exchanges of correspondence took place concerning the arrangements of landraising, including the decision to grant the license for a peppercorn rate. It was unfortunate that those exchanges of correspondence were not copied to more senior officers who may have been able to recognise the significant value of landraising or the danger in starting landraising without completing the proposed land acquisition.
- 1.7 Despite giving much time to this point, the Panel has unfortunately received no clear evidence which identifies any person as giving consent for the landraising to begin and no one who gave evidence has said that they authorised the landraising to start.

- 1.8 The Panel was concerned that no formal report on the landraising as a stand alone matter was made to members of the owning authorities in some form. The Panel has noted that the Airport Manager did not formally advise the members of the Shoreham Airport Joint Committee of the landraising at all during the time of the landraising took place from July 2001 to July 2005.
- 1.9 The Panel has discovered no evidence that the member and officer task groups which were set up to look into the future of the Airport, discussed land raising operations and land raising was never formally considered to be a stand alone option.
- 1.10 The Panel was surprised that when mention was eventually made about landraising to Brighton and Hove Council's previous Chief Executive, it was not possible to stop the landraising. The Panel considers that more action could have been taken to stop the landraise while reviewing the position.
- 1.11 The Panel has concluded that it was a mistake to allow the landraising to take place separately from the land purchase negotiation with the neighbouring land owners because it allowed the land raising to take place ahead of any land acquisition. This put the two Councils in a poor negotiating position. Landraising is potentially lucrative and the urgent needs of the landowners to commence tipping could have been used as an incentive to achieve a swift land acquisition and also a sizeable income for the two owning authorities, in addition to the benefits to the Airport from the landraising, such as operational safety improvements.
- 1.12 The Panel has observed that line management responsibility for officers involved in Airport matters, in particular the Airport Manager, was not as strong as it should have been and may have contributed to officers acting beyond their authority.

Summary of Recommendations of the Panel

(a) On Governance, Democratic Processes and Executive member involvement: -

Recommendation 1

The constitutions of partnership arrangements and semi-autonomous bodies (including schemes under which their functions are further delegated) must be clearly set out and periodically reviewed.

(b) On Intelligence and Communication: -

Recommendation 2

For partnership arrangements and governance of semi-autonomous bodies, communication channels must be clearly defined and used.

Regular monitoring of the effectiveness of arrangements must be undertaken and improvements made where failings are identified.

(c) On Member involvement: -

Recommendation 3

Where Members have authorised a particular course of action, they must be kept informed of any significant developments. If it is ultimately not possible to pursue the matter it needs to be referred back to the Members for approval of any significant developments.

Recommendation 4

The Chair of a Committee that deals with a partnership or semi-autonomous body has a responsibility to be kept informed to ensure that Members of the Committee are also briefed on all relevant matters.

(d) On Governance and Management Processes: -

Recommendation 5

The delegated powers of officers managing partnership arrangements and semi-autonomous bodies must be clearly set out and periodically reviewed.

(e) On Supervision: -

Recommendation 6

Where there is a semi-autonomous operation run by partners, such as the Airport, they need to agree and periodically review the arrangements whereby they will provide supervision and guidance. Thereby they will help the manager(s) of the operation and have “ears and eyes” open to any issues arising that might concern them as partners.

Recommendation 7

Every Council Officer should have an appointed line manager and clearly defined target setting and monitoring arrangements should be the norm, especially for arm’s length or partnership arrangements.

(f) On member and officer development: -

Recommendation 8

Where there are member or officer roles in outside bodies or organisations in which an authority has an interest, they must receive adequate training so that they may fulfil their role. Provision of training should be assessed regularly, and wherever there is a change in the appointed Members to the body or organisation. Both Councils should keep under review whether there are certain bodies to which

appointments of members or officers should only be made who have had appropriate training.

(g) On Project Teams and professional advice: -

Recommendation 9

Any significant project or undertaking should at the outset be assessed for the professional advice needed and a project team, including a Chief Officer, would be established and conducted as set out in paragraphs 9.13 to 9.16 of the report.

(h) On Record keeping: -

Recommendation 10

Officers acting under delegated powers must keep and have available a written record of the decisions taken under such powers to provide a proper audit trail of the exercise of the power.

(i) On special land transactions: -

Recommendation 11

Specialist advice must be obtained where a land transaction or operation involves unusual circumstances, such as landfilling or landraising operations.

(j) On the Role of audit and scrutiny in partnership arrangements: -

Recommendation 12

That Brighton and Hove's Internal Audit Plan 2007/08 includes an internal audit of the authority's governance frameworks, especially with regard to governance arrangements for partnerships and semi-autonomous bodies, to include assessments of risk to the authority of these arrangements; and

That Brighton and Hove's Audit Panel receives the outcomes of this internal audit work.

Recommendation 13

That Worthing's Internal Audit Plan 2007/08 includes an internal audit of the authority's governance frameworks, especially with regard to governance arrangements for partnerships and semi-autonomous bodies, to include assessments of risk to the authority of these arrangements; and

That Worthing's Overview and Scrutiny Committee receives the outcomes of this internal audit work.

(k) On Owning authorities' priorities and involvement: -

Recommendation 14

The priority given to partnership or semi-autonomous arrangements by the authorities involved should reflect the potential risks to the authorities of too little involvement.

An authority should be able to prove that it has considered the risks associated with each undertaking and prioritised accordingly.

Recommendation 15

Authorities in partnership or semi-autonomous arrangements must ensure that they are actively involved and are fulfilling required role.

Recommendation 16

Where one party in a partnership or semi-autonomous arrangement takes a lead role, other parties must ensure their input, to ensure interests of all the parties are upheld.

On changes to the councils' governance frameworks: -

Recommendation 17

That Brighton and Hove City Council makes changes to its scheme of officer delegations on the basis outlined at paragraph 10.2 of the report.

Recommendation 18

That Worthing Borough Council makes changes to its scheme of officer delegations on the basis outlined in paragraph 10.3 of the report.

2. INTRODUCTION

- 2.1 In May 2006 Brighton and Hove City Council's ('Brighton and Hove') Overview and Scrutiny Organisation Committee resolved to set up a joint Scrutiny Panel with Worthing Borough Council ('Worthing') to review landraising activities at Shoreham Airport and associated events between 2000 and 2004.

3. CONTEXT AND BACKGROUND TO THE SCRUTINY REVIEW

- 3.1 On 24 February 2004, concern was raised by Brighton and Hove Councillor Don Turner, then the chair of the Shoreham Airport Joint Committee, regarding land fill operations taking place on an area of land to the west of the Airport predominantly in Airport ownership.
- 3.2 An internal audit was carried out by Brighton and Hove City Council in response to these concerns, which reported its conclusions in August 2004.
- 3.3 In December 2004, at the request of the current Brighton and Hove Chief Executive, the Director of Strategy and Governance referred the matter to the District Auditor for independent investigation due to the potential gravity of the issues. A report 'Landraising at Shoreham (Brighton City) Airport' was published in April 2006 outlining the District Auditor's findings (see section 5).
- 3.4 On 11 April 2006 the Council's Audit Panel, chaired by the Chair of the Overview and Scrutiny Organisation Committee (OSOC), considered the draft report and a presentation by the District Auditor. The Audit Panel determined to recommend to OSOC the establishment of a Joint Scrutiny Panel to consider the issue in greater detail.

4. OBJECTIVES, TERMS OF REFERENCE AND MEMBERSHIP

- 4.1 At its meeting on 22 May 2006, OSOC considered the final District Auditor's report and the recommendation made by the Audit Panel to establish a scrutiny panel. OSOC resolved the following:

That a scrutiny review of the land raising at Shoreham Airport be conducted by six elected Members made up of the Members of the Audit Panel with Councillor Allen serving in the place of Councillor Hamilton and two elected Members from different political groups of Worthing Borough Council.

That the scrutiny review adopt as its Terms of Reference:

- *What went wrong with the decision making in this particular case?*
- *What, if any, lessons can be learned from this scenario and where might they be best applied in the Council's operations?*
- *Are there any changes to the governance framework of the Council that should be introduced as a result of those lessons learnt?*

4.2 The Landraise Joint Scrutiny Panel (the Panel) met for the first time on 17 July 2006. Members of the Panel were:

Brighton and Hove City Council elected Members:

Cllr David Watkins
Cllr Kevin Allen
Cllr Bill Randall
Cllr Jan Young

Worthing Borough Council elected Members:

Cllr Geraldine Lissenburg
Cllr Bryan Turner

4.3 At its first meeting the Panel agreed that Councillor Watkins should serve as the Chair of the Panel for the duration of the review.

4.4 The Panel also noted that Worthing's Overview and Scrutiny Committee had resolved at a meeting on 26 June 2006 'that the Cabinet and officers be requested to explore the possibility of further action for the loss of income which the Council may have incurred.' The Panel therefore agreed to recommend to OSOC an additional Term of Reference:

- *What are the possibilities for further action for the loss of income which the two Councils have incurred?*

4.5 At its meeting on 17 July 2006, OSOC resolved to add this addition to the Panel's Terms of Reference, which are provided in full at Appendix A.

