

GENERAL PURPOSES COMMITTEE: MINUTES

Date: Tuesday, 29th November 2016

Time: 10.00a.m. – 1.00p.m.

Present: Councillors Bailey, Bates, D Brown, Bullen, Cearns, Count (Chairman), Dent, Hickford, Jenkins, Mason (substituting for Councillor Hipkin), McGuire, Nethsingha, Onasanya (substituting for Councillor Whitehead), Orgee, Reeve, Schumann (substituting for Councillor Criswell) and Walsh

Apologies: Councillors Criswell, Hipkin and Whitehead

276. DECLARATIONS OF INTEREST

There were no declarations of interest.

277. MINUTES – 25TH OCTOBER 2016 AND ACTION LOG

The minutes of the meeting held on 25th October 2016 were agreed as a correct record and signed by the Chairman. The Action Log was noted. In response to an action from the last meeting, the Chairman asked officers to find out whether it was the same Councillor who had submitted six Freedom of Information requests. The Chairman stressed the need for Members to avoid using this expensive route when they could access information via the process set out in the Council's Constitution. **Action Required.**

278. PETITIONS

No petitions were received.

279. FINANCE AND PERFORMANCE REPORT – SEPTEMBER 2016

The Committee was presented with the September 2016 Finance and Performance report for Corporate Services and LGSS Cambridge Office. A year-end overspend on revenue of £54k was being forecast. The overspend in Corporate Services had reduced from £301k to £181k mainly as a result of further work to reduce the Corporate Capacity Review overspend. Financing costs were currently predicting an underspend of £250k for the year.

One Member commented on the fact that the LGSS Accounts for 2014/15 had not yet been signed off. The Chief Finance Officer (CFO) reported that although LGSS did not have a statutory duty to produce separate accounts, they were happy to do so for the financial year in question. A member of the public had submitted a detailed challenge which had resulted in additional significant costs. However, the Accounts had since been signed off and the matter closed after the objection had not been upheld. He explained that no objections had been received to the 2015/16 accounts which had been signed off.

It was resolved unanimously to review, note and comment upon the report.

280. INTEGRATED RESOURCES AND PERFORMANCE REPORT FOR THE PERIOD ENDING 30TH SEPTEMBER 2016

The Committee received a report detailing the financial and performance information to assess progress in delivering the Council's Business Plan. Attention was drawn to the forecast year-end of overspend of £1.5m which was a reduction of £0.4m on the position reported last month. The CFO reported that work was taking place to continue to bring down the overspend and he was comfortable of achieving a balanced position at year end. The Chairman acknowledged that there were still significant risks in relation to delivery but he felt that officers could be proud of the work there had done five months into the budget.

In response to a query regarding Ramnoth Primary, Wisbech, the CFO agreed to find out whether work on site would definitely start in December 2016. **Action Required.** Another Member encouraged officers to review prices for schemes by involving the Local Member who might have local knowledge regarding the presence of asbestos for example which would impact on prices.

Members congratulated the Service Director: Older People's Services and Mental Health and her Team for bringing costs down and keeping within budget. However, it was important to note that a significant amount of extra funding had been put into Older People's Care last year. Next year it was proposed to put in a significant amount for Looked After Children. Whilst the challenge of managing demand-led budgets was acknowledged, it was also important to try and identify a realistic budget.

It was resolved unanimously to:

analyse resources and performance information and note any remedial action currently being taken and consider if any further remedial action was required.

281. BUSINESS PLANNING UPDATE

The Committee considered a report providing an overview of the draft Business Planning Proposals and budget position following October Service Committees. Attention was drawn to the budget position and the changes proposed by Economy, Transport and Environment Policy and Service Committees. The financial gap was currently £5.6m predicated on a 0% Council Tax increase and a 2% increase for Adult Social Care. Members of the Committee who had attended the recent GPC/Strategic Management Team workshop would be aware that this figure had reduced even further. Attention was drawn to risks and other issues to note, which could be amended to remove the Pension Triennial Review which would be funded from existing pension contributions over the next three years.

One Member drew attention to the risk relating to the Local Government Finance Settlement and the impact of not accepting the four year arrangement leaving the Council at jeopardy of losing £15m. She had taken action to lobby the Government to shore up the Council's position and urged other Councillors to do the same. The Chairman reported that he had lobbied Sajid Javid MP not to remove £15m from the

Council. He was also lobbying in relation to business rates and how needs would be assessed. Another Member commented that it was up to Members to use their party's internal mechanism to lobby. He drew attention to the fact that every 2% increase in Council Tax would raise £5m.

