

COUNCIL MEETING – 19 NOVEMBER 2009

AGENDA ITEM 8 - RECOMMENDATIONS FROM THE CONSTITUTION ADVISORY GROUP

The Constitution Advisory Group at its meeting on 9 November 2009 received a number of reports relating to constitutional matters, some of which proposed changes to the Council's Constitution. The Group considered those reports and made the recommendations to the Council as set out in 1, 2 and 4 below.

1. REVIEW OF CAPITAL PROGRAMME PROCESSES

The Advisory Group considered a report from the Director of Resources proposing a variation of the procedures relating to the Capital Programme. The Advisory Group noted that the report had arisen following a meeting between the Portfolio holders for Corporate Resources and Culture and Skills, the Deputy Chief Executive/Director of Children, Families and Learning and the Director of Corporate Resources to discuss problems that had arisen regarding the operation of the provisions within the Constitution relating to the Capital Programme.

Members were advised that since the establishment of the authority, a number of operational issues have emerged regarding the processes for incurring Capital Programme expenditure as set out in the Council's Constitution (primarily through the Code of Financial Governance) and the Capital Handbook. These included

- the nature of both the Constitution and Handbook processes which are more relevant for specific, higher-value, projects (rather than rolling programmes and low value schemes)
- the potentially restrictive nature of the Constitution re: approvals, variances, and virements;
- confusion and uncertainty regarding the application of processes to legacy authority schemes and the status of the CBC Capital Programme.

To address these issues Members were presented with suggested amendments to the Code of Financial Governance (Part 12 – Section 4.9) proposing the grouping of Capital Schemes into four main categories (Rolling Programmes, Major Capital Schemes over £500k whole life cost, Intermediate Capital Schemes between £60k - £500k whole life cost and Minor Capital Schemes under £59.999k whole life cost) together with a suggested approval process for each category and the level of project documentation to be produced through Outline and Detailed Business Case requirements. The current requirement in

the Code of Financial Governance for Executive approval of a Project Initiation Document in all cases before a capital project could proceed would be removed.

These proposed amendments would impact upon other Constitution and Capital Handbook issues as follows:

- approval of new projects during the course of the year
- approval of variations in scheme costs
- virements

Members proposed lifting restrictions on capital programme variations and took the view that this action would obviate the need for virements.

It was noted that the new procedures would need to apply equally to capital projects that were wholly externally funded, where the Council was responsible for exercising proper governance arrangements.

Members also proposed amendments throughout the Code of Financial Governance to reflect that authority for approvals should be given by the relevant Portfolio Holder in consultation with the relevant Director rather than vice versa. In the interests of greater transparency, to allow call-in and to facilitate further Executive delegation, this should be adopted as a general principle in future, although it was not proposed at this stage to amend existing delegations to Directors elsewhere in the Constitution.

Members also noted that all references to the 'Assistant Director Audit, Risk and Health and Safety Management' would be amended to read 'Assistant Director Audit and Risk'.

AGREED TO RECOMMEND:

- 1. That Section 4.9 of the Code of Financial Governance (Part I2) be replaced by a new Section 4.9 as set out in Appendix A to these Notes.**
- 2. That in Part C2, paragraph 1.3.3, the words 'project initiation document' be replaced by 'detailed business case'.**
- 3. That, as a general principle, future delegations requiring sanction by a Portfolio Holder should be phrased as being to the relevant Portfolio Holder in consultation with the relevant Director, rather than vice versa.**

2. KEY DECISIONS/DELEGATIONS

The Advisory Group discussed the Definition of a Key Decision as set out in Part C2, paragraph 1 of the Constitution in the light of some uncertainty of interpretation as to the meaning of the financial threshold as between annual and whole life costs.

Members also sought to clarify uncertainty in relation to other delegated functions such as land acquisitions and disposals (Part H3, paragraph 4.6.71) and procurement (Part I3, paragraph 5.1) where a limit of £200,000 is set on Directors' powers.

