

LOWESTOFT SHARED ACCOMMODATION JOINT COMMITTEE

Thursday 6 June 2013

LOWESTOFT SHARED ACCOMMODATION PROGRAMME – JOINT COMMITTEE CONSTITUTIONAL AGREEMENT PROGRESS REPORT

EXECUTIVE SUMMARY

1. The report provides the Joint Committee with a summary of the progress made so far with the completion of the Joint Committee Constitutional Agreement between Waveney District Council (WDC) and Suffolk County Council (SCC) for the Lowestoft Shared Accommodation Programme (LSAP). It includes:
 - A summary of the key content
 - A recommendation to provide the Chief Executives with joint delegated authority to make urgent decisions if required.
2. The Joint Committee is asked to note the content of the report and approve the recommendation for dealing with urgent decisions.

Is the report Open or Exempt?	Open
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Wards Affected:	All
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Cabinet Member:	<p>Cllr Mike Barnard Cabinet Member for Resources</p> <p>Cllr Colin Noble Cabinet Member for Finance and Property</p>
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Supporting Officer:	<p>Peter Revell Lowestoft Shared Accommodation Programme – Programme Director M - 07850 014035 Email: peter.revell@waveney.gov.uk</p>
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1 INTRODUCTION

- 1.1 At their respective Cabinet meetings in September 2012 both authorities approved the establishment of a Joint Committee with delegated authority to manage and oversee the procurement and construction of the project and to ensure that the project remains within budget.
- 1.2 Subsequently the respective Legal Teams have been producing a formal Constitutional Agreement that the Committee will operate under. The document is near completion and this report provides a summary of the key aspects and terms of reference. An oral report on further progress will be provided at the meeting.
- 1.3 The Committee will be asked to note the progress made and terms of reference including the recommendation regarding the making of urgent decisions.

2 BACKGROUND

- 2.1 Waveney District Council (WDC) and Suffolk County Council (SCC) have agreed to work together in partnership to jointly procure the design, construction, occupation and management of a office complex at Riverside Road Lowestoft and the public access facility at the Marina Centre Lowestoft.
- 2.2 Both authorities have agreed to the establishment of a Joint Committee to oversee this activity and as such a Constitutional Agreement needs to be put in place to formalise the roles and responsibilities of each partner. This will replace the Letter of Intent previously signed on behalf of each party to progress the project to date.
- 2.3 Each authority enters into the agreement as a result of their respective Cabinet decisions in September last year and pursuant to the powers vested in them under Sections 101 and 102 of the Local Government Act 1972, Section 20 of the Local Government Act 2000 and the Local Authorities Regulations 2000.
- 2.4 The respective Legal Teams have been developing the content of the agreement which is nearing completion and is expected to be sealed by the end of June 2013.

3 SUMMARY OF KEY CONTENT

- 3.1 The agreement will remain in force whilst the building operating agreement remains in place. Termination of the Agreement will not affect the rights and liabilities of any party subsisting at the date of termination.
- 3.2 Partnership principles of co-operation and partnering are adopted recognising the benefits accruing to both if the work of the Joint Committee is performed in this spirit.
- 3.3 The function of the Joint Committee (terms of reference) is detailed in Appendix A. The core functions are the management of the procurement, construction and occupation of the buildings and then to oversee and monitor the subsequent operation of them post occupation. As allowable within the agreement the delegation of these functions is with the Joint Management Group which is made up of senior officers from both authorities and the Programme Director.
- 3.4 The membership of the Joint Committee is four. Two Members from each authority, one of whom from each has to be an Executive Member and it is this person who has the entitlement to vote. The co-opted non-Executive Member will not be able to vote. Therefore any substitute for the Executive Committee Member must also be an Executive Member in order to be able to vote if needed.
- 3.5 The quorum for a valid meeting is two, who must be Executive Members of each Authority, and a minimum of four meetings are to be held in every municipal year.
- 3.6 The Chairman and Vice Chairman positions will be alternated between both authorities each year.

- 3.7 Where the best interest of both authorities require that action should be taken, or an urgent decision made, on a matter that would normally fall to the Joint Committee but where those best interests would be compromised by waiting until the next meeting, then in such cases it is recommended that the Chief Executives of both authorities are authorised to take such action or decision jointly, in consultation with the Chairman and Vice-Chairman. Any such action taken or decision made shall be reported to the next meeting of the Joint Committee.
- 3.8 Committee Members shall have the same responsibilities and liabilities as those which apply when sitting on other committees and bodies as appointed representative of their respective authority.
- 3.9 It is accepted and agreed that neither authority shall have the right to impose any decision of their authority on the other authority.
- 3.10 In relation to project costs each authority is jointly and severally liable with the other for payment of project costs both pre and post construction. The level of funding for the running costs of the offices will be detailed within an annual business plan that will be produced and agreed by the Committee.
- 3.11 In the unlikely event that any dispute cannot be resolved by the Joint Committee then it shall, in the first instance, be referred to the authorities' Chief Executives and if resolution is still not achievable the matter will be referred to a suitably qualified independent third party and their decision will be conclusive and binding.