5. THE AUDIT COMMISSION REPORT 'LANDRAISING AT SHOREHAM (BRIGHTON CITY) AIRPORT, APRIL 2006

5.1 In December 2004 the Brighton and Hove's Director of Strategy and Governance requested the District Auditor to undertake a review of governance and decision making and value for money of landraising at Shoreham Airport.

5.2 The report highlighted a number of weaknesses in the arrangements for landraising. The District Auditor did not find any evidence of deliberate wrongdoing by any officer, but were of the opinion that officers acted

outside their authority. The main conclusions as set out in the report were:

- key decisions were not taken by members and officers acted beyond their authority;
- there is little evidence that members of the [Joint] Committee were kept abreast of developments;
- on occasions, decisions were made on poor or incomplete information
- record keeping was weak;
- the Council's own governance framework was not followed;
- there was little regard to minimising the risks of fraud and corruption; and
- there was no consideration to achieve value for money.

5.3 The District Auditor also emphasised in the report the issue of poor communications.

5.4 The report indicates that the income foregone by the awarding of tipping rights on Airport land was in excess of £1 million. Officers failing to recognise the value of the tipping rights, poor decision making and lack of effective governance all contributed to the reasons for the income foregone.

6. INFORMATION GATHERING

6.1 At an early stage in the Review, the Panel agreed a series of 20 questions, based on the conclusions of the District Auditor's report and the background information provided as part of initial scoping meetings. These 20 questions were intended to address the key points raised in the District Auditor's report as outlined above. The 20 questions are provided at Appendix B.

6.2 The Panel also identified a number of possible witnesses, both officers and members, from Brighton and Hove City Council and Worthing Borough Council. Of these witnesses the Panel identified a number of main witnesses who were invited to attend a Panel meeting and give oral evidence. All others were provided with a copy of the District Auditors report and the 20 questions and asked to respond in writing.

6.3 In addition, some of these witnesses were asked to provide further information to clarify certain issues, and a number of other officers from both authorities were consulted on evidence received.

6.4 A complete list of Members and officers that were contacted in connection with this Review is provided at Appendix C.

- 6.5 The written responses received and oral evidence heard by the Panel has directly informed the conclusions and recommendations that are included in this report.
- 6.6 In accordance with the overview and scrutiny procedures, all witnesses were given the option of providing confidential responses.
- 6.7 The Panel met 13 times in total. Meetings were held in public wherever possible. However, as a number of the witnesses wished to give evidence in confidence to the Panel, some meetings were held partly or completely in private session. A brief summary of each meeting is provided at Appendix D. Evidence given in open session that has been relied on to a material extent by the Panel in compiling this report is available from Scrutiny Officers as background papers, and contact details are provided at the start of this report. A full list of background papers is provided at Appendix E.
- 6.8 The Panel wishes to thank all members and officers who contributed and without whose time and open approach this Review would not have been able to proceed.

7. BACKGROUND AND HISTORY OF SHOREHAM AIRPORT

- 7.1 Shoreham Airport is one of the oldest municipal Airports in the country. The Airport was bought in three parcels between 1933 and 1953 and owned in equal shares by Brighton, Hove and Worthing Borough Councils. Until the merger of Brighton and Hove Borough Councils to form the unitary Brighton and Hove Council in 1997, when the ownership of the Airport was split two-thirds to Brighton and Hove Council, and one-third to Worthing Borough Council. As part of the joint ownership, a Shoreham Airport Joint Committee had been set up by the owning authorities to oversee operations.
- 7.2 Standing in approximately 240 acres, an area bound by the river Adur, the A27 trunk road and the south coast railway line, it is situated within Adur District Council's area and is classified as a "small general aviation airfield". The Airport has three runways, one of which is hard-surfaced. A planning agreement with West Sussex County Council restricts the number, type and timing of aircraft landings at the Airport.
- 7.3 On 30 June 2006 leasehold interests for the Airport for 150 years were sold to a company called Erinaceous. One lease is for the airfield which is restricted to use as an airfield with ancillary uses for the first 35 years of the lease, and the other lease is for the buildings and commercial area for which minimal restrictions apply.
- 7.4 The sale of these long term leases can be seen as the culmination of nearly a decade of debate and discussion about the future of the Airport.

Much of this debate has focussed around possible expansion of the Airport to allow for the construction of a new runway, which would open up new commercial opportunities.

- 7.5 The issues of landraising on Shoreham Airport was closely related to the debate over the future of the Airport and its possible expansion. This report attempts to highlight these links where necessary in the following sections.

8. WHAT WENT WRONG WITH THE DECISION MAKING IN THIS PARTICULAR CASE?

Introduction

- 8.1 The District Auditor's report stated "Robust decision-making requires clarity over what decisions need to be taken and by whom, the availability of appropriate information to make informed decisions and accurate and complete record keeping" and concludes "These fundamental principles were not followed consistently by the Committee or the Council." (para 13)
- 8.2 An understanding of what decisions were made and by who is best achieved by a consideration of a chronology of events. It is evident to the Panel that a number of events between 1998 and 2004 are relevant to the Review.
- 8.3 A chronology of key events is provided at Appendix F.

Land acquisition and early plans for Airport

- 8.4 It is clear to the Panel that the possibility of expanding the Airport had been under consideration for some time. There appeared to be a general agreement that the commercial success of the Airport into the future would be largely reliant on an extension of the runway to accept larger planes. The purchase of some land adjoining the Airport was essential in order to extend the runway.
- 8.5 The earliest reference the Panel have seen to consideration of the future of the Airport is in 1998, when the Airport Manager discussed with the Shoreham Airport Management Board the possibilities of expansion. The Airport Manager sought authority to make discreet enquiries into the availability and price of some 300 acres of land adjoining the Airport. The Management Board considered this proposal and resolved that due to the lack of funds available from the owning authorities to undertake such a project, no further action should be taken at that time.
- 8.6 A second reference to potential land acquisition and raising of land was to the Shoreham Airport Joint Committee on 12 January 2001. The Airport Manager and the Council's Head of Economic Development and Regeneration made a presentation to the Joint Committee detailing opportunities for further expansion and development of business at the Airport. The subject of land acquisition was discussed. In addition, the Joint Committee authorised the Airport Manager to submit a planning application to raise the level of some land in the north west corner of the Airport to enable the construction of a helicopter training pad. The Airport Manager stated that the raising of this land was required for operational reasons but also part of the plan for the purchase of the land.

- 8.7 The next time a formal Committee of the owning authorities received any information about expansion plans and the future of the Airport was on 22 March 2001 and 4 April 2001 when Worthing and Brighton and Hove's respective Policy and Resources Committees approved a proposal to seek a private sector partner to develop the Airport, which could involve building a longer runway, and authorising officers to enter into negotiations to agree the purchase of 70 acres of land adjoining the Airport.
- 8.8 In actual fact, discussions regarding the possible purchase of the land had begun earlier. In September 2000 officers from Brighton and Hove commenced discussions and negotiations with the owners of some land adjoining the Airport – at that time a company called Wheelwright Estates – after it became apparent that the land was on the market.
- 8.9 There is evidence of four of these negotiation meetings, attended by senior officers from Brighton and Hove, the Airport Manager and representatives of the landowners. Brighton and Hove were approaching these meetings with two objectives. Firstly to ascertain on what terms 70 acres of land adjoining the Airport might be acquired; and secondly to try and get the landowners to engage in a “master-planning exercise” for the whole of the strategic land area between Lancing and Shoreham.
- 8.10 By early December 2000 agreement had been reached in principle on what terms the landowners might be prepared to transfer ownership of the land. The owning authorities did not have the resources to buy the land outright, and so agreed an arrangement whereby the land could be acquired for a sum of £500,000 and in addition to this, the vendors could be granted rights to raise the level of the land to be sold and other areas of the Airport land. The nominal sum of £500,000 was to be raised through a supplementary credit approval from the Department for Transport or a back to back agreement put into place with the new owners of the Airport who could have indemnified the owning authorities for the purchase costs.
- 8.11 The District Auditor's report comments that officers should have sought member authority to commence preliminary negotiations. Officers have strongly indicated that there was nothing improper about this approach, and that it is standard practice throughout local government for agreements to be reached in principle subject to member approval.

Landraising and 'Cost-Neutrality'

- 8.12 Neither the Airport or Brighton and Hove engaged any professional valuer in making a professional judgement to place a value on the tipping rights of the land value. The Panel has received evidence that suggests

that the Council were in no strong position to offer resources towards the purchase price of the land, so the tipping rights became the key element in reaching agreement with the landowners.