The Advisory Group discussed whether the criterion in Part C2, paragraph 1.1.2 relating to a decision having a significant effect on communities living or working in an area comprising one or more wards in the Council's area should be amended. After discussion it was agreed that this could be revisited at a later date.

AGREED TO RECOMMEND:

1. **That Paragraph 1.2 of Part C2 (Key Decisions and the Forward Plan) be amended to read:**

“For the purposes of 1.1.1 above, savings or expenditure are significant if they exceed £200,000 per annum (revenue) or £200,000 whole life cost (capital), or 10% of the budget for the cost centre concerned, whichever is the smaller.”

Arising from the above discussion and concerns expressed elsewhere about the need to reduce the extensive workload of the full Executive, the Group also considered the possible introduction of delegated arrangements to Portfolio Holders generally to authorise savings or expenditure (including procurement) between £200,001 and £500,000, which currently required approval by the full Executive. This would bring the delegation arrangements for revenue and capital into line with the revised Capital Programme processes the Group was now recommending.

Members were aware that such a change would require a specific delegation by the Leader but would avoid the need for individual delegations to be made.

AGREED TO RECOMMEND:

2. **That the thresholds in recommendation 1 above and in the Leader's delegation, if approved, be applied to the Code of Procurement Governance (Part I3, paragraph 5.1) and Land Acquisitions and Disposals (Part H3 – paragraph 4.6.71).**

(Note: Since the Advisory Group's meeting, the Leader has agreed a general scheme of delegation to the relevant Portfolio Holder in each case to authorise savings or expenditure between £200,001 and £500,000 inclusive (revenue per annum or capital whole life/total contract value), in consultation with the Portfolio Holder for Corporate Resources, the relevant Director and the Director of Corporate Resources. The delegation is also subject to compliance with Rule 19 of the Access to Information Procedure Rules. Authority for approving savings or expenditure over £500,000 (revenue per annum or capital whole life/total contract value) continues to rest with the full Executive.)

3. NHS CAMPUS CLOSURE PROGRAMME

(The Advisory Group's consideration of this item is recorded in its decisions).

(Since the Advisory Group's meeting, the Leader has also agreed a delegation to the Portfolio Holder for Social Care, Health and Housing, in consultation with the Portfolio Holder for Corporate Resources, the Director of Social Care, Health and Housing and the Director of Corporate Resources to approve individual projects, without financial limitation, under the NHS Campus Closure Capital Grant Programme, subject to the criteria set out in paragraph 4 of the report at agenda item 19 to the Executive on 15 September 2009 (i.e. projects signed off by the Learning Disabilities Leadership Group). The delegation is subject also to (a) consideration of the detailed business cases for each project; and (b) compliance with Rule 19 of the Access to Information Procedure Rules in respect of any key decision)

4. ANTI-FRAUD AND CORRUPTION STRATEGY AND CONFIDENTIAL REPORTING ("WHISTLEBLOWING") POLICY

The Advisory Group considered the Anti-Fraud and Corruption Strategy and Confidential Reporting ('Whistleblowing') Policy which had been approved by both the Audit and Standards Committees and referred to the Group for inclusion in the Constitution.

AGREED TO RECOMMEND:

- 1. That the Anti-Fraud and Corruption Strategy set out in Appendix B be included in the Constitution under Part I1 – Finance, Contracts and Legal Matters.**
- 2. That the Confidential Reporting ('Whistleblowing') Policy set out in Appendix C be included in the Ethical Framework appended to the Constitution.**

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4.9 Capital Programme:

