

**Document Pack**  
**Committee and Members' Services Section**  
**3<sup>rd</sup> Floor, Adelaide Exchange**  
**24-26 Adelaide Street**  
**Belfast BT2 8GD**



18<sup>th</sup> November, 2008

**MEETING OF STRATEGIC POLICY AND RESOURCES COMMITTEE**

Dear Councillor

The above-named Committee will meet in the Council Chamber, 3rd Floor, Adelaide Exchange on Friday, 21st November, 2008 at 10.00 am, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully

PETER McNANEY

Chief Executive

**AGENDA:**

1. Routine Matters
  - (a) Apologies
2. Democratic Services and Governance
  - (a) Appointment of Member to the George Best Belfast City Airport Forum (Pages 1 - 2)
3. Performance Management and Corporate Plan
  - (a) Corporate Plan and Strategy 2009 - Update (Pages 3 - 6)
4. Finance
  - (a) Revenue Estimates 2008/09 Half-Year Update (Pages 7 - 8)
  - (b) Revenue Estimates 2009/10 - Indicative Rates Position (Pages 9 - 12)
  - (c) Capital Programme - Update (Pages 13 - 18)
5. Human Resources

(a) Retirement of Director of Corporate Services (Pages 19 - 20)

6. Cross-Cutting Issues

(a) Royal Maternity Hospital Liaison Group (Pages 21 - 36)

(b) Consultation Response - Proposed Mortgage Rescue Scheme for Northern Ireland (Pages 37 - 38)



### Belfast City Council

<b>Report to:</b>	Strategic Policy and Resources Committee
<b>Subject:</b>	Appointment of Member to the George Best Belfast City Airport Forum
<b>Date:</b>	Friday, 21st November, 2008
<b>Reporting Officer:</b>	Mr. Liam Steele, Head of Committee and Members' Services
<b>Contact Officer:</b>	Mr. Liam Steele, Head of Committee and Members' Services (extension 6325)

#### Relevant Background Information

Correspondence has been received from the Chairman of the George Best Belfast City Airport Forum indicating that the Council's representation on the Forum was being increased from one to two Elected Members.

#### Key Issues

The Council, following the Local Government Elections on 5th May, 2005, determined through the application of the d'Hondt system of proportionality its representation on a large number of Outside Bodies, and these appointments were made formally at the Annual Meeting on 26th May. A total of ninety such appointments were made in this way across a range of organisations.

Members may recall that the Committee, at its meeting on 19th August, 2005, in considering the nomination of a Member to make application to represent the Council on the Drainage Council for Northern Ireland, authorised the Head of Committee and Members' Services to continue the application of the original d'Hondt process to determine the Party Groupings which would be entitled to appoint nominees to any subsequent invitations of a similar nature which might be received during the current Council term.

Accordingly, under the current system for determining appointments to Outside Bodies, the next choice falls to the Social Democratic Labour Party Grouping.

#### Resource Implications

No financial or Human Resource implications are associated with this report.

<b>Recommendations</b>
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<p>This Committee is asked to approve the appointment of a Member of the Social Democratic Labour Party Grouping as the Council's second representative on the George Best Belfast City Airport Forum.</p>
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### Belfast City Council

<b>Report to:</b>	Strategic Policy and Resources Committee
<b>Subject:</b>	Corporate Plan and Strategy – 2009 Update
<b>Date:</b>	21 November 2008
<b>Reporting Officer:</b>	Gerry Millar, Director of Improvement
<b>Contact Officer:</b>	Gerry Millar, Director of Improvement

#### Relevant Background Information

1. The Committee agreed the Council's corporate plan for 2008-2011 at its meeting in June 2008. The report set out here is intended to update Members on the response to the consultation which was carried out with respect to the corporate plan 2008-11 and to outline for Members the process for updating the priorities and actions within the plan for the period 2009/10.

#### Corporate Plan consultation feed-back

2. A consultation exercise to establish views on the content of the new corporate plan was carried out between June and September 2008. Two detailed responses were received from Disability Action and from the Committee on the Administration of Justice. The comments received were helpful and it is proposed that they can be addressed within the published document in two ways:

- inclusion of reference to the Council's Disability Action Plan;
- reference, in the analysis of the city, to the fact that areas of disadvantage exist across Belfast and of the Council's commitment to work with others to address the issues faced by people who live in these areas.

Members are asked to agree these modifications to the text of the document.

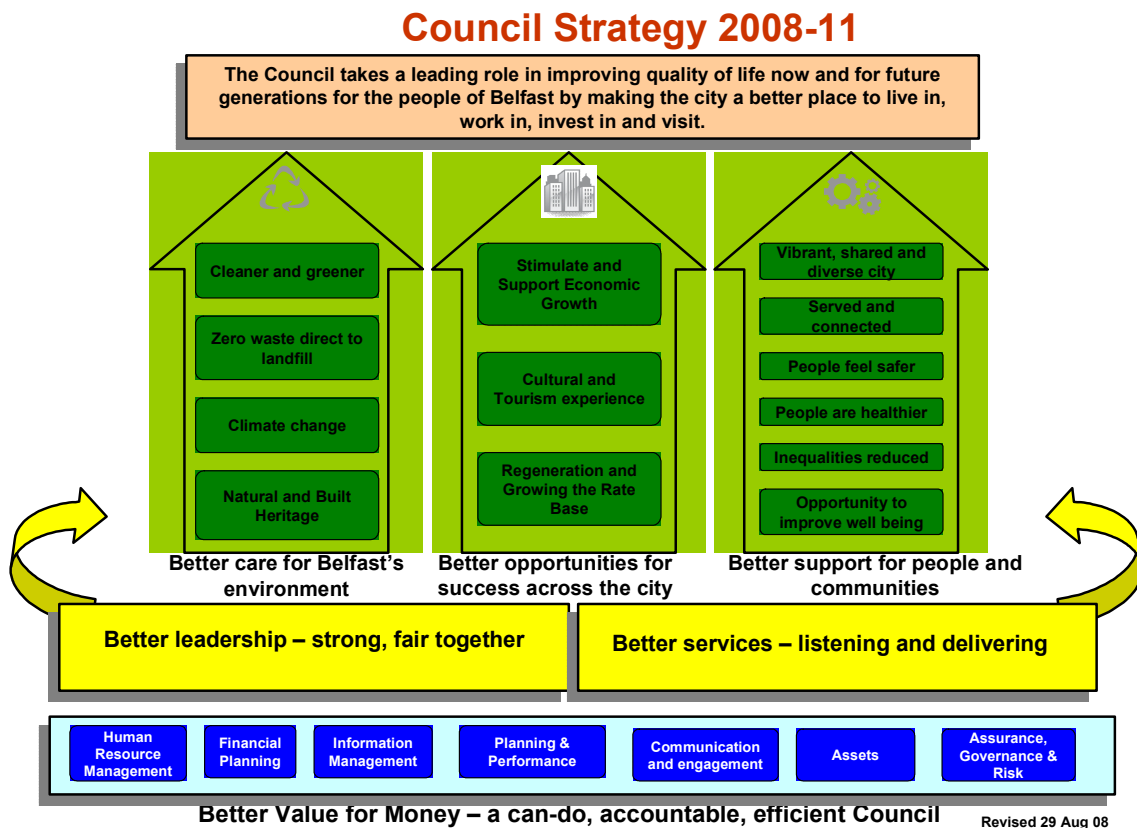
#### Corporate Plan 2009/10 Update

3. As Members are aware, whilst the Committee and the Council have established a high-level three year strategy in the corporate plan, this must be updated operationally each year in line with new challenges and demands being faced by the organisation and its financial constraints. Challenges which include, the recent economic downturn, the increasing demands emerging from the RPA process, and the consequences of the Land and Property Services Agency's revised rates finalisation figure. The process for the update for 2009/10 is summarised in the paragraphs below, it is intended that the steps outlined will continue to ensure a Member-led corporate planning process.

**Nov-Dec 08: First draft departmental and service plans developed in line with financial estimates**

4. Departments and services have been working up draft business plans for 2009/10 at the same time as developing draft financial estimates for this period. These plans are being aligned to the priorities set by Members in the corporate plan, which are summarised in Diagram 2 below. An initial assessment of these plans reveals that services are already contributing to many of the objectives established by Members; however, there are some areas where work will be needed to create a more cohesive programme across the Council.