- 8.13 Reference was made at a negotiation meeting between Council officers and the land owners, which suggested that tipping rights on the 70 acres of land to be acquired benefited the Airport too, so were 'self-cancelling'.
- 8.14 However, no attempt at this stage appears to have been made to place a real value on the tipping rights or the land value itself.
- 8.15 The Airport used the services of two Consultant Surveyors, to advise only on engineering and property portfolio matters. Neither was consulted on valuing land raise or had expertise to advise on cost neutrality. One of these Surveyors was involved in the negotiation meetings between Brighton and Hove officers and the landowners. However, this surveyor was not under instruction to advise on the value of the land, as his involvement was more general – to provide a conduit between the Airport and the Brighton and Hove's legal team.
- 8.16 After several negotiation meetings, agreement in principle was reached with the land owners over the proposed land acquisition.

The Strategic direction for the Airport

- 8.17 Following the negotiation meetings and the agreement in principle being reached with the landowners to transfer ownership of the land on certain terms, officer plans for 'The Future of Shoreham (International) Airport' were formalised and presented to Members at the Policy and Resources Committees of Worthing and Brighton & Hove on 22 March and 4 April 2001 respectively. The report outlined two studies that had been commissioned to look into the potential disposal and marketing of the Airport.
- 8.18 The first study recommended the sale of a long term lease on the Airport as a whole, which would include a bar on any further development other than that contained within the section 52 agreement; the owning authorities benefiting from some level of control over the Airport, and a share in the development value. The report outlined the intention of the owning authorities to proceed with a future expansion and eventual sale of the Airport, alongside a master planning exercise for the whole area between Lancing and Shoreham.
- 8.19 The findings of the second study were strongly supported by the report and considered in detail the option of establishing a joint venture company, which although a more complex option, would allow the owning authorities more control through sharing the capital and the potential for good returns should the Airport prove to be a financial

success. The report accordingly recommended that the establishment of a joint venture company should be pursued.

8.20 The report proposed four clear actions based on the results of the second study that were essential to progressing this: -

- Support for the overall strategy from the owning authorities
- Establish a Member task group
- Establish an officer working group
- Purchase land for the extension of the runway.

8.21 Previous officer level negotiations with Wheelwright Estates are clearly outlined in the report:

'Officers advising the Airport have been in discussion with Wheelwright Estates the owners of the 187 acres immediately to the west of the Airport. The company is prepared to sell the 70 acres the Airport would require to construct a larger runway for £500,000 subject to:

1. Licence to raise the 70 acres with inert material.

2. The submission of a joint planning application for a 187 acres to include the construction of the new runway, an area of housing in include a proportion of affordable housing, some commercial development and new public sports facilities to be gifted by Adur District Council.

3. The granting of permission to raise part of the Airport's land in the north east corner with inert material. '

8.22 The full recommendations of the report, as agreed by Brighton and Hove and Worthing Councils were as follows:

'That the Members of the Owing Authorities:

- i. Support the general strategy of seeking private sector investment to build a longer runway and develop new markets such as general aviation, thus increasing the contribution of the Airport to the local economy.*
- ii. Approve in principle the transfer of the management of the Airport to an appropriate through the establishment of a joint venture company in which the Owing Authorities would have a stake.*
- iii. Authorise the Chief Executives to seek "expressions of interest" and to negotiate an appropriate partner for the establishment of a joint venture company.*

- iv. *Authorise the Chief Executives to proceed to negotiate an agreement with Wheelwright Estates to: purchase approximately 70 acres of land to the west of the Airport; prepare a master plan for the strategic gap and subsequently submit a planning application for a new runway and mixed use development.*
- v. *Agree in principle to purchase the additional 70 acres of land from Wheelwright Estates, subject to the necessary resources being available.*
- vi. *Adopt the provisional timetable set out in Table 4.*
- vii. *Establish a member task group made up of 4 members from Brighton and Hove and 2 from Worthing to steer the project with 2 observers from Adur District Council and 2 observers from West Sussex County Council. The Task Group is to be chaired by the Leader of Brighton & Hove City Council.*
- viii. *Establish a joint officer-working group drawn from Brighton & Hove Council, Worthing Borough Council, Adur District Council and West Sussex County Council to advise the Member Task Group. The Officer Group to be chaired by the Strategic Director of Culture & Regeneration, Brighton & Hove Council.'*

8.23 At this point the notion of the cost-neutrality of the land acquisition deal, including the landraising, appeared to have been set in stone. The Panel wish to stress that this was still without any formal consideration of the value of the land or the tipping rights associated with it.

Change in strategy for the Airport's future and links with landraising

8.24 Following the 'Future of Shoreham (International) Airport' report, the officer working group and member task groups were set up, with the objective "To investigate and make recommendations regarding the potential redevelopment of Shoreham Airport", and have the following considerations: -

- The scope for a longer runway and the purchase of 70 acres of land from Wheelwright Estates to the west of the Airport.
- The potential to seek expressions of interest for an appropriate partner to establish a joint venture company (in which the Owing Authorities would have a stake) to manage the Airport and its operations.
- The preparation of a master plan for the Airport and the "strategic gap" between Shoreham and Lancing and the submission of appropriate planning permission for mixed use development.

- The scope to develop new markets for the Airport.
- 8.25 The officer working group prepared recommendations for the consideration of the member task group, both of which were supported by professional advisors.
- 8.26 The groups met regularly from 2001 until 2004 when the member task group made its final recommendations on the future of the Airport to Brighton and Hove's Policy and Resources Committee and Worthing's Executive.
- 8.27 After lengthy discussions, the member task group settled on two options for public consultation for the regeneration of the Airport which were presented for public and stakeholder consultation. Following this consultation, the task group recommended a different approach: to market test the Airport as a going concern. This new option was considered attractive for a number of reasons, including the fact that the two options that were presented for consultation received broadly negative responses; that to pass on the Airport would not affect the planning exercise for the rest of the Strategic gap area; and would avoid the need for substantial and time-consuming sustainability, traffic and environmental impact assessments.
- 8.28 Therefore during this period, there was a shift from the initial position of pursuing the acquisition of the 70 acres of land, to the eventual recommendation to simply market test the Airport as a going concern without the land purchase. However, the landraising arrangements that formed part of the approved recommendations in 'The Future of Shoreham Airport' report went ahead without the purchase of the land. The Panel has found no evidence to say that the matter of landraise was discussed at the task groups. Landraising was never member approved as a stand alone option.

Authority and consent to start tipping

- 8.29 Unlicensed landraising began on Airport land in July 2001 without any member authority. The Panel notes that this is without the owning authorities reaching agreement on the acquisition of the land, the land raising being a part of this agreement, and without any formal written licence.
- 8.30 In the period between April 2001, when the owning authorities approved formal negotiations for the purchase of land, and when the tipping commenced in July 2001, correspondence from the land owner's solicitors was received, indicating that the landowners were still keen to transfer ownership of the land. At the same time, Brighton and Hove's Legal team - was drafting a tipping licence in the belief that the land purchase would be completed. On 9 April 2001 the Airport's Consultant

Surveyor (Property), acting in his capacity as a conduit between the Airport and Brighton and Hove's legal team sought confirmation that the Airport Manager believed the costs and benefits to the Airport and the licensee were self-cancelling, and accordingly did not wish the license to contain any consideration other than a peppercorn. Later in April, a Brighton and Hove solicitor while drafting the tipping licence questioned the Airport's Consultant Surveyor about the granting of a licence for no consideration, and received confirmation that the operation was cost/value neutral from the Airport's perspective. The Panel note that at this stage, the correspondence was not copied to any more senior officers who were involved in the broader strategy for the future of the Airport.

- 8.31 It is clear that raising areas of the Airport land before the completion of the proposed land acquisition was being progressed at this early stage by the Airport Manager. He has indicated that he had discussed this with other officers and was sure he had authority to proceed.
- 8.32 The Panel has received no clear written evidence identifying any person as giving consent for the landraising to start. No-one who gave evidence has said that they authorised the landraise to start or were in a position to give that authority. The Panel notes that no formal report was made to Members – either the Joint Committee, Management Board, or the Policy and Resources Committees of the owning authorities – to seek authority to start landraising independently of the land purchase or to advise them formally that the landraise had started. The Panel notes that the Airport Manager has cited the authority to start landraising as the 12 January 2001 report which requested authority to submit a planning application on for the raising of land in the north west corner of the Airport for a helicopter training area.
- 8.33 The Panel believes that it was a mistake to seek planning permission for the raising of the land in the north west corner of the Airport separately from the authority to negotiate with the land owners. This allowed the Airport Manager to proceed with the landraising ahead of the acquisition of land, albeit in the expectation of an eventual agreement to acquire the land. The Panel also comment that given the poor negotiating position that the Council were in, the potentially lucrative landraising operations and the clear urgency of the landowners to commence tipping, could have been used as the incentives to achieve a swift completion of the land acquisition. However, because of the lack of valuation advice, no one appreciated the potential value of the landraise. Allowing the land raise operation to commence before the land acquisition seriously weakened the land purchase deal.
- 8.34 In the meantime, the member task group and officer working group were monitoring the ongoing land purchase negotiations. Notes from the meetings of the officer task group suggest that negotiations were slow

in progressing. In the summer of 2001, the original vendors of the land (Wheelwright Estates) had sold their interests to a new organisation (New Monks Farm Development Ltd). Thereafter it appears that these new land owners requested different terms for the acquisition, and eventually these negotiations began to falter, and by early 2002, the negotiations for the purchase of the land had ceased.