- 4.9.1 Investment in capital assets shapes future service delivery and creates future financial commitments. The Capital Programme is a three-year programme of estimated capital expenditure and associated funding. The Full Council will approve a Capital Programme each year, recognising that approving initial estimates is the first stage in the process of progressing a proposed scheme to implementation. Estimates produced at this stage will be liable to change.
- 4.9.2 The Executive will receive budgetary proposals for inclusion in the Council's Capital Programme and will submit a proposed programme to Full Council for approval. The programme will include all capital schemes including those proposed to be financed from revenue resources or external funding sources.
- 4.9.3 Capital Schemes will be grouped into four main categories:
- Rolling Programmes;
 - Major Capital Schemes (over £500,000 Whole Life Cost);
 - Intermediate Capital Schemes (between £60,000 - £500,000 Whole Life Cost)
 - Minor Capital Schemes (under £59,999 Whole Life Cost);
- 4.9.4 **Outline Business Case**
All categories of capital projects will require an Outline Business Case in order to be considered for inclusion in the proposed Capital Programme. An Outline Business Case will normally have best estimates of capital and revenue costs, timescales, and deliverables. Outline Business Cases will be approved by the relevant Portfolio Holder in consultation with the relevant Director, the Portfolio Holder (Corporate Resources) and the Chief Finance Officer.
- 4.9.5 **Detailed Business Case**
A Detailed Business Case will have fully validated costs (including ongoing revenue costs), timescales, deliverables and where necessary an exit strategy.
The process for approving capital schemes for subsequent implementation will be different according to their category and is explained in paragraphs 4.9.6 to 4.9.9 below.

4.9.6 Rolling Programmes

Rolling programmes in the Council's Capital Programme are largely concentrated on infrastructure and asset improvement and maintenance.

After a Rolling Programme has been approved by the Council for inclusion in the Capital Programme, a single Detailed Business Case will be produced for the whole programme before it proceeds.

The Detailed Business Case and release of capital expenditure will be approved by the relevant Portfolio Holder in consultation with the relevant Director, the Portfolio Holder (Corporate Resources) and the Chief Finance Officer.

4.9.7 Major Capital Schemes (over £500,000 Whole Life Cost)

After a Major Capital Scheme has been approved by the Council for inclusion in the Capital Programme, a Detailed Business Case will be produced for the scheme. Executive Approval will be required for these schemes before proceeding to implementation.

For Major Capital Schemes, some further costs may need to be incurred to take a project up to Detailed Business Case stage. The relevant Portfolio Holder in consultation with the relevant Director can authorise expenditure up to a level of 5% of the total scheme cost at this stage to enable a Detailed Business Case to be produced. The revenue budget of the applicable directorate will meet these costs if ultimately the scheme does not proceed for any reason.

4.9.8 Intermediate Capital Schemes (between £60,000 and £500,000 Whole Life Cost)

After an Intermediate Capital Scheme in this range has been approved by the Council for inclusion in the Capital Programme, a Detailed Business Case will be produced before it proceeds.

The Detailed Business Case and release of capital expenditure will be approved by the relevant Portfolio Holder in consultation with the relevant Director, the Portfolio Holder (Corporate Resources) and the Chief Finance Officer.

4.9.9 Minor Capital Schemes (under £59,999 Whole Life Cost)

A Detailed Business Case is not required for these schemes and Minor Capital Schemes in this range can proceed with the approval of the relevant Portfolio Holder in consultation with the relevant Director, the Portfolio Holder (Corporate Resources) and the Chief Finance Officer.

4.9.10 In year, the Executive may approve new Capital Schemes estimated to cost less than £500,000 (whole life cost) that have not previously been included in the Capital Programme, subject to the production of Outline and Detailed Business Cases as required by paragraphs 4.9.6 and 4.9.8 to 4.9.9. New Major Capital Schemes estimated to cost more than £500,000 (whole life cost) must be approved by Full Council.

4.9.11 Variations from the Detailed Business Case

Where there are variations in costs on existing schemes compared with the provision in the Detailed Business Case, additional costs will be approved in accordance with the following conditions:-

Existing Scheme Additional Costs	Approval Powers
Up to £25k or 10% (whichever is the greater)	Relevant Portfolio Holder and relevant Director
Up to £100k or between 10-25% (whichever is the greater)	Executive
Over £100k or over 25% of the original budget (whichever is the greater)	Council

Where additional costs are agreed, the relevant Portfolio Holder in consultation with the relevant Director will seek compensatory savings.

4.9.12 The Chief Finance Officer will report to the Executive on the monitoring of the approved Capital Programme, including: expenditure and income to date; projected expenditure and income and approved variations.