**Diagram 2**



**Dec 08-Jan 09 – Reviewing plans in the light of financial guidance from Members**

5. Separate items on the Committee's agenda are addressing the emerging financial position of the Council with respect to affordability in 2009/10. Members' high level guidance on this issue will inform a review of draft plans at a corporate, departmental and service level during December and January.

**Feb-Mar 09 – updating priorities within the Corporate Plan for 2009/10**

6. Further analysis of draft plans will take place in the light of the Committee's decisions in terms of resources for delivery in 2009/10 and in the light of external developments, such as the progress of the Review of Public Administration. The corporate plan will be updated to take on board these changes and any implications for the priorities within the plan or the scheduling of activity will be brought to the Committee for initial discussion in February. At this time we will also bring information to the Committee about the way in which accountability for cross-cutting objectives

within the plan such as “people feel safer” or “people are healthier” will be managed and reported to the Committee and how plans for such thematic work will be taken forward within the financial limits set.

***Mar/Apr 09 – approval of updated plans for 2009/10***

7. It is intended that the updated corporate plan for 2009/10 will be brought to the Committee for approval during March, following party group briefings. Aligned departmental plans will be brought to Committees in April/May for approval.

**Recommendation**

8. Members are asked to agree the modifications to the text of the document for publication, outlined in Paragraph 2.

9. Members are asked to note the proposed process for updating the Corporate Plan for 2009/10.

10. Members are asked to agree that party group briefings are held during February to discuss any emerging issues with respect to Council priorities and action plans for 2009/10.







**Belfast City Council**

<b>Report to:</b>	Strategic Policy and Resources Committee
<b>Subject:</b>	Revenue Estimates 2008/09 Half Year Update
<b>Date:</b>	21 November 2008
<b>Reporting Officer:</b>	Trevor Salmon, Director of Corporate Services
<b>Contact Officer:</b>	Trevor Salmon, Director of Corporate Services

**Purpose**

Financial reporting is one of the key elements of the Council's strategic financial management framework. This report enables Members to consider the financial position of the organisation at the half year and the predicted year end outturn.

**Relevant Background Information**

Members are reminded that the agreed net expenditure for 2008/09 is £117,946,200 which is based on a 4.83% increase in the district rate.

**Key Issues**

The Council's position at the end of September is that actual expenditure exceeds budgeted expenditure by £149,135 (0.25%). It is forecast that at the year end the Council will be over budget by £850,000 (0.72%). Members should note that because of the volatile economic conditions impacting on both income and expenditure that this forecast may change over the coming months. The position will be tracked on a continuous basis and any material changes will be reported to Members.

There are a number of key drivers for the forecast overspend and these are explained below.

**Loss of External Income**

Three services have incurred significant loss in income which is a direct result of the current economic climate. These losses are:

- BIS - £250,000
- ISB - £315,000
- Building Control - £290,000.

**Utility Costs**

Inflationary pressures on utility costs have resulted in this budget heading being overspent by £480,000.

**Unbudgeted Expenditure**

The budgets are put together five or six months in advance of the year to which the budget relates. It is therefore expected that decisions may be made which will result in new expenditure for which there is no budget. For example, in the current year Members have made decisions in respect of Grove, Beechmount and the Ulster Wildlife

Trust which will require the Parks and Leisure Department to find an additional £540,000.

**Investment Income**

Interest on investments is forecast to be at least £200,000 less than budget. This is due to the level of reserves being reduced as result of the £4.1m clawback in the rates and falling interest rates.

**Action Plan**

There is an obvious need to address the potential overspend position. The Chief Officers' Management Team met on 10 November to discuss the position and have recommended the following course of action:

- Each department will review its spending requirements to the year end and identify potential reductions in expenditure.
- Specific budget headings will be reviewed corporately in order to identify potential expenditure reductions. This will include expenditure on agency workers and overtime.

It is recommended that a detailed report is presented to the Strategic Policy and Resources Committee in December which will propose specific actions to be taken to address the predicted overspend.

**Recommendations**

Members are asked to note the contents of the report and agree to receive a report in December which will recommend specific actions to be taken to address the potential year end overspend.



### Belfast City Council

<b>Report to:</b>	Strategic Policy and Resources Committee
<b>Subject:</b>	Revenue Estimates 2009/10 – Indicative Rates Position
<b>Date:</b>	21 November 2008
<b>Reporting Officer:</b>	Trevor Salmon, Director of Corporate Services
<b>Contact Officer:</b>	Trevor Salmon, Director of Corporate Services

#### Purpose

The purpose of this report is to bring to Members attention the key issues relating to the establishment of the budget and district rate for 2009/10.

#### Key Issues

The budget round for 2009/10 is going to be one of the toughest the Council has faced in recent years. Inflationary pressure will increase expenditure by 6% and at the same time non-rates income is predicted to fall by £1.8m because of the decline in the economy. Capital expenditure is under pressure too as the City Investment Strategy requires an additional £2.0m of funding and the capital programme will need loans financing which will add 2% onto the rate. The Council's District Fund Reserve is depleted mainly due to the £4.1m clawback from the LPS. This means reserves are below an acceptable level and therefore will need replenished. Finally, Members have indicated through the corporate planning process that priority should be given to a number of cross-cutting issues such as younger and older people which have not been fully budgeted for in departmental estimates. Officers have worked hard to find £1.76m of efficiencies but given all of the above factors it is likely that a rates increase above the level of inflation will be required simply to continue with business as usual. Indications from LPS would indicate that the EPP will only marginally improve.

Officers have already started work on ways to further reduce expenditure and increase income. For example, the centre of the organisation is currently being reviewed and it is anticipated that substantial savings will be achieved. Members should note, however, that further reductions in expenditure will not be easily achieved and not without pain given the fact that base budgets have already been reduced by £4.69m through the efficiency programme.

Each of the key elements of the 2009/10 estimates is discussed below.

#### Departmental Expenditure

**Inflation** – the Government's inflation target is defined in terms of the Consumer Prices Index (CPI). At October 2008 the annual rate is 5.2%. The Retail Prices Index (RPI) which is used for the indexation of pensions and benefits stands at 5.0%. At present there is no local government price index. It is estimated that the inflationary impact for the Council is approximately 6.0%. The key drivers of this rate areas follows:

- pension increases 7%

- oil 25%
- electricity 49%
- gas 50%
- salaries and wages 2.5%
- landfill tax 8%

**External Income** – it is anticipated that external income generated by services will fall in 2009/10 by £1.615m. Investment income will reduce by £200,000.

### **City Investment Strategy**

Strategic Policy and Resources Committee on 14/12/07 approved the establishment of a City Investment Strategy (CIS). It was agreed that the ratepayer would contribute £1m to the CIS in 2008/09, a further £1m in 2009/10 and a further £1m in 2010/11 making a ratepayer contribution of £6m over the three year period. During the rate setting process in 2008/09 Members decided that the 2008/09 contribution to the fund would be met from reserves and not from the rate levy.

The fund currently has a balance of £3.5m made up of a £1m contribution from reserves in 2007/08, rent arrears of £1.075m and a capital receipt in respect of Boucher Road for £1.429m.

In the context of the current agreed financing arrangements for the fund £2.0m would be required to be raised from the rates in 2009/10.

### **Capital Programme**

A separate report on the capital programme will be discussed at today's committee meeting. The report will show that currently, £1.9m of debt charges is allowed for in the estimates which will finance £15m of debt. However, as the debt requirement for 2009/10 will be £33.1m an additional debt charge equivalent to 2% on the rate will be required.

### **Reserves**

The District Fund Reserves now amount to £6,267,397. By the year end this figure will fall to around £4.0m.

Currently CIPFA does not define a minimum or maximum level of District Fund Reserves and believes that Local Authorities, on the advice of their Chief Finance Officer, should make their own judgement on such matters taking into account all the relevant local circumstances.

The Council currently aims to maintain the level of District Fund Reserves in the region of 5% to 10% of annual gross expenditure. The organisation will need to build its reserves up during the next few years to an acceptable level in order to ensure that the Council is not left financially vulnerable.

### **Estimated Penny Product (EPP)**

The Council receives 74% of its income from the rates. The EPP is calculated by the LPS. It provides an estimate of what the rates will yield in income for the Council for the following year (in this case 2009/10). It is critical that the Council receives as reasonably is possible an accurate EPP. Consequently, Council officers are working closely with officers from LPS to determine the most reliable EPP.

In determining the EPP for 2009/10, LPS have agreed to provide provisional figures in October, November, December and January. The October provisional EPP shows a modest increase in growth of 0.45%. The November EPP shows a further increase of 0.23%. Members should note that this EPP includes valuations of £8.9m for Victoria Square.