It was resolved unanimously to:

consider the Council's current budget position and provide comment ahead of Service Committee consideration of Business Planning proposals in December.

282. CONSULTATION RESULTS FOR THE 2017-18 BUSINESS PLAN

The Committee received a report setting out the results of the business plan consultation for 2016/17. Attention was drawn to the three different types of consultation used as part of the process. Members made the following comments in relation to the report:

- queried the way the question had been asked in relation to potential changes to Council Tax. It was noted that 66% had supported a 1.99% increase but this was not presented as part of the results. Members were informed that the presentation reflected the process used in the 2014 Survey to enable comparison. It was noted that a final graph would be included in the report to Council which would reflect the suggested presentation. Another Member queried the possibility of producing a combined figure for the three forms of consultation.
- queried the point of four options when the difference between options two and three was so insignificant. Another Member felt the consultation was fundamentally flawed; he questioned how representative the samples had been and the questions asked.
- highlighted the fact that the cross party Member Working Group had tried to learn lessons from previous consultations. One Member highlighted the fact that the Cambridge City consultation, which had involved people from across the county, had identified an appetite to increase Council Tax to prevent further cuts. The Chairman commented that there was a North/South divide reflected in the consultation results. Another Member reported that the consultation in St. Ives had identified that the majority preferred option one. Attention was drawn to the fact that those who were aware of the financial challenges facing the Council were more likely (72%) to support an increase in council tax than those who were not aware (61%).
- noted that 47% as part of the M E L Research did not use any of the Council services listed. Libraries came well down the list of valued Council services. The option preference of Council Tax increase by District was very varied. One Member highlighted the response for East Cambridgeshire which showed that only half supported an increase in Council Tax primarily because the District Council had managed to transform services without increasing Council Tax. The Business Intelligence Manager (Research) drew attention to the fact that there had been a higher proportion of older households of average income approached in East

Cambridgeshire. It was noted that the percentage figures for Districts/City were less reliable than the County Council percentage.

- highlighted the need to stop portraying Local Government as highly inefficient which would in the end alienate the City. One Member raised the need to reflect in the consultation the efforts which had been made to transform services. Another congratulated the Service Director: Older People's Services and Mental Health on the savings she had achieved at no detriment to the Service by transformation.
- the need to include context in future consultations to reflect the fact that the Council was one of many precepting authorities.
- highlighted the need to bear in mind the major concern for Children's Services raised at community events.

It was resolved unanimously to:

note the results of the 2017/18 Business Plan consultation.

283. TOTAL TRANSPORT PILOT

The Committee received an overview of the results of engagement and analysis work undertaken following its meeting on 26 July 2016. The question was posed as to whether there would be a net benefit to changing day centre times in the Total Transport pilot area in order to allow integration with special educational needs transport. Attention was drawn to the main issues, which demonstrated that the proposed changes would be possible for some. However, there were three respondents where the changes would have a significant impact; individual case studies had been provided for two of them. It was noted that in both cases the family was the primary carer. There would be significant additional costs incurred which would be more than the maximum potential saving from changing times. It was therefore not proposed to change existing day centre times. It was noted that there was scope for the Flexible Minibus Service to provide access to other community based provision.

The Committee thanked the Transport Policy and Operational Projects Manager for the work he had carried out. Members highlighted the strength of qualitative data in identifying the real risk to the Council. One Member drew attention to the significant amount of funding that family carers saved the Council. Members were informed that both Children and Young People and Adults Policy and Service Committees supported the recommendations.

It was important to bear in mind that Total Transport was not simple to roll out because it needed to be specific to the area and involve a considerable amount of consultation. It was suggested that there should be a review mechanism to allow for any changes in the future. Members noted the importance of the Flexible Minibus Service in targeting people who were not currently using day centres. There was a need for change to be led by the day centres.

It was resolved unanimously to:

- maintain existing day centre times, accepting that the potential costs involved in changing times would outweigh the benefits.
- note the alternative approach of considering the Flexible Minibus Service as an enabler for residents, helping them maintain their independence and to access community-based solutions.