4 REASONS FOR RECOMMENDATION

- 4.1 The Constitutional Agreement has been developed and worked upon by both authorities' Legal and Democratic Services Teams and comprehensively meets all the constitutional requirements as required by law whilst at the same time enabling practical delivery of the programme to be maintained.
- 4.2 With a programme of this scale and complexity it is important that urgent decisions and actions are taken within a timescale that does not cause detriment to either authority. Waiting for the next Joint Committee before an urgent and unexpected decision is made, may in some circumstances cause increased costs or delays to the programme delivery. The proposal that in such circumstances the Chief Executives of both authorities, in consultation with both the Chairman and Vice Chairman of the Committee, are jointly delegated to make the decisions is one that will help ensure that the project budget and timescales are maintained.

RECOMMENDATIONS

- 1. That the content of this report be noted and received.
- 2. Where the best interests of both authorities requires that any action should be taken, or an urgent decision made, on a matter that would ordinarily fall to the Joint Committee, but where those best interests would be compromised by waiting until the next meeting of the Joint Committee, then in such cases the Chief Executives are granted joint delegated authority to take such action or decision, following consultation with the Chairman and Vice-Chairman.

APPENDICES

Appendix A

Function of the Joint Committee – (Extract from full Agreement)

BACKGROUND PAPERS

None other than published information.

Function of the Joint Committee – (Extract from Full Agreement)

5. FUNCTION OF THE JOINT COMMITTEE

The Joint Committee shall:-

5.1 Procurement and Construction

- (a) Manage and oversee the procurement -and construction of the Offices;
- (b) Project manage and monitor the construction of the Offices (including risk management, value engineering and approval of significant contract variations);
- (c) Commission use of consultants;
- (d) Procure the joint facilities management and fitting out of the Office;

5.2 Finance and Business Planning

- (a) Ensure the construction and engineering costs of the Project are within the budgeted Capital Costs;
- (b) Review and approve finance protocols and joint funding arrangements;
- (c) Prior to the first year the Offices are occupied by the Parties to prepare a Business Plan and thereafter to prepare an annual Business Plan for approval by the Parties.
- (d) Monitor compliance with the Business Plan (including achievement of outline business case / final business case objectives and outcomes);
- (e) Prepare an annual capital and revenue budget for the Project including management of building maintenance and capital programme reserves for approval by the Parties;
- (f) Exercise both revenue and capital budgetary monitoring and control over the duration of the Project and management of the Offices and the facilities therein thereafter
- (g) Delegate any of its functions that it may lawfully do so to the Joint Management Group the Programme Director or to any officer of either of the Parties or to a third party or parties.

5.3 Partnerships and Joint Working

- (a) Review and advise the Parties on any proposal for partnership and joint working opportunities and arrangements within the Project
- (b) Approve new tenant arrangements, licences and leases;
- (c) Advise the Parties on the implications for the occupation of the Offices arising from any future development plans/opportunities for the Site in general and the Project in particular;

5.4 Occupation and use of the Offices

- (a) Oversee the arrangement for commissioning and occupation of the Offices;
- (b) Annually review and approve the Operating Agreement –including joint facilities management arrangements, joint ICT arrangements, service delivery and accessibility issues;
- (c) Review and approve annual maintenance and capital works programmes - ,
- (d) Review and approve performance of trading activities and marketing opportunities;
- (e) Review and approve performance management and review performance indicators;
- (f) Review and approve sustainability and environmental performance;

5.5 Personnel Management relating to the management and operation of the Project

- (a) Review and approve personnel management policies and procedures for jointly employed staff engaged in management and operation of the Project – including arrangements for contracted and agency staff- ,
- (b) Review and approve staff facilities; -
- (c) Review and approve joint working arrangements/initiatives that have been approved in principle by the Authorities and that have an impact on management and operation of the Project;
- (d) Review and approve equality and accessibility matters that relate to management and operation of the Project.

5.6 Communications

- (a) Review and approve communications strategy/plans – during construction, commissioning and operational phases.