The Council is working hard to ensure that the valuations provided by LPS are accurate and complete and that the losses arising from vacant properties is minimised.

## Efficiencies

The table below summarises the efficiency programme for 2009/10.

<b>Efficiency Area</b>	<b>£</b>
Insurances	482,000
Stationery	128,723
Personal computers	105,839
Department Contributions	
• Health & Environmental Services	770,000
• CIT	200,000
Development	76,311
<b>Total Efficiency Savings</b>	<b>1,762,873</b>
<b>Rates income from vacant property</b>	<b>2,700,000</b>

The detail on the programme was reported to Strategic Policy and Resources Committee on 14 November 2008.

## Corporate Thematic Priorities

As part of the corporate planning process Members and chief officers have identified a number of cross-cutting priorities which cannot be solely delivered within functional budgets. It is recommended that a corporate strategy budget is established to finance these cross-cutting priorities. The budget would fall within the oversight of the Strategic Policy and Resources Committee.

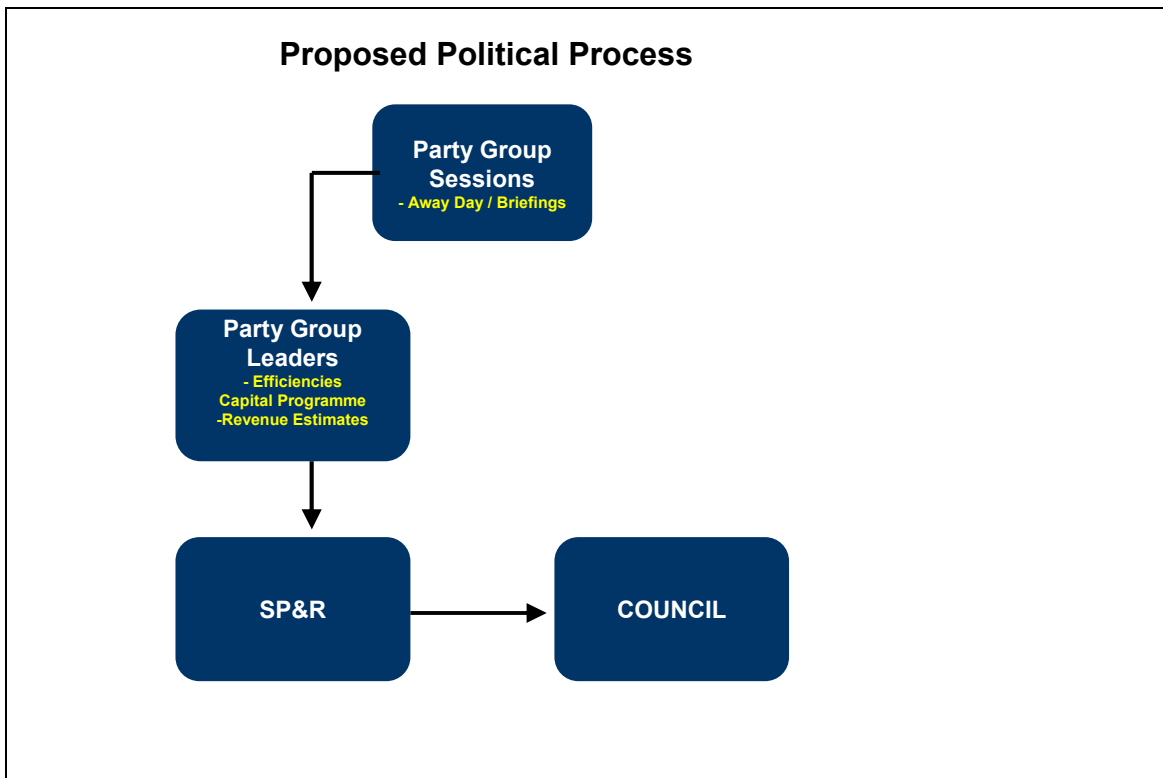
The priority areas which would require access to this budget are:

- Safer Belfast - £150,000
- Older People - £145,000
- Younger People - £30,000
- Invest to Save - at present the Council has no budget for invest to save initiatives. As mentioned in the efficiency element of this report the Council has now reached the position where savings cannot be obtained from budgetary control alone. If further efficiencies are to be achieved then it is likely that invest to save money will be required.
- Customer Strategy – this will not be completed until the New Year so it is not possible to determine a definitive budget requirement at this stage.

It is anticipated that a minimum of £500,000 will be required for 2009/10.

## Recommendations

1. Members are requested to note the contents of this report and agree to receive further reports on the estimates 2009/10 in December 2008 and January 2009.
2. Given the importance of this budget round a clear political process is required in order to ensure that Members are in a position where they are best able to make the decisions which they will be asked to make over the coming months. It is recommended that the process depicted graphically below is followed by Members.





### Belfast City Council

<b>Report to:</b>	Strategic Policy & Resources
<b>Subject:</b>	Capital Programme Update
<b>Date:</b>	21 November 2008
<b>Reporting Officer:</b>	Trevor Salmon, Director of Corporate Services Gerry Millar, Director of Improvement
<b>Contact Officer:</b>	Paul Starkey, Management Accountant Michael Stanley, Project Manager
<b>Relevant Background Information</b>	
<p>The purpose of this report is to update Members on the capital programme. The report will cover the following areas:</p> <ul style="list-style-type: none"> <li>• A request to move seven schemes from being “uncommitted” to “committed” in the 2008/09 capital programme.</li> <li>• Capital programme 2009/10 expenditure and future years.</li> <li>• A recommended approach for agreeing the capital programme and its financing 2009/10 and future years.</li> </ul>	
<b>Key Issues</b>	
<p><b>Scheme Update</b></p> <p>There are 7 requests to advance projects which were previously included as “<i>uncommitted</i>”. Full details of each scheme are provided at Appendix A and a summary is provided below.</p> <ul style="list-style-type: none"> <li>○ <b>Roselawn Extension/Development</b> (Parks and Leisure Department) – retrospective Committee approval is requested to the invitation of tenders for the infrastructure development element of this project and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria.</li> <li>○ <b>Outdoor Skate Park Facility (Parks and Leisure Department)</b> - Committee is asked to consider approval of the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria. This will require a loan of £80,000 to lever a £300,000 grant.</li> <li>○ <b>Springfield Avenue Site A Children’s Park</b> (Parks and Leisure Department) - Committee is asked to consider approval of the invitation of tenders for the development of the park and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria. This scheme is 100% grant-aided.</li> <li>○ <b>Gasworks Northern Fringe Infrastructure</b> (Development Department) - Committee is asked to consider approval of the invitation of tenders for the site/ground investigation works and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria.</li> <li>○ <b>2012 Elite Sports Facilities</b> - Mary Peters Track &amp; Blanchflower Playing Fields (Parks and Leisure Department) - Committee is asked to ratify the decision of the P&amp;L</li> </ul>	

Committee to prepare a bid for funding at a cost of £400,000.

- o **Telephony System** (Corporate Services) - Committee is asked to consider approval of the invitation of tenders and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria.

**nb** There remains approximately £ 77m of estimated proposals in the current capital programme to 2012/13

### Resource Implications

The table below shows that the forecast for capital expenditure financed by loan for 2008/09 amounts to £21.9m and that Members should note that the Council already has a loan of £11.2m for the Grove Wellbeing Centre. This means that by the end of 2008/09 the Council will have a loan requirement of £33.1m. The Council's affordability limit for loans financed capital expenditure is £45m.

**Table One: Capital Expenditure Financed by Loan 2008/09**

	<b>Forecast Total Spend 08/09</b>
	£
Underway and contractually committed	19,676,057
Committed by decision but not contractually committed	2,219,950
Uncommitted future proposals – but essential	0
<b>Total</b>	<b>21,896,007</b>

Table two shows the level of anticipated capital expenditure required for 2009/10. This is needed to complete the schemes started in 2008/09 and to start a number of essential schemes during 2009/10. The forecast loans requirement is a further £8.0m. This means that by the end of 2009/10 the total loans requirement will be £41.1m which is broken down as follows:

- 2007/08 £11.2m
- 2008/09 £21.9m
- 2009/10 £ 8.0m  
£41.1m total loan requirement 2010 onwards

**Table Two: Capital Expenditure Financed by Loan 2009/10**

	<b>Forecast Total Spend 09/10</b>
	£
Underway and contractually committed	5,124,416
Committed by decision but not contractually committed	1,299,247
Uncommitted future proposals – but essential <sup>1</sup>	1,650,000
<b>Total</b>	<b>8,073,663</b>

<sup>1</sup> \* Mercury Abatement at Crematorium : New Cemetery : Loop River Centre



### **Rates Impact and future affordability**

This position has two major consequences for the Council. Firstly, the revenue impact of the loans will have to be covered both in the 2009/10 and 2010/11 estimates and also in future years until the loans are repaid i.e. up to 20 years.