284. TREASURY MANAGEMENT REPORT QUARTER 2

The Committee received the second quarterly update and mid-year review on the Treasury Management Strategy 2016-17 approved by Council in February 2016. The Chairman drew attention to the predictions and continual disagreements regarding interest rates. The central forecast was for lower interest rates but it appeared that the ability of the Council to flex rates was diminishing slowly. Members requested an update on how the loan to Arthur Rank Hospice Charity was progressing. The CFO agreed to circulate information at full Council. **Action Required.**

It was resolved unanimously to:

- a) note the Treasury Management Report; and
- b) forward to full Council for approval.

285. GENERAL PURPOSES COMMITTEE AGENDA PLAN, TRAINING PLAN APPOINTMENTS TO OUTSIDE BODIES, PARTNERSHIP LIAISON AND ADVISORY GROUPS AND INTERNAL ADVISORY GROUPS AND PANELS

The Committee considered its agenda plan and training plan, and noted the following changes to the agenda plan:

- move "Assistive Technology in Older People's Care & Assessments Phase 2" to March.

Members were also asked to note a number of appointments which had been made to Outside Bodies, Partnership Liaison and Advisory Groups and Internal Advisory Group and Panels since the last meeting.

It was resolved unanimously to:

- a) review its Agenda Plan attached at Appendix 1;
- b) review and agree its Training Plan attached at Appendix 2; and
- c) note the appointment of the following:
 - Councillor Connor to replace Councillor McGuire on the Police and Crime Panel;

- Councillor Smith to replace Councillor McGuire on the Community Safety Strategic Board;
- Councillor Bullen to replace Councillor McGuire on the Conservators of the River Cam; and
- Councillor Cearns to replace Councillor Nethsingha on the Consultation Working Group.

286. CAMBRIDGESHIRE GUIDED BUSWAY DEFECTS

The Committee considered a report detailing expert technical and legal advice regarding the rectification of defects in the construction of the Cambridgeshire Guided Busway (CGB) and the recovery of costs from the contractor Bam Nuttall (BAM). A report with similar recommendations had been presented to the Committee on 7 October 2014. Since that time, lengthy investigations had been carried out jointly with the contractor. It was noted that the results of the investigations strengthened the Authority's case as demonstrated in the expert opinion provided by Capita. Attention was drawn to the principal problems with the Busway. The Council had to consider whether it fixed the defects immediately or waited for them to fail. It was being advised to carry out rectification works and commence legal action to secure a satisfactory settlement from BAM.

During a detailed discussion, the following points were raised by some Members:

- queried the impact of the defects on public safety. The Service Director, Strategy and Development, (Director) reported that speed limits were introduced to manage any significant defects. If the Council failed to rectify the defects then there would be more speed limits on the Busway which could eventually result in passengers and buses not using the route. The Council prioritised safety at all times by carrying out regular inspections.
- confirmed that the recent incidents on the southern route of the Busway had no connection with the issues raised in the report.
- highlighted the need to bear in mind that the Council retained responsibility for maintaining the Busway in a safe condition. One Member expressed his concern about the financial consequences for the Council whatever action was taken.
- disappointment expressed by one Member that the Executive Director: Economy, Transport and Environment, the author of the technical report from Capita, and a representative from Atkins who were contracted the Project Managers, had not been present at the confidential briefing for members of the Committee and Economy and Environment Spokes. One Member reported that he had submitted three questions for consideration. Unfortunately, the presenter from Skanska had been unable to answer the technical question relating to the cracking of the longitudinal beams. He expressed further disappointment that a further £3.07m plus £192,000 of taxpayers money had been paid in professional fees to consultants some of whom had declined to answer questions from Members. The Director reported that Atkins and Skanska had not declined to answer questions. A response would be provided to the Member concerned. He informed the Committee that the Executive Director had been called away from the briefing at short notice.