- 8.35 Further landraising activities were carried out in the south west of Airport. These arose from a planning application submitted 'For raising of levels by up to 2 metres for improvement of operational safety'. No formal authority was obtained from the Airport Joint Committee. No valuation was made of the potential value of the landraising operations that would raise the land and no consideration was received for this landraise other than the benefits to the Airport from improved operational safety.
- 8.36 The matter of landraising was raised by Councillor Don Turner on 24 February 2004 at a meeting of the Airport Management Board and in response an internal audit report was requested and completed. However, the landraise operations were not stopped by the owning authorities. The Director of Strategy and Governance told the Panel that to stop the landraising operations would have risked action being taken by the contractors regarding performance of the contract.

Priority, and continuity of chief officer roles and line management

- 8.37 There were a number of changes to Chief Officer and lead officer roles for the Airport at Brighton and Hove and also Worthing during the time period the land negotiations and landraising was taking place.
- 8.38 Over the years, Chief Officers of Brighton and Hove with responsibility for the Airport have changed several times, and these changes are detailed below. However, during the time of the initial Airport negotiations and most of the landraising activity, Brighton and Hove's Director of Culture and Regeneration was responsible for the airport.

Dates	Chief Officer with responsibility for Shoreham Airport
April 1997 to February 2000	Chief Finance Officer
February 2000 to January 2003	Director of Culture and Regeneration
January 2003 to 21 January 2005	Director of Corporate Services
21 January 2005 to 1 April 2006	Director of Strategy and Governance
1 April 2006 – 30 June 2006	Director of Cultural Services

- 8.39 In 1997 the owning authorities' Chief Executives raised some concerns over financial arrangements for the Airport. It was agreed that the then Chief Financial Officer of Brighton and Hove should have line management responsibilities for the Airport Manager and he provided regular, personal supervision.
- 8.40 The Airport Manager had no clear line management after 10th February 2000 when the Chief Financial Officer retired from the Council. The Director of Culture and Regeneration had overall management responsibility. The lead officer role for the Airport was held by the Head of Economic Development and Regeneration between March 2000 and the autumn 2000. Thereafter, lead officer roles were split between two officers – the strategic side of the Airport, including leading on the future ownership of the Airport, was the responsibility of the Head of Economic Development; and the lead officer on operational matters was the Assistant Director, Major Projects and Venues. Neither of these officers appears to have been given line management responsibilities for the Airport Manager.
- 8.41 The Panel believes that the split weakened the line management responsibility because two officers shared the leading roles and it pinpoints that the Airport would have benefited from the Airport Manager having a recognised single line management arrangement with a Director from Brighton and Hove. Whilst being line managed by the Chief Finance Officer, the Airport Manager was set targets and had weekly progress meetings. This line management role also appeared to link up with the role played by the Chair of the Shoreham Airport Joint Committee, Councillor Mike Middleton, and provided the Airport Manager with a direct route into the Council, to assist in highlighting issues at the Airport that might otherwise have not been dealt with or heard by the owning authorities.
- 8.42 The Panel has heard that the Airport Manager had often been frustrated by the low priority afforded to the Airport by Brighton and Hove officers, who have concurred that the Airport was not considered a high priority compared with other major projects.

Airport Manager delegations and responsibilities

- 8.43 The Airport Manager did not have clearly outlined delegated powers and duties and therefore lacked clarity over which decisions he had authority to make. The Panel has heard that the Airport Manager would refer to officers at the Council if he wished to confirm what he was able to do at officer level. Otherwise, he would seek specific approval for specific actions from the Airport Joint Committee.
- 8.44 This lack of clarity was a major contributory factor to the lack of consistency in reporting to the Airport Joint Committee and the kinds of

decisions that were made by the Airport Manager. For example, the Airport Manager arranged for the submission of the planning application to raise the land in the south west corner of the Airport without Joint Committee approval. However, he had sought Committee approval for a previous planning application. The Panel was surprised that he had no convincing reason for not seeking Joint Committee approval for the submission of planning applications.

- 8.45 The Panel did not receive any evidence to suggest that the Airport Manager was not keen to improve the Airport and ensure its future viability and acted in anything other than the Airport's best interests. However, it is clear that what was the Airport's best interest was not always also the best interests of the owning authorities. Without clearly outlined delegations, a combination of weak line management and the general lack of priority given to the Airport by both Councils allowed the Airport Manager to implement decisions that were outside his powers without these being picked up by the owning authorities.

Disciplinary proceedings against officers

- 8.46 The Panel have spent considerable time trying to see if it could clearly be established how the idea that the landraising was 'cost neutral' became established and more particularly who gave authority for the landraising to commence separately from the land purchase.
- 8.47 The cost neutrality assumption appears to have its origin when the negotiations were starting. This was before authority was obtained from the Airport Joint Committee and the Policy and Resources Committees formally to negotiate for the acquisition of land. Because no expert valuation advice was ever commissioned, the assumption was not questioned. This would not have mattered if neither the land acquisition nor the linked landraising proposal had proceeded, but because the landraising assumed a life of its own, the opportunity to make a profit from the landraising was lost.
- 8.48 The Panel concluded that the Airport Manager was closely involved in the commencement of the landraise operations because he was responsible for airport safety and the contractors would not have been allowed on to the airport land if he had not been satisfied with the arrangements. He was adamant that others knew what was happening and authorised the landraising, but was not able to direct the Panel to any relevant documentary evidence which showed that formal approval had been given to allow it to take place independently of the land acquisition proposal. The recommendations below address the issues of supervision and clarity of delegated powers which the Panel felt were raised by his role in the landraising.

- 8.49 No past or present officer, member or consultant has said that they took responsibility for authorising the landraise to start even though the linked land acquisition had not been completed. Neither the District Auditor nor the Panel have been able to find any clear written evidence indicating that any particular officer(s) or member(s) gave authority for the landraising to start.
- 8.50 The Panel reached the same conclusion as the District Auditor that there is no one officer at fault. Officers acted without proper authority and this failing was not spotted and corrected by managers at the highest level. Until late early 2004, no officers or members of either Council who had any involvement with the Airport questioned what authority had been given for the landraising operations, although they were openly proceeding on site from July 2001. The Scrutiny Panel's view is that there has been a collective failure of responsibility.
- 8.51 The Panel met with the current Chief Executives of both Councils and one of the issues discussed was whether any disciplinary action had been taken or was contemplated against any officer.
- 8.52 The Chief Executives have advised that no such action has been taken. It would have been premature while the internal and external audit investigations were taking place. It was only after the District Auditor's report was available that the extent of the potential loss was fully appreciated. It is considered that establishing a case would be unlikely, partly because of the evidential difficulties mentioned above. Also, a number of the officers who were involved in the matter no longer work for Brighton & Hove City Council.
- 8.53 The Chief Executives have also given their initial assessment that the Airport arrangements were unusual and that there were now no other Council controlled, but semi-autonomous, bodies with relatively poorly defined governance arrangements. Therefore potential for problems of a similar nature arising again was much reduced.
- 8.54 The Panel, whilst understanding this and the position in relation to disciplinary proceedings have made it clear that what happened was entirely unacceptable. Officers and Members of both Councils must remain vigilant to ensure something similar does not occur again. The recommendations below should help the executives of both Councils to address the governance issues raised in the scrutiny review.
- 8.55 The Panel concludes that it will be for the Chief Executives of the two Councils to lead in ensuring that appropriate governance arrangements are in place, and periodically reviewed, to prevent any similar failures.

Clarity of Governance Arrangements

- 8.56 Until its sale in July 2006, Shoreham Airport was jointly owned by Brighton and Hove and Worthing. Brighton and Hove owned two-thirds and Worthing owned one-third. Previous to Brighton and Hove Council's merger in 1997 the Airport was owned in three equal portions by Brighton, Hove and Worthing.
- 8.57 A management agreement between the two owning authorities required a Joint Committee to oversee operations. The Shoreham Airport Joint Committee was responsible for the management of the Airport and after 1997 was constituted of members of Brighton and Hove and Worthing.
- 8.58 Decisions relating to powers which were outside the terms of delegation of the Joint Committee, for example decisions with major financial implications, were made by the respective Policy and Resources Committees of the owning authorities.
- 8.59 A Management Board was also in existence consisting of 2 Brighton and Hove and 1 Worthing Joint Committee Members (including the Chair of the Joint Committee) and advised by senior officers, which dealt with some of the more detailed aspects of the Airport's management and which reported its minutes to the full Joint Committee.
- 8.60 There was no clear documentation outlining the specific roles and responsibilities of the Management Board, although it met formally enough to keep proper minutes. The Management Board could have been constituted with Sub-Committee status, which was permissible under the Joint Committee's Standing Orders, but the Panel has received no evidence of any specific delegations to the Management Board. Without a scheme of delegation, the Management Board could not take any decisions and was therefore in effect only a Chair's meeting for the Joint Committee. The Panel observes that the Management Board was actively dealing with issues and it would appear to the Panel that for it not to have had clear delegated responsibilities was a failing in the governance arrangements for the Airport.
- 8.61 The Panel also notes that during the 4 years of the landraising from 2001 to 2005, the Airport Manager did not see a need to make any formal reports to the Airport Joint Committee about the landraising.