Currently, £1.9m of debt charges is allowed for in the estimates which will finance £15m of debt. However, as the debt requirement for 2009/10 will be £33.1m an additional debt charge equivalent to 2% on the rate will be required. For 2010/11 the equivalent figure is an additional 1%.

In total from 2010/11 onwards approximately 5% of the rate will be required to finance debt for current committed schemes for the foreseeable future.

The second major issue for the Council is that the agreed affordability limit on loans financed capital expenditure is £45m and we will have reached £41.1m by the end of 2009/10. This means that only £3.9m of further loans financing will be available post 2009/10 and it is likely that this will be required to finance the rollover of schemes due to start in 2009/10. Therefore, a reassessment of the affordability limit and/or other means of finance will need to be considered, if **any** new schemes are to be progressed.

Members should also note that few schemes in the capital programme have had any revenue consequences assessed and this is an important factor in economically appraising any new schemes.

### **Way Forward**

These are serious and complex issues for the Council and will involve difficult decisions. It is also important that any decisions taken are as collective as possible to ensure any expenditure is allocated within agreed affordability limits and to address corporate priorities.

These problems will not be resolved overnight and will require a significant amount of time commitment from Members. For these reasons, it is recommended that the Party Leaders as recommended in the Indicative Rates 2009/10 report also examines the future of the capital programme and takes all decisions via the SP&R Committee. The group will need to consider issues such as:

- review the Council's agreed affordability limit;
- an agreed level of capital expenditure for 2009/10;
- prioritisation mechanism for the 2009/10 and future capital programme;
- agree prioritisation criteria for all schemes e.g. place shaping; 100% grant aid etc.;
- assess economic appraisals of prioritised schemes
- develop financing rules for future capital schemes
- consider other ways of financing capital expenditure

### **Recommendations**

The Committee is requested to:

1. Note the Capital Programme update information provided.
2. Sign off the 7 projects proposed for advancement.
3. Agree to establish a cross party working group within the Strategic Policy and Resources Committee with the purpose of considering future arrangements for the capital programme.

### **Documents Attached**

Appendix A – Details of projects proposed for advancement.

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## **Appendix A: Details of projects proposed for advancement**

### **Roselawn Extension/Development** (Parks and Leisure Department)

As the acquisition of land for a new cemetery is still some way off there is an urgent need for additional land at the existing Roselawn site.

Negotiations were undertaken and agreement reached with an adjoining landowner to acquire land for an additional 4000 (approx) graves, subject to planning permission.

The Parks and Leisure Department decided, during July in the summer Committee recess period, that it would be prudent to proceed with the acquisition in order to avoid incurring increased acquisition costs, given that the additional land is critical to the continuing operation of the cemetery and the Planning Services had recommended to Castlereaigh BC that planning approval be granted. The project proposal was included in the approved capital programme as uncommitted but critical).

The overall project estimate is £1.7, with £1.2m for acquisition costs and £500k for the development of the infrastructure to enable the land to be used.

The Committee is asked to note the decision taken by the Parks and Leisure Department on the grounds of prudence.

The Committee is asked to consider approval of the invitation of tenders for the development of the infrastructure and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria.

### **Outdoor Skate Park Facility** (Parks and Leisure Department)

Discussions regarding the provision of an Urban Sports (Skate) Park have been ongoing for some six or seven years with limited progress.

A detailed report was presented to the Parks and Leisure Committee on 16 June 2008 outlining the history and current position. The Parks and Leisure Committee approved the recommendation to revise the proposal to include an additional £75k to progress the construction of the Urban Sports Park if Peace III funding is not secured and the 50% Sports Council Funding is secured; however, subsequent to this decision the funding from Peace III funding has been secured.

The net project cost to BCC is therefore £80k and the Committee is asked to consider approval of the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria.

Revenue expenditure in relation to operation and maintenance will be provided for from the 2009/10 estimates onwards to coincide with the opening of the facility.

### **Springfield Avenue Site A Children's Park** (Parks and Leisure Department)

An offer of 100% grant funding for this proposal has been made by BRO for the overall project estimate of £394,360, and the Parks & Leisure Committee have agreed to proceed with procurement and delivery.

Committee is asked to consider approval of the invitation of tenders for the development of the park and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria subject to 100% grant funding from BRO.

## **Gasworks Northern Fringe Infrastructure** (Development Department)

The Development Department have completed a masterplan report for the development of the site and are preparing an application to the Planning Service for approval to enable effective and economical development of the site and a report was submitted to the Development Committee on 15 October 2008.

To support the planning application a significant site and ground investigation has to be undertaken to meet the requirements of the NI Environment Agency.

The overall estimate is for the site/ground investigation works £55k and the Committee is asked to consider approval of the invitation of tenders for the site/ground investigation works and to the acceptance, under the general scheme of delegation, of the most economically advantageous offer based on quality and price criteria.

## **2012 Elite Sports Facilities** (Parks and Leisure Department)

### **(1) Mary Peters Track**

### **(2) Blanchflower Playing Fields**

A report presented to the P&L Committee in September was taken back at Council for reconsideration by the Committee at their meeting on 9 October, when Members resolved to proceed with the preparation of a bid for funding.

The estimated cost of this advance expenditure to support the funding bid is £400k and the Committee is asked to ratify the decision of the P&L Committee.

## **New Corporate Telephone System**

The corporate telephone system has been in operation for 12 years. It now needs replaced in time for the re-opening of the City Hall. A new system will require an upgrade of some cabling and network equipment (£117,000), a new telephony system (£350,000) and a unified communications system (£100,000). The introduction of the new system will mean can reap the benefits which new technology will offer. This includes reducing telephone bill costs, reducing the rental and use of phone lines and reducing mobile phone bills.



**Belfast City Council**

<b>Report to:</b>	Strategic Policy and Resources Committee
<b>Subject:</b>	Retirement of Director of Corporate Services
<b>Date:</b>	21 November 2008
<b>Reporting Officer:</b>	Peter McNaney, Chief Executive
<b>Contact Officer:</b>	Jill Minne, extension 3220

**Relevant Background Information**

The Director of Corporate Services is scheduled to retire in June 2009. Members are aware that a review of the centre of the organisation is ongoing. This will help to define the specific purpose, functions and responsibilities of the replacement post. Arrangements however, need to be put in place now to ensure the effective recruitment of this post in early 2009.

**Key Issues**

The nature of this post means it will be necessary to adopt a proactive approach to recruitment. This will include executive search which typically involves researching market conditions; identifying and encouraging suitably experienced applicants; a dedicated website for the role; providing impartial advice on the role; answering applicants' queries; following-up initial candidate interest; handling responses; and conducting an initial sifting exercise to present to the council's selection panel.

The purpose of executive search is to ensure that there is a good field of able candidates for this critical role. The appointment itself is made on merit in accordance with the Council's normal recruitment and selection procedure. Council policy made in accordance with guidance given by the statutory Code of Employment Practice issued by the Local Government Staff Commission provides that the selection panel for such posts should comprise the Chair, Deputy Chair, two Elected Members and the Chief Executive. (Community balance is to be provided across the Elected Members and gender balance is to be provided across the panel.) A non-voting Local Government Staff Commission professional assessor/observer should also be in attendance.

**Recommendations**

It is recommended that:

- (i) the procurement process is initiated to engage assistance with executive search to encourage the strongest field possible for the post;
- (ii) Committee agree Elected Members' nominees to comprise the selection panel;
- (iii) the Chair and Deputy Chair agree the recruitment plan and documentation with the Chief Executive; and
- (iv) the selection panel have delegated authority to make the appointment with the outcome being reported back to Committee for Members' notification.