- highlighted conflicting information concerning the cost of repairs to the Busway received from the Director compared with information on the Council's website; the difference in the figures had been millions. It was noted that the CFO had provided Members with an explanation, together with a revised public data set of payments over £500. One Member reported that he remained unhappy with errors of this magnitude appearing on the public website and believed that action should be taken to tighten up accountancy procedures. The CFO explained that there had been an error in the software as to how the Authority treated cost income.
- queried the CFO's revised figure of four payments totalling £217,677 which did not reconcile with the Director's original statement of £2.8m. The Director reported that the £2.8m figure reflected the funding for the Busway since 2011. The payments were not connected with the defects instead they reflected construction retention payments and land payments which were part of the original project. Provision for these costs needed to be made in the Capital Programme.
- highlighted a further commitment of £15.685m prudential borrowing raised in a previous report. One Member queried whether this related to capital provision for anticipated legal costs, professional fees and/or repairs, reserves or borrowing more money to repair the Busway. He expressed concern as to whether the Council was throwing good money after bad. He was particularly concerned about whether the repairs would last the lifetime of the Busway. The Director advised that the commitment in the capital programme was for land costs and contractual retention payments. The CFO reminded the Committee that the Council was not allowed to capitalise legal costs.
- highlighted the compelling case which made the situation regarding the defects on the route clear. One Member expressed shock that since the completion of the Busway BAM had failed to address any defects completion and had ignored defect notices. Action needed to be taken but it was important to ensure that any decision was considered by the Committee or, if necessary, full Council first.
- queried the impact of Option 1 should any further defects arise if the Council rectified the defects using a different contractor. The Director acknowledged that the situation would be complicated if another contractor was involved as it could lead to difficulties establishing which contractor was responsible should further defects arise. Members were informed that it was a risk but the Council did not have a choice.
- highlighted the 13% of elements which needed to be repaired. One Member queried what would happen to those elements which could become a problem in the future and how they would form part of any settlement. The Director reported that 13% related to only one of the defects and was based on a sample. As part of the repair works, it was proposed to expose all joints and remedy every one if necessary. It was suggested that this could therefore result in a bigger claim against BAM.
- the need raised by Councillor Bullen (*the Chairman agreed that he could be named in the minutes*) to draw a line under the project. He reported that he did not think the Council would win its legal action. He felt that the project had been flawed from the beginning and that Option 1 did not make business sense. He suggested using the

£2.2m being withheld from the contractor to keep the Busway running and then closing it when the money ran out and only reopening if the Council was successful in getting the money. He queried who had actually signed off the design. The Director reported that when the Busway had been commissioned the specification had included provision for a Design and Build Contract. The Chairman commented that the Council had therefore employed someone purportedly proposing to be an expert to take the risk. The Director explained that the terms of the contract meant that the design had been accepted and not approved. The role of the Council's agents, Atkins, was one of checking that the quality assurance had been carried out and not approval. Liability for the design therefore rested with BAM.

- acknowledged the need to continue to maintain relationships with BAM to see whether a negotiated settlement could be reached.
- suggested by one Member the need to consider alternatives such as a Tramway, as a bus system had limited capacity. He proposed the need to integrate with any light rail system being proposed by the City Deal. He suggested considering provision North and South of the City separately. The Director stated that it was his understanding that money secured through legal action for rectifying defects had to be used for that purpose, however he agreed to seek legal advice to confirm this. **Action Required.** However, he informed the Committee that Light Rail was not a City Deal proposal.
- highlighted a recent newspaper report which claimed that there had been little contact between the Council and BAM. It was noted that the Executive Director met regularly with BAM representatives. There had also been over 20 meetings with BAM representatives during the investigation of the defects.
- queried the statement in Section 3.6 regarding legal and technical advice. The Director reported that the Council did not involve lawyers for defects with an estimated assessed value of less than £50,000, as it would not be cost effective.
- queried the scheduling of any Busway works given the proposed works for the A14. The Director reported that discussions had taken place with Highways England who would maintain two lanes on the A14. He acknowledged that it was likely work would take place at the same time. Individual sections of the Busway would be closed at a time and buses would be directed to the roads. One Member queried whether the non-intended impact on the community had been taken into account by the Council's QC. The Director reported that the impact on the community in relation to the way the Council carried out repairs could be factored in. He acknowledged the need for a co-ordination of works. Another Member pointed out the reputational damage to the Council which needed to be considered in the negotiations and the impact on usage. The Director reminded Members that the contract with the bus companies did not include compensation if the guided busway was not available.
- suggested that recommendation c) was premature and that there should be no decision at this moment in time as to how the funding should be spent if the Council was successful in its action against BAM. Another Member highlighted the need to scope the work first before any action occurred. She also suggested in relation to

recommendation e) that any additional spending should be considered by General Purposes Committee first. The Director informed the Committee that lawyers had helped to draft the recommendations hence the use of the word resolve. The Chairman informed the Committee that the lawyers had advised the Council of the need to make clear in the recommendations what it intended to do.