9. **WHAT, IF ANY, LESSONS CAN BE LEARNED FROM THIS SCENARIO AND WHERE MIGHT THEY BE BEST APPLIED IN THE COUNCIL'S OPERATION?**

(a) Governance, Democratic Processes and Executive member involvement

- 9.1 Where there is a “semi-autonomous body” run by partners, such as the Joint Committee, the body itself and all the partners to that body need to have its constitution clearly set out and periodically reviewed, so its powers, duties and procedures are accessible and understood. If it has any subordinate bodies, such as the Management Board, the same applies to the subordinate body. Where any individual Member has a special role he / she needs to be clear whether that role includes actual direct power to make decisions, eg as an Executive Councillor might now have at Worthing, but a Committee Chair at Brighton & Hove would not.
- 9.2 The Panel received assurances from the Chief Executive's of Brighton and Hove and Worthing that the likelihood of events such as the landraising ever occurring again was very small, making the comment that the Airport was a unique enterprise for the owning authorities, and the failures identified by the District Auditor and the Joint Scrutiny Panel are not indicative of systemic failures of management and governance in the owning authorities.

Recommendation 1

The constitutions of partnership arrangements and semi-autonomous bodies (including schemes under which their functions are further delegated) must be clearly set out and periodically reviewed.

(b) Intelligence and Communication

- 9.3 A number of decisions made and events seemed to have gone unnoticed by officers and Members of both Councils, which in combination have resulted in the loss to the owning authorities of at least £1 million, based on the District Auditor's investigation. Consideration of the real value of the deal being struck, the commencement of the tipping, the granting of a tipping licence separate to the land acquisition for less than its true value, the submission of two planning applications without Joint Committee approval, and the continuation of tipping operations for several years without comment; all appear to have not been picked up or put through proper governance processes by the Members and officers of the owning authorities. The Panel finds it hard to believe that there was no mention of landraising or landfill at any formal Committee meetings.
- 9.4 The prevention of similar events and issues can be achieved through the observance of the other recommendations set out below, but as a

general point, the Panel observe that it is crucial to ensure the availability of the right people who can advise at the right time. Usually these will be experienced officers, but members also have a guidance role. These officers and members need enough governance knowledge of the ways in which things should be done and enough knowledge of the business area in which they are involved (in this case the Airport) to be able to question assumptions, advise on procedure and suggest where more (expert) help is needed. If these people move on to other tasks, their successors must be fully briefed by them to ensure continuity.

- 9.5 This must be entrenched in the standard practice for any Council undertaking, especially one which involves a certain 'distance' between the Council and the operation, for example arm's length management organisations and partnership arrangements.
- 9.6 The Panel notes that there are no other directly comparable enterprises like the Airport currently in the control of the owning authorities. However, the Panel observe that Worthing Borough Council are increasingly working with Adur District Council and forming partnership arrangements with external organisations to deliver key service areas. It is also a generally accepted view that there will be greater use of partnerships to deliver public services in the future. For example, Brighton and Hove recently formed the Children and Young People's Trust with South Downs Health Trust to deliver integrated services for children; and Worthing have joint arrangements to run the Davison Leisure Centre, Community Centres, and also work with Adur District Council and West Sussex County Council on various initiatives. With this in mind it is vital that the authorities ensure that the right officers are in place to coordinate operations. Communication channels must be clearly defined and used. Regular monitoring of the effectiveness of arrangements must be undertaken and improvements made where failings are identified.

Recommendation 2

For partnership arrangements and governance of semi-autonomous bodies, communication channels must be clearly defined and used. Regular monitoring of the effectiveness of arrangements must be undertaken and improvements made where failings are identified.

(c) Member involvement

- 9.7 The District Auditor felt that Committee authority should have been sought before any land negotiations were opened. As a general proposition, this does not seem fully practical as it will usually be necessary to have some preliminary discussions in order to find out what is being proposed. In the case of the Airport, members were duly

asked to authorise the negotiations and it is felt that the failure to address the points at paragraph (g) below about taking early advice seem to have been more crucial than the timing of the authority from members. However, as a matter of principle, where members (in this case the Joint -Committee, & the Policy & Resources Committees) have been informed and have authorised an initiative which ultimately is not implemented, they should be formally advised that it is not going ahead. This will contribute properly to the democratic process. It will also prompt officers to track and review progress of matters, which will add an element of audit to the process and should help to ensure that there are no “loose ends”.

- 9.8 In addition the Panel believes that the Chair of Committees has a central role to ensure that all members of the Joint Committee are briefed on the progress of events. The Panel has not received any evidence that information was withheld from members of the Committee, but it does seem clear that there was a information gap. The Chair would seem to be the most obvious role to ensure he/she is personally fully briefed on all matters, and to ensure this information is disseminated to all members.

Recommendation 3

Where members have authorised a particular course of action, they must be kept informed of any significant developments. If it is ultimately not possible to pursue the matter it needs to be referred back to the members for approval of any significant developments.

Recommendation 4

The Chair of a Committee that deals with a partnership or semi-autonomous body has a responsibility to be kept informed to ensure that members of the Committee are also briefed on all relevant matters.

(d) **Governance and Management Processes**

- 9.9 Where Partners run semi-autonomous operations, such as the Airport, the extent of the delegated powers and duties of the officer(s) managing and running the operation need to be clearly set out (particularly any restrictions on what may be done) and periodically reviewed.
- 9.10 This will ensure that all parties are fully aware of what they are and are not permitted to do, and what actions would require member authority. It would also ensure that action could be taken against any breach of these clearly defined delegated powers and duties.

Recommendation 5

The delegated powers of officers managing partnership arrangements and semi-autonomous bodies must be clearly set out and periodically reviewed.

(e) Supervision

- 9.11 The Panel observes that the Airport Manager did not always have a clearly designated line manager. In 1997 this was raised as a concern by the Chief Executives of the owning authorities and subsequently the Chief Finance Officer of Brighton and Hove City Council was given line management responsibilities. During this time the Airport Manager was given monthly targets and benefited from weekly progress meetings with the Chief Finance Officer. In addition this gave the Airport Manager better route to raise issues with the owning authorities on Airport matters and generally raised the profile of the Airport which was not always considered a priority by the owning authorities. However, after the Chief Finance Officer left the authority in February 2000, the arrangements for line management appear to have become less clear. Without clear and strong line management, these benefits were lost and the Panel concludes that this was a contributory factor in the land raisings failings.

Recommendation 6

Where there is a semi-autonomous operation run by partners, such as the Airport, they need to agree and periodically review the arrangements whereby they will provide supervision and guidance. Thereby they will help the manager(s) of the operation and have “ears and eyes” open to any issues arising that might concern them as partners.

Recommendation 7

Every Council officer should have an appointed line manager and clearly defined target setting and monitoring arrangements should be the norm, especially for arm’s length or partnership arrangements.

(f) Member and officer development

- 9.12 A partnership arrangement or outside organisation may often operate differently to mainstream Council services or operations. It is therefore necessary to ensure that members involved in the work of a partnership or semi-autonomous body have sufficient training to have a sound

understanding of their role and of the powers and duties of the partnership or body and its officers. If they are able to have a good overview, they can serve the partnership or body properly and should be able to pick up more easily on any potential failures to follow its governance framework.

Recommendation 8

Where there are member or officer roles in outside bodies or organisations in which an authority has an interest, they must receive adequate training so that they may fulfil their role. Provision of training should be assessed regularly, and wherever there is a change in the appointed Members to the body or organisation. Both Councils should keep under review whether there are certain bodies to which appointments of members or officers should only be made who have had appropriate training.

(g) Project Teams and professional advice

- 9.13 The District Auditor's report found that at no stage was any expert advice sought as to the value of the land or the tipping rights attached to it. There was also no consideration of the value of the tipping associated with the second planning application to raise land in the south west corner of the Airport. Assumptions were made during the early stages of the land purchase negotiations about the 'cost-neutrality' of the deal, which were never tested and remained unproven.
- 9.14 The Panel therefore feel that where any land transaction or land operation of any significance is proposed, before informal negotiations get beyond the first stages, consideration needs to be given to the professional advice which may need to be commissioned. Such advice should be obtained before assumptions are made that may become enshrined in the negotiation process.
- 9.15 In addition, a project team should be set up, with clear division of responsibilities between its members and an acknowledged lead officer. The lead officer should also be responsible for ensuring that there are regular meetings of the project team with minutes of its decisions produced and circulated. The project team must ensure that any subsidiary aspects of its work are monitored and supervised, especially if delegated to officers who are not directly part of the project team.
- 9.16 The project team would include the Chief Officer and its responsibilities would include managing the governance arrangements (including periodic monitoring and review), determining and arranging training for

Members, identification of expert advice needed (especially in fields like negotiation with external organisations and valuations).