<b>Resource Implications</b>
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The cost of executive search will be subject to a four quote specification process based on quality and price and will be within the limit set for delegated authority. The tenders will be discussed with the Chair and Deputy Chair of the Committee.
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## Belfast City Council

<b>Report to:</b>	Strategic Policy & Resources Committee
<b>Subject:</b>	<b>ROYAL MATERNITY HOSPITAL LIAISON GROUP</b>
<b>Date:</b>	21 November 2008
<b>Reporting Officer:</b>	Director of Legal Services, Ciaran Quigley – Ext 6038

### Purpose of the Report

To provide advice to the Committee as to the ways in which the Council can support the campaign for the provision of a new regional hospital for children and women at the site of the Royal Group of Hospitals, either financially or otherwise as requested by the Committee at its meeting of 22 August 2008.

### Relevant Background Information

The Council, at its meeting of 1 July 2008, unanimously passed the following Notice of Motion :

“Belfast City Council calls on the Minister for Health, Social Services and Public Safety and the Northern Ireland Executive to make the completion of the new regional hospital for children and women, on the site of the Royal Group of Hospitals, a matter of top priority in the next comprehensive spending review.

The Council calls on the Minister of Health and the Executive to secure the resources now for clearing the site, which is an essential first step in progressing the new hospital for children and women.

The Council agrees to work in partnership with the Royal Maternity Hospital Liaison Group to lobby the Northern Ireland Executive and Assembly to secure the capital funds necessary to build the new regional hospital for children and women.”

At its meeting of 22 August 2008, the Strategic Policy & Resources Committee noted that a response had been received from the Minister for Health in which he had indicated that his Department had not received adequate funding in the current budget allocation for the new regional hospital. However he had commissioned a review of capital priorities over the next ten years. Also, a revised business case for the new hospital, which would include phased options for the proposed development, including the possibility of advance site clearance and enabling works, was being developed by the Belfast Trust in the context of the Review. Only when the business case had been submitted and scrutinised could a decision on the funding and timing of the project be taken.

The Committee received a presentation from representatives of the Royal Maternity Hospital Liaison Group (“the Liaison Group”). After hearing that presentation, the Committee agreed that the question of the business case for the new regional hospital could be raised with the Chief Executive Officer of the Belfast Health & Social Care Trust, Mr William McKee, who had requested permission to address the Committee on health issues at a future meeting, and the Committee further agreed that ways in which the Council could support the campaign either financially or otherwise be investigated and that a report thereon be submitted for the Committee’s consideration in due course.

### **Key Issues**

The Director of Legal Services has now obtained advice from leading Counsel, Mr David Scoffield BL, in relation to the legal issues which arise in relation to the proposal that the Council should support the hospital campaign, and a full copy of Mr Scoffield’s advice is appended to this report. Mr Scoffield’s advice is detailed, but essentially makes the following points

- Belfast City Council, as a district council, is subject to the *ultra vires* rule which means that it must restrict its activities to those for which it has statutory authority and, subject to the special expenditure power in Section 115 of the 1972 Act of the Local Government Act (NI) 1972, it cannot incur expenditure for any purpose for which it is not authorised to exercise
- the Council does not have any direct role in the provision of health care
- district councils have a limited power to contribute to the funds of any voluntary body, but the voluntary body must be one which provides a “public service in Northern Ireland” – and the Liaison Group could not be considered to be providing such a service
- Section 115 of the 1972 Act gives a power of special expenditure to district councils in Northern Ireland. Under this section, a council may make any payment for any purpose which in its opinion is in the interests of, and will bring direct benefit to the council, or its district, or the inhabitants of its district (or part thereof)
- the exercise of the special expenditure power in Section 115 is however subject to certain constraints and, in particular the constraint that a payment cannot be made under the Section by way of assistance to a voluntary body (which would include the Liaison Group) where that payment is primarily intended for publicity
- the proposals which have been put forward by the Liaison Group to the Council were clearly stated to be in relation to providing financial assistance for publicity purposes – and accordingly the Council is not legally able to make payment for such purposes
- the Council does, however, have the power to incur limited expenditure under Section 115 by way of assistance to the Liaison Group in circumstances where no publicity is primarily involved. Counsel has mentioned that, for example, the Council facilitate meetings with the Minister and apply political pressure (see paragraph 40).

Counsel has noted that the City Council could of course conduct its own campaign in relation to the establishment of a hospital but this would require a resolution that the Council is satisfied that any expenditure to be incurred by it in relation to the matter would bring a direct benefit to the City and that the expenditure to be incurred would be “commensurate” with that direct benefit. Such expenditure could only be incurred, where publicity is involved, provided that the Council is not perceived to be publishing material which, in whole or in part, appears to be designed to affect public support for any particular political party.

### **Recommendations**

It is a matter for the Committee to take into account the advice which has been received from Mr Scoffield BL and, having taken that advice into account, decide whether or not the Council should:



1. decline to provide any financial assistance to the Liaison Group
2. agree to provide assistance, either financially or otherwise, to the Liaison Group, but on condition that any financial assistance given is not used for publicity purposes
3. decide that the Council itself should mount some form of campaign in support of the proposed hospital.

Should the Council elect for Option 3 above, then it will be necessary to determine an appropriate level of expenditure to be incurred in the context that the Council is satisfied that such expenditure will bring direct benefit to the Council and will be “commensurate” with the benefit to be achieved.

**Documents Attached**

Advice of David Scoffield BL

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**BRIEF TO ADVISE**

**BELFAST CITY COUNCIL**

Querist

**In relation to the proposed assistance  
for the campaign for a Royal Maternity Hospital**

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**COUNSEL'S ADVICES**

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**INTRODUCTION**

1. I am asked to advise Belfast City Council ('the Council') in relation to the legality of potential assistance which might be given to a campaign for a Royal Maternity Hospital for Belfast.

**FACTS AND INSTRUCTIONS**

2. The Council's Strategic Planning and Resources Committee ('the SP&R Committee'), at its meeting on 20 June 2008, agreed to hold an informal meeting in the form of a briefing session with representatives of the Royal Jubilee Maternity Liaison Committee (RJMLC).
3. The RJMLC is a lobby group seeking support for the proposal to build a new regional hospital for children and women on the Royal site. The group's short-term aim is to secure by late Autumn 2008 a commitment from the Minister of Health and the Executive to prioritise in the Infrastructure Budget 2008-2011 the funds required to clear the site at the Royal Hospital Complex; and then to secure a commitment to source the funding and commence building works at the start of the next Comprehensive Spending Review in 2011.
4. However, before this meeting occurred, Councillor Tim Attwood brought a motion to the Council, which was passed unanimously on 1 July 2008, in the following terms:

"Belfast City Council calls on the Minister of Health, Social Services and Public Safety and the Northern Ireland Executive to make the completion of the new regional hospital for children and women, on the site of the Royal Group of Hospitals, a matter of top priority in the next comprehensive spending review.

The Council calls on the Minister of Health and the Executive to secure the resources now for clearing the site, which is an essential first step in progressing the new hospital for children and women.

The Council agrees to work in partnership with the Royal Maternity Liaison Group to lobby the NI Executive and Assembly to secure the capital funds necessary to build the new regional hospital for children and women."

5. Subsequently, the SP&R Committee agreed to look at ways in which resource assistance could be given to the Group and in which a lobby could be built for the purpose set out in the motion.
6. In the meantime, a copy of the motion was forwarded to both the Northern Ireland Assembly and the Minister for Health. The Minister responded on 29 July 2008 indicating that his Department had not received adequate funding in the current budget allocation for the new regional hospital. However, he had commissioned a review of capital priorities over the next 10 years. Also, a revised business case for the new hospital, which would include phased options for the proposed development, was being developed by the Belfast Trust in the context of the review. Only when the business case had been submitted and scrutinised could a decision on the funding and timing of the project be taken.
7. The SP&R Committee received a delegation from the RJMLC on 22 August 2008. I have been provided with a copy of the minutes of this Committee meeting. These also indicate that the Committee have asked the Chief Executive of the Belfast Trust (who wished to address the Committee on the delivery of health care in Belfast in any event) to update them on the preparation of the business case for the new hospital.
8. The Committee agreed that a report be submitted for its consideration in due course in relation to the question of how the Council could support the campaign either financially or otherwise.
9. The cause certainly appears to be a popular one. RJMLC have indicated that they have received letters of support from every political party. As to Council support, they are seeking:
  - Continued political support on a cross or all party basis (supporting statements for campaign etc)
  - Financial support to run the campaign
  - Practical support eg. the use of local Council facilities to distribute campaign materials or hold publicity events or advice of Council staff to the RJMLC.
10. In relation to financial support, the Group project their costs to be in the region of £14,000, made up as follows:
  - (i) £8,800: Poster and postcard campaign: 'Freepost' postcards to the Minister for Health and the First and Deputy First Minister's Office (design, printing and freepost costs for 40,000 cards and 2,000 posters);
  - (ii) £2,300: General publicity and information events (including 3 PVC banners and 10 'pop-up' stands); and
  - (iii) £3,900: other costs such as administration, general postage and paper, transport, etc.
11. The Director of Legal Services met with members of the Royal Jubilee Maternity Liaison Committee (RJMLC) on 18 September 2008. Further to this, the Chairperson of RJMLC wrote to the Director of Legal Services by letter dated 30 September 2008 asking the

Council “to take the lead in an awareness campaign to highlight the need for the new Women and Children’s Hospitals to be built on the Royal Hospital site”. The correspondence continues:

“Belfast City Council is a major partner in the Healthy Cities initiative which aims to improve the health and well being of those who live and work in Belfast. What better start on this aim than to improve the conditions of the hospital where children are born as research indicates that this first experience and indeed the experiences of the mother whilst pregnant have a major impact on the lifelong health and well-being of our very youngest citizens.