Councillor Bates proposed an amendment to recommendations c), d) and e) (*additions in bold*) detailed below, seconded by Councillor Schumann. He informed the Committee that the advice received had been very clear and precise. He highlighted the fact that the Busway was used by 3.7 million people annually. The proposal that it could be closed was therefore unrealistic. BAM had been quoted in the Hunts Post as confirming that it would put the Busway right. He therefore hoped that BAM would come to the negotiation table so that all parties could avoid expensive legal costs.

- c) Resolve to carry out works **on the basis of Option 1 from this report** to rectify all of the superstructure, foundation and drainage defects in accordance with the assessment of the Project Manager and the advice of the Council's expert technical advisers, subject to securing funds from Bam Nuttall in accordance with the defect provisions in the construction contract or alternative legal argument.
- d) Instruct Officers to initiate negotiations and any necessary legal proceedings to recover the assessed cost of defect correction in accordance with the contract, consequential losses arising from those defects, and any costs incurred to date and incurred in future in investigating and taking advice on the defects **and to report to General Purposes Committee as those negotiations continue. Final decisions on the outcome of those negotiations are to be reported to General Purposes Committee and decided by Full Council.**
- e) Note that in the event that a settlement was not reached and it was necessary to pursue the matter through the courts the estimated costs of legal action would exceed the amount remaining in the specific reserve and agree that any additional costs should be met from the general reserve, **this to be approved by the General Purposes Committee..**

Speaking on the amendment, one Member expressed his support for legal action and challenged the unrealistic proposal to close the route. He stressed the need to hold private bodies to account and urged all Councillors to take a collective approach if the recommendation was approved in order to show the contractor a sign of strength.

In conclusion, the Chairman reminded Members that Counsel and the independent technical experts had agreed that the defects were defects under the Contract. BAM was therefore responsible. He acknowledged the importance of scoping the work and bringing it back to Committee.

The Chairman then took each amendment individually which were all carried. Before putting the substantive motion to the vote, as permitted under Part 4 - Rules of Procedure, Part 4.4 - Committee and Sub-Committee Meetings, Section 18 Voting of the Council's Constitution, the majority of members of the committee requested a recorded vote. The substantive motion on being put to the vote was carried.

[Councillors Bailey, Bates, D Brown, Cearns, Count, Hickford, Jenkins, Mason, McGuire, Nethsingha, Onasanya, Orgee, Schumann and Walsh voted in favour; Bullen, Dent and Reeve voted against]

It was resolved to:

- a) Note the advice of the Council's expert technical advisers regarding the causes of, and options, for rectification of the defects as set out in the report and Appendices A, and B.
- b) Note the advice of Mr Stephen Furst QC regarding the Council's legal remedies and assessment of the strength of case, as set out in confidential Appendix C.
- c) Resolve to carry out works on the basis of Option 1 from this report to rectify all of the superstructure, foundation and drainage defects in accordance with the assessment of the Project Manager and the advice of the Council's expert technical advisers, subject to securing funds from Bam Nuttall in accordance with the defect provisions in the construction contract or alternative legal argument.
- d) Instruct Officers to initiate negotiations and any necessary legal proceedings to recover the assessed cost of defect correction in accordance with the contract, consequential losses arising from those defects, and any costs incurred to date and incurred in future in investigating and taking advice on the defects and to report to General Purposes Committee as those negotiations continue. Final decisions on the outcome of those negotiations are to be reported to General Purposes Committee and decided by Full Council.
- e) Note that in the event that a settlement was not reached and it was necessary to pursue the matter through the courts the estimated costs of legal action would exceed the amount remaining in the specific reserve and agree that any additional costs should be met from the general reserve, this to be approved by the General Purposes Committee.

287. EXCLUSION OF PRESS AND PUBLIC

It was resolved:

That the press and public be excluded from the meeting during the consideration of the following report on the grounds that it was likely to involve the disclosure of exempt information under paragraphs 3 & 5 of Schedule 12A of the Local Government Act 1972 as it referred to information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

288. WASTE PRIVATE FINANCE INITIATIVE CONTRACT

The Committee received a report on the Waste Private Finance Initiative (PFI) Contract.

It was resolved unanimously to agree the recommendations as set out in the report.

Chairman