Recommendation 9

Any significant project or undertaking should at the outset be assessed for the professional advice needed and a project team, including a Chief Officer, would be established and conducted as set out in paragraphs 9.13 to 9.16 of the report.

(h) Record keeping

- 9.17 The way in which the initiative to buy additional land came to an end and the way in which the landraise became split from the original proposals, was started and then extended are the main examples of matters for which there should have been some clear record at officer and Committee level, but there is not. The Panel found no failing in the standard of the minute-taking at the meetings of the Joint Committee and Management Board. Rather there was a marked inconsistency in what items and issues were brought before the members for decision and the level of information members were given on Airport operations. The need to keep records of significant decisions should go without saying. The difficulty in this case was that officers appear to have thought that there was no great significance in the landraising. However, if the other points in the paragraphs above are taken to heart, the significant issues in any proposal will be clearer and then proper record keeping should follow automatically.

Recommendation 10

Officers acting under delegated powers must keep and have available a written record of the decisions taken under such powers to provide a proper audit trail of the exercise of the power.

(i) Special land transactions

- 9.18 There needs to be an appreciation by senior officers involved in land transactions or operations on land, firstly that landfill may have a very significant value in certain circumstances; and secondly that in any case it must be carefully regulated for environmental reasons. The potential negative publicity from the potential environmental damage caused by landraising is all too clear. As it turned out, the landraising was completed satisfactorily, but the District Auditor commented that too much reliance was placed on the licence holders and their contractors and no provision was made for independent supervision. If there is something unusual about a proposed land transaction, specialist advice should be obtained at an early stage. Thus both potential problems and

potential opportunities can be assessed and will not be overlooked as the project gathers momentum.

Recommendation 11

Specialist advice must be obtained where a land transaction or operation involves unusual circumstances, such as landfilling or landraising operations.

(j) Role of audit and scrutiny in partnership arrangements

- 9.19 Both audit (internal & external) and scrutiny committees have important roles in monitoring all governance arrangements. It is important not to forget these roles in relation to partnerships and semi-autonomous bodies or operations, which could be overlooked if audit and scrutiny concentrate regularly on the main governance arrangements of the Councils.
- 9.20 Brighton and Hove now has an Audit Panel, constituted as a standing sub-group of the Overview and Scrutiny Organisation Committee and Children and Young People's Overview and Scrutiny Committee, to provide the following in relation to the Council: -
- independent assurance of the adequacy of the risk management framework and the associated control environment;
 - independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment;
 - assurance on the adequacy of the Council's audit arrangements;
 - to oversee the financial reporting process; and
 - to oversee the performance and risk management arrangements in the Council.
- 9.21 Worthing's Overview and Scrutiny Committee has responsibility for monitoring all of the issues which in Brighton and Hove are performed by the Audit Panel. This includes the Council's audit, performance and risk management arrangements. Worthing's Overview and Scrutiny Committee has also created a specialist 'Overview and Scrutiny Panel for Performance Issues', which undertakes in-depth work on those issues to ensure that the Council's arrangements are monitored.
- 9.22 An additional and complementary role for the Brighton and Hove's Audit Panel and Worthing's Overview and Scrutiny Committee should be to keep an overview of governance arrangements for partnerships and

other similar arrangements would provide a forum to monitor and raise concerns and ensure useful member input into the process.

Recommendation 12

That Brighton and Hove's Internal Audit Plan 2007/08 includes an internal audit of the authority's governance frameworks, especially with regard to governance arrangements for partnerships and semi-autonomous bodies, to include assessments of risk to the authority of these arrangements; and

That Brighton and Hove's Audit Panel receives the outcomes of this internal audit work.

Recommendation 13

That Worthing's Internal Audit Plan 2007/08 includes an internal audit of the authority's governance frameworks, especially with regard to governance arrangements for partnerships and semi-autonomous bodies, to include assessments of risk to the authority of these arrangements; and

That Worthing's Overview and Scrutiny Committee receives the outcomes of this internal audit work.

(k) Owning authorities' priorities and involvement

- 9.23 Shoreham Airport was a unique enterprise for the owning authorities. As a capital investment it carried value for both the owning authorities. However, the day-to-day running of the Airport was a not a high priority amongst the authorities' other competing priorities and major projects. The Panel observe that the Airport was reasonably capable of running itself, but has received substantial evidence, much of which is already referred to above, that the Airport carried significant risks also, which needed close monitoring. The low priority given to the Airport can be seen as a clear contributory factor to the landraise operations not being discovered.
- 9.24 The Panel acknowledge that for a joint governance arrangement, for a variety of reasons it may make sense for one authority take a leading role. However, the Panel would add that a senior officer from the other authority must still remain actively involved and fully briefed on all matters relating to the undertaking to ensure that the interests of both authorities are considered and protected.

Recommendation 14

The priority given to partnership or semi-autonomous arrangements by the authorities involved should reflect the potential risks to the authorities of too little involvement.

An authority should be able to prove that it has considered the risks associated with each undertaking and prioritised accordingly.

Recommendation 15

Authorities in partnership or semi-autonomous arrangements must ensure that they are actively involved and are fulfilling required role.

Recommendation 16

Where one party in a partnership or semi-autonomous arrangement takes a lead role, other parties must ensure their input, to ensure interests of all the parties are upheld.

10. ARE THERE ANY CHANGES TO THE GOVERNANCE FRAMEWORK OF THE COUNCIL(S) THAT SHOULD BE INTRODUCED AS A RESULT OF THOSE LESSONS LEARNT?

10.1 In considering this aspect, because (i) one of the biggest issues is the failure of communications and (ii) the Joint Committee has been disbanded and the Airport is now no longer run by the two Councils, it is not obvious to the Panel that many specific alterations to the provisions of the constitution of either Council are necessary. The matter is one of awareness as much as of the wording of constitutions.

10.2 However, in relation to the general land delegations to Brighton & Hove's chief officers there are specific changes that could be made (even though neither of them was relied on in relation to the landraising) so that it is a clearly required step that the Council's valuer be consulted before certain transactions take place. The two delegations would then read (possible new wording in italics; a fuller redraft may be needed to make the delegation easier to follow):-

“(f) *After consultation with the Valuer for all land in relation to item (i) and for all land except council housing in relation to item (ii), (i) to approve the change of use of land let by the Council, and (ii) to give consent for improvements or alterations to such land (except*

where any compensation payable by the Council is likely to exceed £10,000)

- (h) After consultation with *the Valuer and* the Monitoring Officer to grant easements, licences and wayleaves;”

Recommendation 17

That Brighton and Hove City Council makes changes to its scheme of officer delegations on the basis outlined in 10.2 of the report.

- 10.3 It is also considered that Worthing should include a reference in its constitution to reflect the advice required for land dealings. It is suggested that the Council’s Estates Manager be consulted before land dealings take place.

Recommendation 18

That Worthing Borough Council makes changes to its scheme of officer delegations on the basis outlined in 10.3 of the report.

APPENDIX A

LANDRAISE JOINT SCRUTINY PANEL

TERMS OF REFERENCE

(As agreed at Overview and Scrutiny Organisation Committee (OSOC) 22 May 2006, and revised at OSOC 17 July 2006)

1. What went wrong with the decision making in this particular case?
2. What, if any, lessons can be learned from this scenario and where might they be best applied in the Council's operations?
3. Are there any changes to the governance framework of the Council that should be introduced as a result of those lessons learnt?
4. What are the possibilities for further action for the loss of income which the two Council's have incurred?

APPENDIX B

THE 20 QUESTIONS

Record keeping was weak

- 1) Are there written records that show the authority for:
 - land purchase negotiations after they were first mentioned at the Management Board on 15th December 1998?
 - the start of the landraising in July 2001?
 - the issuing of a tipping licence in March 2003?

Key Decisions were not taken by Members

- 2) How was it that the land purchase agreement was reached in principle (December 2000) by officers without Member authority?
- 3) Why did the purchase of land to the west of the Airport not go ahead and in what terms were the landowners advised?
- 4) What was the involvement of the consultant surveyors in the land purchase negotiations?
- 5) Why (as of April 2006) has the landraised area at the north-west of the Airport's boundary not been used as a helicopter training pad or for any other purpose?

Officers acted beyond their authority

- 6) Why was Member approval not sought prior to submitting a planning application (March 2002) to raise the level of land in the south-west of the Airport?
- 7) After it was first mentioned at the Management Board on 5th September 2000, to what extent were SAJC and/or SAMB informed about tipping operations on the Airport-owned land?

There is little evidence that Members of the (Shoreham Airport) Committee were kept abreast of developments.

- 8) Why was the Committee not kept fully informed of the broader strategic direction for the Airport or of the landraising operations?

On occasions, decisions were made on poor or incomplete information

- 9) How were legal, financial and environmental implications taken into account in:

- issuing a landfill licence for a peppercorn?
- starting tipping in advance of the purchase of the 70 acres

The Council's own governance framework was not followed and there was little regard to minimising the risks of fraud and corruption. (The Audit Commission found no evidence of fraud)

10) What was the management structure for officers involved in managing the Airport and what levels of responsibility were delegated to Airport staff and senior managers?