Based on the discussions at the meeting on the 18<sup>th</sup> September as to how best to progress this work we would like to officially request Belfast City Council to lead this campaign. RJMLC would of course continue to offer the Council every support as an advisory group.”

12. As to similar precedents:

- (i) I understand that Lisburn City Council organised a campaign in opposition to the reduction of services provided at Lagan Valley Hospital. A motion of opposition was passed by the Council in this regard and, subsequently, a decision was taken to fund a campaign in this regard on the basis of special expenditure under section 115 of the Local Government Act (Northern Ireland) 1972. A public relations firm was then employed to assist the Council in this campaign.
- (ii) Similarly, Omagh District Council raised by public subscriptions monies to fund a campaign to locate a new acute hospital in Omagh – and all costs are met from this fund so that no expenditure is charged to the ratepayer.

13. I am asked to advise on the Council’s powers in the above circumstances.

## DISCUSSION

### *THE VIRES PRINCIPLE*

14. The *vires* principle is the legal principle which determines what bodies such as the Council can, and cannot, lawfully do. The nature of the principle is that district councils are statutory bodies whose powers, as creatures of statute, must be within the purview of some statutory authority. Thus Cross<sup>1</sup> states at paragraph 1-02:

“A fundamental feature is that the United Kingdom is a unitary and not federal state. Subject to overriding provisions of European Community law, an Act of the United Kingdom Parliament is the supreme source of law. The existence of the powers of elected local authorities depend on the provisions of Acts of Parliament.”

15. Thus, for a power or function of a council to be lawfully exercised, it must be acting within the bounds of authority delegated by legislation. If it acts beyond or outwith the powers which have been conferred on it, it is said to have acted *ultra vires* (beyond its powers). This doctrine as applied to statutory corporations is stated in Lord Watson’s speech in *Baroness Wenlock v River Dee Co*<sup>2</sup>:

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<sup>1</sup> Cross on *Principles of Local Government Law* (2<sup>nd</sup> edn, 1997, Sweet & Maxwell).

<sup>2</sup> (1885) 10 App Cas 354 at 362.

“Whenever a corporation is created by an Act of Parliament, with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of the opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions.”

16. Cross expands on the issue again at paragraph 1-20:

“Unlike a natural person who can in general do whatever he pleases so long as what he does is not forbidden by law or contrary to law, a statutory corporation can do only those things which it authorized to do by statute, directly or by implication. If such a corporation acts otherwise than in this way its acts are *ultra vires*. There must in all cases be statutory authority for what is done, and that authority must either be expressly given or reasonably inferred from the language of an Act of Parliament.”

17. Sharland<sup>3</sup> makes the same point in these terms:

“Local authorities owe their existence to statute. It follows from this that they owe their powers to statute as well. They are not sovereign bodies. This means that they can do nothing outside the powers given to them by legislation. This is known as the doctrine of *ultra vires*.”

18. The requirements of the *ultra vires* doctrine as regards Belfast City Council and other local authorities in Northern Ireland are evident from section 1(1) of the Local Government Act (Northern Ireland) 1972 (‘the 1972 Act’) which provides:

“For every local government district established in pursuance of the Local Government (Boundaries) Act (Northern Ireland) 1971 or the succeeding provisions of this Act there shall be a district council which –

... (b) shall have such functions as are conferred on the council by any statutory provision.’

#### *THE PROVISION OF FUNDS BY THE COUNCIL*

19. The requirement that the Council must restrict its activities to those for which it has statutory authority is re-emphasised in section 60 of the 1972 Act which makes provision for the application of council funds in the following manner:

“A council shall not directly or indirectly apply any part of the district fund, or any money under its control, for any purpose not authorised specifically or generally by some statutory provision...”

20. A key concern for the Council (and, no doubt, individual councillors who vote to approve such expenditure) is that where expenditure is unlawful, the Local Government Auditor can become involved and the possibility of surcharge becomes live. In the present

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<sup>3</sup> Sharland, *A Practical Approach to Local Government Law* (2<sup>nd</sup> edn, 2006, OUP) at paragraph 6.01.

circumstances, therefore, the Council is quite correct to ensure that it has a firm legal basis for doing so before deciding to provide the RJMLC with the financial assistance it is seeking.

*THE RELEVANT STATUTORY PROVISIONS*

21. One then turns to try to find statutory authority for the Council lending assistance to the RJMLC. Such authority may be express within the terms of legislation or may be implied from the terms of the legislation.
22. Express authority is usually in the form of the conferral of a power or the provision of a duty (with a coexistent power to perform the duty). An implied power will usually be a power which is a necessary implication of the functions of the Council provided for by the legislation. In addition, the Council will have power to do things which are “reasonably incidental” to the doing of things for which there is express or implied authority. In *Attorney-General v Great Eastern Railway Co*<sup>4</sup> Lord Selborne commented at that:

“It appears to me to be important that the doctrine of *ultra vires*... should be maintained. But I agree... that this doctrine ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction to be *ultra vires*.”
23. This common law rule is given statutory force in respect of local authorities in England and Wales by virtue of section 111(1) of the Local Government Act 1972 which provides:

“Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”
24. Unfortunately, this provision does not appear to be replicated in the Northern Irish legislation. However, the common law rule that the doing of things reasonably incidental to the Council’s functions will be permissible is still applicable. The absence of a specific provision in similar terms to section 111 of the English legislation is not a terrible difficulty therefore. Indeed, section 17 of the Interpretation Act (Northern Ireland) 1954 provides that where an enactment empowers any person or authority to do any act or thing, all such powers shall be deemed to be also given as are reasonably necessary to enable that person or authority to do that act or thing or are incidental to the doing thereof. There is also recent authority in this jurisdiction to the effect that whatever may be fairly regarded as incidental to, or consequential upon, those things which the legislator has authorised ought not (unless expressly prohibited) to be held to be *ultra vires*<sup>5</sup>.
25. I should say that I have helpfully been furnished with advices which were previously provided to the Council in relation to a similar issue by Nicolas Hanna QC. These advices were sought in 2002 when the Policy and Resources Committee of the Council

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<sup>4</sup> (1880) 5 App Cas 473 at 487.

<sup>5</sup> See *Re Local Government Auditor* [2005] NIQB 52 at paragraph 15.

(what is now the SP&R Committee) was asked to provide funding to the Mater Infirmorum Trust to enable it to undertake public campaign and also to undertake a consultation exercise to ascertain the views of the public in relation to the proposed closure of certain services at the Mater Hospital. In the event, the Committee resolved to provide funding to the Trust in the sum of £5,000 providing that it would not be used to fund publicity. The advices which are set out below broadly accord with the views expressed by Mr Hanna.

