

Report to Cabinet

12 January 2017
Monitoring Officer
DECISION REQUIRED



**Horsham
District
Council**

Not Exempt

Creation of a Cabinet Advisory Sub-Committee (Property Investment)

Executive Summary

Decisions about the acquisition of property investments are likely to be for financial amounts that exceed the Council's key decision threshold of £250,000. Under the revised Constitution and Governance regulations agreed by full council such decisions are required to be made by the Cabinet collectively meeting in public.

In order to provide greater understanding and more certainty about property decisions, Section 102 (4) of the Local Government Act provides for the Cabinet to appoint a Sub-Committee to advise it on any matter relating to the discharge of its functions. The Cabinet needs to receive advice from a wider group of members before making a key decision on property investment. This report recommends the formation of a Cabinet Property Investment Advisory Sub-Committee for this task.

Recommendations

That the Cabinet is recommended:

- i) to create a Property Investment Cabinet Advisory Sub-Committee of six members of the council in accordance with 3.4 below
- ii) to receive, and agree, the nominations of the Leader of the Council for the appointment of the membership of the advisory sub-committee
- ii) to agree the terms of reference for the sub-committee set out in paragraph 3.5 of this report and the next steps identified in paragraph 4.1

Reasons for Recommendations

- i) To discharge the purposes of the Constitution of the Council, by enabling decisions to be taken efficiently and effectively, and ensure that those responsible for decision making are clearly identifiable to local people.

Background Papers

None

Wards affected: All wards

Contact: Paul Cummins, Head of Legal and Democratic Services.

Background Information

1 Introduction and Background

- 1.1 Full Council in April 2016 improved the governance arrangements at the Council. It standardised its 'key decision' threshold to that of typical district councils and reaffirmed that all key decisions would be made only by Cabinet collectively at a publicly convened meeting. Consequently, a key decision can no longer be made by a Cabinet member or officer individually.
- 1.2 'Key decisions' were introduced by the Local Government Act 2000 and the definition has been most recently restated in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 as cabinet decisions to *incur expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates*. The guidance issued with the Local Government Act 2000 expected councils to identify a financial value for 'significant' and state that in the Constitution. The changes to governance introduced in April 2016 defined 'significant' as £250,000.
- 1.3 Property investment decisions are liable to be key decisions that need to be made quickly but which can only be made by the Cabinet collectively in accordance with the constitution and regulations. The key decision regulations make provision for urgent matters and Cabinet can form at short notice to consider making urgent decisions only.
- 1.4 All recent property investment acquisition and disposal decisions have been made upon the advice of a small group of members. This report strengthens and formalises the way key decisions relating to property investment are advised upon.

2 Relevant Council policy

- 2.1 The Corporate Plan Priority area, *Efficiency, great value services*, has an objective to grow the council's property portfolio to increase income, and this report provides certainty about the governance arrangements to deliver that objective.

3 Details

- 3.1 An advisory function enables decision makers to take advice from a wider group of members before making a decision. Property investment decisions in recent years have benefited from advice from predecessor groups;
 - The Property Investment Advisory Group (PIAG -until July 2016), and latterly
 - A sub-group of the Finance and Assets PDAG formed at the meeting of the PDAG on 4 July 2016 (minute reference 4 refers).

Publicly available notes of the meetings of those groups is inconsistent. However the view of the sub-group of the Finance PDAG is stated in section 5 of any report to Cabinet for decision.

3.3 Under the previous arrangement, the decision on property acquisition was made by the Cabinet member for Finance advised by a sub group of the Finance PDAG. However, under the new Constitution, a key decision cannot be delegated to a single cabinet member and requires a collective cabinet decision taken in a public meeting. The whole cabinet needs to receive advice before making a key decision on property investment and thus the existing sub-group of the Finance PDAG will be decommissioned in favour of the formation of a Cabinet Property Investment Advisory Sub-Committee.

3.4 The sub-committee will be formed by the Cabinet at its meeting on 12 January 2017. Three positions on the sub-committee are reserved to the following office holders:

- a) the Cabinet Member for finance and assets
- b) the Leader of the Council
- c) the Leader of the Opposition

Nominations will be sought from the Leader of the Council for the remaining 3 appointments to the sub-committee.

3.5 The terms of reference of the Sub-Committee (subject to a quorum of three) shall be:

- a) to advise the Cabinet on property investment key decisions
- b) to elect a Chairman of the Sub-Committee for the forthcoming year at the first annual meeting of the Sub-Committee
- c) to hold four meetings of the Sub-Committee each municipal year, subject to the access to information procedure rules.

4 Next Steps

4.1 Consequent to the resolution of Cabinet, the Sub-Committee will be created on the council's website and the appointment of Members made by the Leader shall be allocated to the Sub-Committee. The Sub-Committee shall meet upon the rising of Cabinet or at 19:00 on 12 January 2017, whichever is the earlier, to appoint its chairman and note its indicative timetable of meetings for 2017 as follows:

1. 12 January 2017
2. 30 March 2017
3. 25 May 2017 (when 3 meetings for municipal year 2017/18 will be timetabled)

5 Views of the Policy Development Advisory Group and Outcome of Consultations

5.1 The Leader of the Council, the Cabinet Member for Finance and Assets, the Senior Leadership Team and the Property and Facilities Manager have been consulted on the matters detailed in this report. The Finance and Assets PDAG met on 19 December 2016 and noted the proposal for the minor adjustment to existing arrangements, including the cessation of the property sub-group of the Finance PDAG upon the resolution of Cabinet on 12 January 2017. The group welcomed the

proposal for greater transparency and noted that the statutory role of the Overview and Scrutiny Chairman would preclude that post holder from appointment to the Sub-Committee.

6 Other Courses of Action Considered but Rejected

- 6.1 Retention of the existing advisory arrangements for property investment decisions would not discharge the purposes of the constitution.

7 Resource Consequences

- 7.1 All key decisions relating to property investment will be considered by the Cabinet consequent to the report before Cabinet detailing the resource consequence of each recommendation. As such, there are no resource consequences flowing from this report to form the sub-committee. Key decision making will follow the constitution and associated regulation.
- 7.2 The changes to the advisory function introduced in April 2016 were met from existing staff resources, however, the suite of 42 policy development advisory group meetings per year has proven demanding on staff resources. The sub-committee proposed in this report will add a further 4 meetings to the calendar per year.
- 7.3 The scheme of members allowances does not provide for a special responsibility allowance to be payable to the chairman of the sub-committee.

8 Legal Consequences

- 8.1 Section 102 (4) of the Local Government Act provides for the Cabinet to appoint a Sub-Committee to advise it on any matter relating to the discharge of its functions, and any such (Sub)-Committee may consist of such persons (whether members of the appointing body or not) appointed for such term as may be determined by the appointing body. For the avoidance of doubt, the Cabinet is the appointing body.
- 8.2 No decision making power can be conferred to the Sub-Committee. Each key decision shall only be made, in accordance with the Constitution, by the Cabinet collectively at a publicly convened meeting of the Cabinet and in further accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

9 Risk Assessment

- 9.1 The Corporate Risk Register details risk CRR13 – Governance: *Source: decisions are not always based on data: Event: wrong decision made.* This is materially relevant to governance and decision making insofar as a mitigation to that risk would be that the Cabinet would be well-advised by a Sub-Committee on the business case for each relevant key decision relating to property investment.

10 Other Considerations

10.1 The requirements Openness of Public Bodies Regulations 2014 are better discharged by such ongoing improvement to governance arrangements.