11) Why was the governance framework not followed regarding landraising operations at the Airport on several occasions?

12) Could/should more effective support for Airport staff have been provided by the councils?

13) How could supervision by senior officers have been improved?

There was no consideration to achieve value for money

14) What were the assumptions made and what was the basis for the Airport's consultant surveyor to state (9th April 2001) that the land raise cost/benefits were self-cancelling or cost neutral?

15) Why was the tipping licence holder given tipping rights over 14.8 acres in the south-west of the Airport for no consideration?

16) Why was a future option not secured on the purchase of the 70 acre as part of the negotiations on tipping rights on its land in the north-west of the Airport?

17) Why was the landraise to the north-west and south-west of the Airport not subject to a tendering exercise?

18) Can it be shown that best consideration was obtained for the terms of the disposal interest in the Airport's land?

19) Why was there no consideration of treating the granting of tipping rights and land raise construction works as separate contracts to maximise value for money?

20) How can internal systems of control be improved to avoid similar weaknesses in future?

In addition, some specific questions have been asked from other officers on points of factual accuracy and clarity.

APPENDIX C

MEMBERS AND OFFICERS FROM BRIGHTON & HOVE CITY COUNCIL AND WORTHING BOROUGH COUNCIL THAT PARTICIPATED IN THE LANDRAISE JOINT SCRUTINY REVIEW

- (a) A number of Members, officers and others who might be able to help the Scrutiny Panel were asked to respond to 20 questions, which followed on from the conclusions of the Audit Commission report. The 20 questions are set out at Annex A. Listed below are those who gave substantive responses and also others who assisted the Scrutiny Panel with written evidence or evidence given to the scrutiny officers:-

Brighton and Hove City Council

- Councillor Les Hamilton (served on Shoreham Airport Joint Committee 2001-2006)
- Councillor Don Turner (Joint Committee and Management Board Chair, and Chair of Member Task Group)
- Howard Attree (former Treasurer to Shoreham Airport)
- Bob Bruce (Solicitor to the Airport Jan 1997 to Sept 1998, and Apr 2000 to June 2006)
- Richard Butler (Estate Manager, Property and Design)
- David Fleming (Assistant Director, Major Projects and Venues)
- Mike Gregson (former Solicitor)
- John Haffenden (Airport Manager)
- David Healy (Cluttons Property Consultants and Surveyors)
- Scott Marshall (Assistant Director, Economic Development and Regeneration)
- John Packman (former Head of Economic Development and Regeneration)
- David Vine (former Consultant Surveyor – Engineering and Maintenance)
- Peter Wright (Principal Accountant)

Worthing Borough Council

- Brian Curtis (Principal Engineer)
- Tim Preston (former Economic Development Officer)

- (b) The Scrutiny Panel has heard oral evidence from the following:-

- Grahame Brown (District Auditor)
- Bob Bruce (Principle Solicitor)
- Alex Bailey (Director of Strategy and Governance, Brighton and Hove)
- David Fleming (Assistant Director, Major Projects and Venues)
- Mike Middleton (former Chair of Shoreham Airport Joint Committee)

- Councillor Don Turner (former Chair of Shoreham Airport Joint Committee)
 - John Haffenden (Shoreham Airport Manager)
 - David Healy (Consultant Surveyor to Airport, Cluttons)
 - Ian Withers (Head of Audit and Assurance)
- (c) Some of the written and oral evidence received and heard by the Panel was given in confidence.
- (d) There were also a number of people approached by the Scrutiny Panel for evidence who were only able to make a very limited response or did not supply any evidence and they were as follows:-

Brighton and Hove City Council

- Councillor Bob Carden
- Councillor Peltzer Dunn
- Lynette Gwyn-Jones (former Councillor)
- Glynn Jones (former Chief Executive)
- David Panter (former Chief Executive)
- Brian Rowe (former Councillor)
- Sarah Tanburn (former Director of Culture and Regeneration)
- Chris Taylor (former Assistant Director Corporate Resources and Treasurer to the Airport)

Worthing Borough Council

- Tim Everett (Director of Services)
- Simon Aley (former Head of Legal and Democratic Services)
- Tony Clark (former Director Planning and Environmental services)
- Reg Green (Councillor)
- Kit Wingate (former Councillor)
- Councillor John Lovell
- Bob Clare (former Councillor)
- Sheryl Grady (former Chief Executive)
- Tony Price (former Councillor)
- Colin Smith (former Treasurer)
- Alan Smith (Director of Resources)
- Cliff Harrison (Assistant Director, Properties and Facilities Management)

APPENDIX D

SUMMARY OF THE MEETINGS OF THE PANEL

Date	Agenda
17 July 2006	<p>The Panel agree its Terms of Reference and ways of working. Councillor Watkins is elected Chair of the Panel for the duration of the scrutiny. The Panel also agree what further information they would need, begin discussions on the identification of witnesses, and agree a work programme for the scrutiny review.</p> <p>The Panel also agree to recommend to OSOC that its Terms of Reference should be extended to include: "What are the possibilities for further action for the loss of income which the two Councils have incurred?"</p>
8 August 2006	<p>The Panel receive information provided by the Audit Commission, and identify further information not included in the Audit Commission's evidence, which would be needed to address the questions set out in the Panel's Terms of Reference. The Panel also receive the previous Airport audit reports and agree witnesses to be invited to future meetings of the Panel.</p>
25 August 2006	<p>The Panel agree a series of key questions, based on the conclusions for the Audit Commission report, which would be forwarded to the witnesses.</p>
28 September 2006	<p>SITE VISIT</p>
10 October 2006	<p>The Panel interview Brighton and Hove City Council's Director of Strategy and Governance and the Council's Principal Solicitor (former Solicitor to the Airport)</p>
31 October 2006	<p>The Panel interview Brighton and Hove City Council's Assistant Director, Major Projects and Venues and Councillor Mike Middleton, former Chair of Shoreham Airport Joint Committee.</p>
20 November 2006	<p>The Panel interview Councillor Don Turner, former Chair of Shoreham Airport Joint Committee, and the Airport Manager.</p>
5 December 2006	<p>The Panel interview a representative from Cluttons, property advisors to the Airport.</p>
18 December 2006	<p>The Panel begins to discuss its draft conclusions and recommendations. The Panel agree to invite the Council's Head of Audit and Assurance to the next meeting to provide opinion on the Panel's evidence and draft recommendations.</p>

9 January 2007	The Panel discuss the evidence and draft recommendations with the Council's Head of Audit and Assurance.
30 January 2007	The Panel consider a briefing paper detailing the draft findings and recommendations of the Panel in advance of a meeting with Brighton and Hove City Council and Worthing Borough Council's Chief Executives.
5 February 2007	The Panel meet with the Chief Executives of Brighton and Hove City Council and Worthing Borough Council to discuss the draft findings and recommendations.
15 February 2007	The Panel receives and agrees the final report for submission to the respective authorities' Overview and Scrutiny Committees.

APPENDIX E

LIST OF BACKGROUND PAPERS

1. Report to Brighton and Hove City Council Audit Panel 10 April 2006 'Audit Commission Report; Shoreham Airport. Report of the Director, Strategy and Governance'
2. Report to Brighton and Hove City Council Overview and Scrutiny Organisation Committee 22 May 2006 'Shoreham Airport Landfill Operations. Report of the Director, Strategy and Governance' (includes Audit Commission Report 'Landraising at Shoreham (Brighton City) Airport', April 2006)
3. Minutes of informal meeting of Landraise Joint Scrutiny Panel 17 July 2006
4. Extract from Minutes of Worthing Borough Council Overview and Scrutiny Committee 26 June 2006
5. Extract from Minutes of Brighton and Hove City Council Overview and Scrutiny Committee 17 July 2006
6. Minutes of informal meeting of Landraise Joint Scrutiny Panel 8 August 2006
7. Minutes of informal meeting of Landraise Joint Scrutiny Panel 25 August 2006
8. Minutes of informal meeting of Landraise Joint Scrutiny Panel 28 September 2006
9. Transcript of evidence given in public session by Brighton and Hove City Council's Director of Strategy and Governance, 10 October 2006
10. Transcript of evidence given in public session by Brighton and Hove City Council's Principal Solicitor, 10 October 2006.
11. Transcript of evidence given in public session Brighton and Hove Councillor Don Turner, former Chair of Shoreham Airport Joint Committee, 20 November 2006.
12. Minutes of informal meeting Landraise Joint Scrutiny Panel 9 January 2007
13. Minutes of informal meeting Landraise Joint Scrutiny Panel 30 January 2007

14. Minutes of meeting of Landraise Joint Scrutiny Panel with Chief Executives of Brighton & Hove City Council and Worthing Borough Council 5 February 2007