26. I have not been directed to, and have been unable to find, any statutory provision which gives the Council any direct role in the provision of health care within its district. This is plainly a matter for the Department and the relevant Board and/or Trusts making such provision with the Council area.
27. Resort must therefore be had to more general powers of the Council which may permit it to provide funding to the RJMLC. There appear to me to be two powers which are potentially relevant – those contained in sections 108 and 115 of the 1972 Act respectively.
28. Section 108 (contributions to other voluntary bodies) provides:
  - “(1) A council may contribute to the funds of any voluntary body which provides any public service in Northern Ireland.
  - (2) A council may contribute under subsection (1) towards the funds of a voluntary body in respect of publicity only where the publicity is incidental to the main purpose for which the contribution is given.”
29. Section 115 (expenditure for special purposes) provides:
  - (1) Subject to subsections (2) to (5), a council may make any payment for any purpose which in its opinion is in the interests of, and will bring direct benefit to –
    - (a) the council;
    - (b) its district or any part of its district;
    - (c) the inhabitants of its district or any part of its district.
  - ...
  - (3) A council shall not make any payment under subsection (1) –
    - (a) for a purpose for which the council is, either unconditionally or subject to any limitation or to the satisfaction of any condition, authorised or required under any other statutory provision to make any payment or
    - (b) unless the direct benefit accruing to its district or any part of its district or to the inhabitants of its district or any part of its district will be commensurate with the payments to be made.
  - (4) In any case where-
    - (a) by virtue of paragraph (a) of subsection (3) a council is prohibited from making any payment for a particular purpose; and



- (b) the power or duty of the council to make any payment for that purpose is in any respect limited or conditional (whether by being restricted to a particular group of persons or in any other way),

the prohibition in that paragraph shall extend to all payments to which that power or duty would apply if it were not subject to any limitation or condition.

- (5) A council may make a payment under subsection (1) on publicity only by way of assistance to a public body or a voluntary body where the publicity is incidental to the main purpose for which the assistance is given.”

29. As to section 108, the first question is whether the RJMLC is a “voluntary body”. This phrase is defined in section 148(1) of the 1972 Act as meaning “any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members thereof”. It is debatable whether the RJMLC in fact meets this definition since the papers disclose that “the RJMLC is made up of users and patient representatives, facilitated by Belfast Trust maternity staff”. It might be thought, therefore, that the constituency comprising the RJMLC does stand to gain from its campaign, unless the term “for the purpose of gain” is interpreted in a narrow way as precluding only the pursuit of direct financial gain.
30. In any event, I think it is also unlikely that the RJMLC is a voluntary body “which provides any public service in Northern Ireland”. It is a lobbying group which no doubt believes that its campaign is in the public interest; but it does not seem to me that it is providing a public service within the meaning contemplated in section 108(1) of the 1972 Act. The Council would be wise to proceed, in my view, on the basis that section 108 does not provide a basis for providing funding to the RJMLC.
31. The ability to incur special expenditure under section 115 is more wide since it can be made “for any purpose” which the Council considers (in its discretion) to be in the interests of and bringing direct benefit to the Council itself, its district or the inhabitants of its district, or any part thereof.
32. Authority suggests that the purpose of this section is to allow a council to spend money for purposes of their own, so as to give them more scope for enterprise and experiment. The question whether the expenditure is in the interests of the district or of its inhabitants is one of fact for the council, not one of law. Anything which relates in any way to the legitimate interests of the district or its inhabitants may be considered to fall within the section, provided that the council satisfies itself that the payment is in the interests of the council or of its district etc., that there will be a direct benefit flowing from the expenditure and that the direct benefit is commensurate with the payment to be made<sup>6</sup>.
33. I have been provided with a copy of criteria adopted by the Council in 2004 to assist it in determining proposed expenditure under section 115. These are:

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<sup>6</sup> See *Re Local Government Auditor* [2003] NIJB 207, especially at paragraph 14. That case concerned expenditure on a staff Christmas party.

- (1) Whether there are sufficient funds remaining in the Council's Special Expenditure budget for the relevant year<sup>7</sup>;
  - (2) Whether the application for financial assistance links to any of the Council's Corporate Objectives;
  - (3) Whether the direct benefit to be obtained is specific to the Council or its district or inhabitants;
  - (4) Whether the activity or initiative in respect of which assistance is being sought is being promoted by a person or organisation living or operating, or otherwise having a direct connection with, the City;
  - (5) Whether the request for financial assistance relates to an event or initiative which falls within the remit and statutory power of any other Committee of the Council (in which case it should be so referred);
  - (6) Whether the request relates to a specific event, activity or initiative as distinct from a request for a contribution to general funds;
  - (7) Whether the benefit to be obtained will be commensurate with the payment to be made.
34. These criteria appear to me to be permissible considerations which the Council can lawfully take into account<sup>8</sup> in determining a request for special expenditure under section 115 of the 1972 Act.
35. In relation to the RJMLC, it is open to the Council<sup>9</sup> to make a payment under section 115 assuming that the Council is of the view that the expenditure is in the interests of, and will bring a direct benefit to, the Council, its district, or inhabitants of its district, or any part thereof. This is a matter for the Council to consider and its substantive conclusion is likely to be upset by the Court only on the grounds of *Wednesbury* irrationality. In considering this issue, the Council would also wish to take into account the prospects of RJMLC's campaign succeeding (either with or without the Council's assistance) and reach its own view on this.
36. Discussion of this issue in the present case is simplified, in my view, however, by the provisions of section 115(5) which make clear that section 115 funding can only be attributed towards publicity "where the publicity is incidental to the main purpose for which the assistance is given"<sup>10</sup>. For these purposes publicity is defined in section 148(4) of the 1972 Act in the following terms:

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<sup>7</sup> The amount being limited by virtue of section 115(2), which I have not set out above.

<sup>8</sup> And, in respect of criteria (1) and (7) must, irrespective of the Council's own policy, take into account.

<sup>9</sup> Subject to the effect of section 115(5) to which I return below.

<sup>10</sup> It might be argued that section 115(5) does not strictly apply to the provision of funding in this case since it only relates to payments made "by way of assistance to a public body or a voluntary body", neither of which the RJMLC actually is. This is a difficult issue however. If the RJMLC is neither, but is a private organisation with private, it makes it very difficult to justify how providing it with funds would bring "direct benefit" to the Council, its district or inhabitants. If, on the other hand, the RJMLC is a voluntary body, section 115(5) clearly applies.

“For the purposes of this Act references to “publicity”, “publish” and “publication” are references to any communication, in whatever form, addressed to the public at large or to a section of the public.”

37. Assuming the Council was minded, under its discretion to provide funding under section 115(1), to provide monies to the RJMLC, it would have to consider whether that money was being used for publicity and, if so, whether this was incidental to the main purpose for which the assistance was given. Section 115(5) is consistent with the wide-ranging restrictions (contained in sections 115A and following) on councils engaging in party political publicity campaigns. Obviously, these restrictions would be negated if the Council could simply fund external organisations to engage in publicity campaigns, although section 115(5) is not limited to party political publicity. Another obvious reason for a provision such as section 115(5) is that the Council has control over any publicity it provides itself, but does not have similar control where it funds someone else to provide publicity.
38. I am obliged to say that, from the papers with which I have been provided, it seems clear that the RJMLC are seeking funding for the very purpose of publicity. They wish to fund a poster and postcard campaign (including the printing of 2000 posters, three PVC banners and 10 ‘pop-up’ stands) and seek funding towards “general publicity and information events”. These all appear to be addressed to the public at large or a section of the public. Any suggested decision that the funding sought was not for the purposes of publicity appears to me to be highly vulnerable to challenge.
39. Similarly, although it is a matter for the Council to determine, I also think it would be difficult to say that publicity would be incidental to the purpose for which the funding was given – since (as I have said above) the mounting of a publicity campaign appears to be the very essence of the funding request made the RJMLC to the Council. If the Council takes this view, section 115(5) represents, in my view, a clear bar to the funding being granted.
40. This is not to say that the Council cannot support the RJMLC’s cause in other ways. Indeed, the passing of the motion on 1 July 2008 no doubt gave its campaign a boost. The Council can also, for instance, facilitate meetings with the Minister and apply political pressure. Where the question of expenditure arises, however, the constraints of section 115(5) will have to be borne in mind.
41. Mr Hanna QC’s opinion deals with this in some detail. He suggests that exercises such as a consultation exercise could be carried out or funded pursuant to section 115 of the 1972 Act but that “it would, however, be necessary to take care to ensure that the consultation process was not simply being used as a thinly-veiled disguise for what was, in reality, a publicity campaign”. For my own part, I would incline to the view that a consultation exercise (where materials were distributed and addressed to the public or a section of the public) would constitute publicity within the terms of the meaning set out in section 148(4)<sup>11</sup> and so be precluded from being funded by the Council through assistance to another body by virtue of section 115(5).
42. The suggestion might, of course, be made that – rather than providing funding to the RJMLC – the Council should simply run its own publicity campaign. I am not convinced this approach would avoid the difficulties discussed above, however. Expenditure of

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<sup>11</sup> Set out at paragraph 36 above. I note that Mr Hanna does not cite this definition of publicity in his advices.

monies from the district fund must still be related to, and underpinned by, one of the Council's statutory functions<sup>12</sup>. As I have said above, it appears to me that the only basis on which the Council could spend money for this purpose (whether by giving it to another organisation by means of funding or the Council simply spending the funds itself) is likely to be section 115 of the 1972 Act.