APPENDIX F

LANDRAISING KEY EVENTS

Date

September 2000	Negotiations to purchase 70 acres of the adjoining land started. Owners (Wheelwright Estates) ready to sell subject to being given tipping rights to raise the land on the 70 acres and on part of the airport's existing land to the north-west.
3 November 2000	Senior officers from Brighton and Hove City Council attend negotiation meeting with Wheelwright Estates.
22 November 2000	Meeting at Kings House between senior Brighton and Hove officers, the Airport Manager, the Airport's property consultant valuer and Wheelwright Estates regarding the offer made that would include tipping right on the 70 acres. A reference is made in the notes from this meeting referring to tipping rights to be sold and reference is also made to self-cancelling.
8 December 2000	Meeting at Kings House between senior Brighton and Hove officers, the Airport Manager, the Airport's property consultant valuer, Wheelwrights, Planning Consultant and Architect. Planning brief for golf course on adjacent land had been approved that week. Discussions on master plan including housing, tipping, flooding, playing fields and referring to authority so far from the Cabinet Member for Regeneration and delegated authority to the Member Task Group Project Board of the owning councils.
Early December 2000	Agreement for the purchase of the 70 acres reached in principle for £0.5 million subject to the tipping rights being granted by the Airport.
12 January 2001	Joint Committee received presentation from the then Head of Economic Development and the Airport Manager on potential for development of the airport. Committee authorised the submission of a planning application which involved the raising of the land on the north-west to create a helicopter training pad.
12 January 2001	Application made to Adur District Council by the Consultant Surveyor (Engineering and Maintenance) to the Airport for raising of ground level by up to 2m in height in the northwest part of the airfield to provide a helicopter training ground.
8 February 2001	Meeting between Senior Officers and the landowners. Indications that landowners would wish to commence landraising before summer

2002. A question appears to have been raised about how the value of the land raising had been taken into account.

- 14 February 2001 Report of the Chief Executives of Brighton and Hove City Council and Worthing Borough Council to the Senior Management Board (SMB) recommending seeking private sector investment and purchase of the 70 acres neighbouring land.
- 22 March 2001 The Future of Shoreham (International) Airport report approved by Worthing Borough Council's Policy and Resources Committee.
- 23 March 2001 Answering questions at Shoreham Airport Joint Committee the Airport Manager confirms that the planning application had been made to enable the land in the north west corner of the airport to be raised and was going through the statutory processes.
- 4 April 2001 Note of meeting between Senior Officers and the Airport Manager at which the Airport Manager explains that the landowners want to dump inert material on a northern area of the airport – the airport wanted this to raise the land and a planning application was in.
- 4 April 2001 Brighton and Hove's Policy & Resources Committee approves the proposal to seek a private sector partner to build a longer runway, develop new markets, the transfer of management of the airport to the private sector (in principle) and to negotiate agreement for the purchase of neighbouring land.
- Report also went to Brighton and Hove's Executive Board in Waiting at earlier the same day.
- 6 April 2001 Letter from the landowners' solicitors to Brighton and Hove's Legal Services regarding £500,000 plus an obligation to fill and level the land for use as a runway over a period of 18 months.
- 9 April 2001 Letter from the Consultant Surveyor (Property) to the Airport Manager commenting on a faxed copy of a precedent tipping licence asking for confirmation that the Airport Manager believed the costs and benefits to the airport and the licensee to be self-cancelling, and therefore wished the only consideration for the license to be a peppercorn.
- 11 April 2001 Meeting between Airport Manager and landowners regarding the housekeeping arrangements for land raising. Reference is also made to a second 'phase' of land raising planned for the south west corner of the Airport.
- 23 April 2001 Planning application for raising of land in the north west corner of the Airport for a helicopter training ground approved by Adur DC.

April 2001	Agreement for the purchase of the 70 acres prepared, but not completed.
27 April 2001	Brighton and Hove City Council solicitor preparing the licence questions the granting of the licence for no consideration. The Consultant Surveyor (Property) to the Airport responds that the operation was cost/value neutral from the Airport's perspective. This correspondence was not copied to any other Senior Officers.
11 May 2001	First meeting of Officer working group Chaired by the Director of Culture and Regeneration. Terms of Reference to 'investigate and make recommendations to the Member Task Group regarding the potential redevelopment of Shoreham Airport.' At this meeting the Airport Manager reported he was still waiting for legal agreement to the runway proposals.
4 July 2001	Second meeting of the officer working group. Noted that 'a new draft contract has been received regarding the purchase of the land for the runway.'
12 July 2001	The Brighton and Hove solicitor responds to the Head of Economic Development and Regeneration 'the negotiations are on-going but the contract will be conditional on planning.' (requirement that the council should submit and pay for planning on the extension land and adjacent land for residential and commercial.)
July 2001	Tipping commenced.
22 August 2001	Third meeting of officer working group. On Land purchase update, noted that senior officers met with Wheelwrights who have now sold their interest to a new organisation, Monks Farm Development Ltd. Land being purchased by Brighton; need to look out why it is not the airport that are buying it. Officers agreed to investigate.
14 September 2001	First meeting of Member Task Group – 9 Members from 4 authorities Chaired by the Chair of the Joint Committee. Established 'to consider and take action on the recommendations of the Officer Working Group regarding the identification of a private sector partner or Joint Venture Partner to deliver the Shoreham Airport Regeneration vision and to make recommendations to the Owning Authorities' decision-making committees.' Reference to 'sorting out land issues.'
18 October 2001	Fourth meeting of officer working group. On land purchase update; Land purchase negotiations appear to be ongoing.
28 January 2002	Meeting of Officer working group. On land purchase update. Officers report that Brighton and Hove has now been given discussion draft Heads of terms.

1 February 2002	Stiles Harold Williams extensive valuation report to Task Group. Brief reference at end of report to “Some land filling is in progress towards the northern end of the airfield and we presume that there is neither any liability or material income to be received from this exercise.”
Early 2002	Negotiations to purchase the 70 acres of land ceased.
25 February 2002	Planning application by Enplan on behalf of the airport for raising ground level in the south-west part of the airfield for operational safety improvement, without Joint Committee authority.
5 April 2002	Head of Economic Development and Regeneration/Airport Manager reports orally to the Joint Committee on potential areas for future development of the airport that were currently being explored by a working party comprising members of the two owning authorities, Adur DC and West Sussex County Council.
18 June 2002	Discussions between Brighton and Hove solicitor and Airport Manager about the signing of a retrospective tipping license. Reference made to tipping started at the beginning of July 2001 and that it was expected to continue for several months.
5 July 2002	An amended draft tipping licence is sent to the Airport Manager
22 July 2002	Planning application approved for raising of ground level of south-western part of airfield for operational safety improvement.
30 August 2002	Planning application by David Vine to provide runway end safety area to accommodate overrun of aircraft beyond surfaced runway, without Joint Committee authority.
5 November 2002	Head of Economic Development and Regeneration reports to the Member Task Group on the re-development project – masterplan/regeneration vision and procurement exercise
13 November 2002	Head of Economic Development and Regeneration reports to Brighton and Hove’s Policy and Resources Committee on future proposals for the Airport.
12 December 2002	Worthing and Brighton and Hove Chief Executives are made aware of issues raised by the Environment Agency on environmental regulations and water voles habitats as a result of landraising. Issues followed up by Worthing.
18 December 2002	The Airport Manager meets with Environment Agency regarding environmental regulations and water voles habitats. Reports back to Worthing BC that matter is resolved, this information is circulated.

16 January 2003	On request, the Airport Manager cites the authority for the granting of the tipping license as the Joint Committee meeting on 12 January 2001, where the Committee agreed the submission of a planning application to raise land in the north west corner of the Airport for the construction of a helicopter training pad.
28 January 2003	Final form of the tipping licence settled.
31 March 2003	Licence Agreement completed and signed between Brighton and Hove and Jeffrey Blundell and Ron Sweet (trading as S&B) for depositing waste for a period of 12 months from 31 March 2003 for a pepper corn.
12 December 2003	Planning application approved for levelling of ground by culverting ditch to provide safety area at North end of hard runway (with conditions and environmental compensation works)
24 February 2004	The Chair of the Management Board, Councillor Don Turner raised concerns at the meeting as to why waste was being deposited with no direct incomes to the airport.
31 March 2004	Tipping Licence ends – No further Licence issued.
8 April 2004	The Management Board resolved to review and formalise the decision-making powers of the Airport Manager, Shoreham Airport Management Board and Shoreham Airport Joint Committee.
August 2004	Internal Audit Investigation report issued – recommending that all such agreements should be in a form of formal legal agreement signed and held by legal and appropriate monitoring be undertaken.
Aug-Dec 2004	Follow up Internal Audit work done.
10 Dec 2004	Director of Strategy & Governance referred the matter to the Audit Commission for investigation.
13 Dec 2004	Director of Strategy & Governance instructed the District Auditor to investigate the matter, with particular emphasis on the decision-making process and value for money issue. Internal Audit work put on hold.
July 2005	Work completed (i.e tipping ceased.)
3 March 2006	Audit Commission draft report issued for consultation.