43. Put another way, if the Council funded its own publicity campaign and the Local Government Auditor asked what statutory function or provision these funds were being spent in relation to, the Council's best (and probably its only) answer is section 115 of the 1972 Act.
44. If the Council ran its own campaign, the expenditure thereby incurred would still have to be within the cap for special expenditure and the Council would still have to determine (pursuant to section 115(3)(b)) that the benefit accruing was commensurate with what was being spent. The key difference with this approach, however, is that section 115(5) does not appear to apply to the Council spending its own money on publicity. Rather, it relates to the Council making payments "by way or assistance to a public body or a voluntary body".
45. What the Council itself can do by way of publicity is governed by section 115A of the 1972 Act, which precludes party political publicity campaigns. This does not preclude it from mounting other publicity campaigns which are not party political, provided:
  - (i) That this is authorised by some statutory provision, which can include section 115<sup>13</sup>;
  - (ii) That, where the publicity is authorised by section 115(1), the expenditure incurred is considered (in the usual way) to be of direct benefit to the Council, its inhabitants, or its district or any part thereof and commensurate with that interest;
  - (iii) That regard is had to any code issued by the Department in relation to Council publicity<sup>14</sup>; and
  - (iv) That any such expenditure is separately accounted for<sup>15</sup>.

## CONCLUSION

46. I am a conscious that the above advices are lengthy. However, I can summarise my advices briefly as follows:
  - (a) The Council does not appear to have any express power to provide funding to the RJMLC other than its discretionary funding powers in sections 108 and 115 of the 1972 Act.
  - (b) I do not consider that section 108 of the 1972 Act provides an adequate legal basis for the Council to fund the RJMLC in the way in which they have requested.

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<sup>12</sup> See section 60 of the 1972 Act, set out at paragraph 19 above.

<sup>13</sup> Section 115D(1).

<sup>14</sup> Section 115B(1). I am unsure whether there is such a code.

<sup>15</sup> Section 115C(1).

- (c) Section 115 of the 1972 Act provides a much wider basis for the incurring of special expenditure in the exercise of the Council's discretion. Provided it was satisfied that the tests in section 115 were met, and this judgment was not *Wednesbury* irrational, the Council could provide funding to assist the RJMLC in its campaign under section 115.
  - (d) Section 115(5), however, prohibits funding being provided under this section where its purpose is for publicity, unless this purpose is merely ancillary to the purpose for which funding is being sought. In my view, the funding being sought by the RJMLC is for the purpose of publicity and it is very difficult to say that this is merely an ancillary purpose in the request.
  - (e) Accordingly, if the Council were to provide the funding sought in the purported exercise of its powers under section 115 of the 1972 Act, I consider that it would be vulnerable to successful legal challenge or action by someone aggrieved by the decision with sufficient interest to bring judicial review proceedings or by the Local Government Auditor.
  - (f) The Council can still provide support to the RJMLC where this does not involve the incurring of expenditure from the district fund by the Council<sup>16</sup>.
  - (g) The Council could also mount its own publicity campaign using its own funds<sup>17</sup>. This would again have to be under the statutory authority of section 115 (but would have an added advantage since section 115(5) does not appear to apply to the Council spending its own money). In determining to do so, the Council would still have to satisfy itself that the expenditure would be of direct benefit to it, its district or its inhabitants and that the amounts to be spent were commensurate with that benefit. It would further have to ensure that the publicity campaign it mounted complied in all respects with the provisions of sections 115A to 115C of the 1972 Act.
47. I trust the above is of some assistance. If I can be of any further assistance, the Director of Legal Services should not hesitate to contact me.

**David A Scoffield**  
**Bar Library**  
**11 November 2008**

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<sup>16</sup> As in the case of Omagh District Council.

<sup>17</sup> Which appears to be the approach which Lisburn City Council has adopted.

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### Belfast City Council

<b>Report to:</b>	Strategic Policy & Resources Committee
<b>Subject:</b>	<b>CONSULTATION – Proposed Mortgage Rescue Scheme for Northern Ireland</b>
<b>Date:</b>	Friday 21 <sup>st</sup> November 2008
<b>Reporting Officer:</b>	Gerry Millar, Director of Improvement, ext 6217
<b>Contact Officer:</b>	Sharon McNicholl, Policy & Performance Manager, ext 6207

#### Relevant Background Information

##### Purpose

To bring to the attention of the Strategic Policy & Resources Committee a short suggested response to the Department for Social Development's Proposed Mortgage Rescue Scheme for Northern Ireland and to bring to the attention of Members details of the Department's proposals to establish a Mortgage Rescue Scheme for Northern Ireland. Whilst the document was not sent to Local Councils it was sent to NILGA and all Northern Ireland political parties and MLAs. The closing date for responses is Friday 21<sup>st</sup> November, so if the Committee is minded to put comments forward, these will be submitted subject to ratification by the Council.

##### Background

Since 2004/05 there have been at least 500 mortgage repossessions each year in Northern Ireland. This peaked during the 2006-2007 financial year when 933 orders for repossessions were granted. In Great Britain, the Council of Mortgage Lenders expects repossessions to rise by 65 per cent. If this increase is seen here, 800 homeowners could be repossessed this year.

Repossession results in increased pressure on social housing. Most importantly, repossession, or the threat of it, can be immensely stressful for the individuals and families involved. The Mortgage Rescue Scheme is aimed at saving as many homeowners as possible from having their home repossessed.

#### Summary of the Consultation

##### Proposal

The Mortgage Rescue Scheme is aimed at saving as many homeowners as possible from having their homes repossessed. The proposed scheme intends to help people who have been unable to keep up payments on their homes to stay in them; it will also help people who think that they will be unlikely to be able to make mortgage payments. It will do this through both preventative measures as well as some direct intervention. It is an administrative and discretionary, rather than a statutory scheme

It is proposed to provide more emergency advice. Those who feel they may get into arrears should contact an advice agency to see what steps can be taken to help them and keep them from getting further into debt. This will help people who are struggling explore the options open to them, for example refinancing to more affordable rates. The centrepiece of the measure would let the Department for Social Development through Housing Associations support people who cannot cover their mortgage. This may be done in two ways; Flexible Tenure and Mortgage to Rent.

##### Shape of the Mortgage Rescue Scheme

#### **Element 1 – The Advice Service**

Critical to the success of the scheme is a frontline advice and guidance service. It would have a number of objectives:

- Preventing the problem reaching the stage where repossession is the only option
- Preventing households from getting deeper into debt
- Dealing with cases, where people have been in mortgage arrears for some time
- Making a comprehensive assessment of all the available debt solutions and housing options open to a client; and
- Working with the client, his lender and housing bodies to reach a solution suitable to the applicant's specific circumstances

**Element 2 – Mortgage Buy-Out**

This discretionary element of the Scheme would only be open to people facing imminent repossession for whom lower repayments; a longer repayment period; or finance restructuring are not possible. This may be done in two ways; Flexible Tenure and Mortgage to Rent.

- Flexible Tenure – in order to be eligible an applicant must be able to finance a percentage share of their existing property, either through a mortgage or equity, examples within the document suggest 25% or 50%. The remaining share would then be purchased by the participating Housing Association, which would charge an affordable rent on its share of the house. DSD have not arrived at a firm view on whether a minimum equity level should apply, and the consultation document asks:
  - Should a minimum equity level be applied?
  - How should that minimum level be determined?
- Mortgage to rent – this would be available for applicants who could not afford to retain the minimum agreed equity in their home

**Proposed Council Response**

The Council welcomes this opportunity to comment upon The Proposed Mortgage Rescue Scheme. Due to the specific nature of the consultation questions and the fact that the Council has no functional responsibility for this issue we do not feel it is appropriate to give a detailed response. However, we are committed to improving the quality of life of all who live in, work in, invest in and visit Belfast. We aim to do this by ensuring that the services we provide are the best they can be and by working with other organisations and communities in the city to address the things that matter most to people in their day-to-day lives. In light of this the Council is supportive of this initiative which is intended to alleviate hardship for those in need. It also supports the aim of the scheme to save as many homeowners as possible from having their homes repossessed and to enable people to remain in their homes.

**Resource Implications**

n/a

**Recommendations**

Members are asked to approve the draft response from Belfast City Council and agree its submission Department for Social Development