



# **Terms of Reference**

## **Investment and Commercial Board**

Date 05/07/2017  
Version 5.3  
Commercial Services and Resources

## Terms of Reference – Investment and Commercial Board

### Section 1: Purpose

- 1) The purpose of the Investment and Commercial Board (ICB) and its Sub Board (s) is to ensure that a corporate body is in place to oversee, act as a corporate gateway and, where relevant, recommend to Cabinet/Council and all relevant decision-makers all:
  - Future capital investment and revenue expenditure over relevant thresholds (see section 5 below);
  - Monitoring delivery of the Capital Programme and Contract performance;
  - Compliance with the Council's Contract Procedure Rules;
  - Consideration of Internal Direct Awards to any of the companies which are owned/controlled by the Council as part of the Internal Direct Award process;
  - Delivery of the Council's Commercial and Property Strategies;
  - Overseeing of the management of the Council's Assets.
  - Grant payments from the Council to third parties in excess of £250,000
- 2) The responsibilities of the ICB and its Sub Board do not detract from the individual accountabilities of those responsible for and involved in matters within the remit of those bodies.

### Section 2: Objectives

- 3) The main objective of the ICB and its Sub Board (s) is to ensure that the Council only engages in schemes/projects/expenditure that align with the Council's strategy and business plan priorities and which are based on sound commercial principles and evidence based decision making.
- 4) In order to achieve this, the ICB and its Sub Board have oversight responsibilities at four key stages:

Stage 1 – Strategic Outline Case. To scrutinise, challenge and endorse the detailed options appraisal for new capital schemes and revenue expenditure including any potential bids for external revenue or capital funding.

Stage 2 – Outline Business Case. To scrutinise, challenge and endorse the Business Case for new capital schemes and revenue expenditure prior to advertisement of the formal tender process.

Stage 3 – Process and Award Stage. To review the process at the award stage and endorse the award decision.

Stage 4 - Benefits Realisation/In Life Contract Delivery Review. To evaluate the benefits realised during contract delivery. This stage is

required for several types of expenditure and apply to both capital and revenue expenditure to:

- Review the performance of the contract, in line with the Contract Management Toolkit, against the key performance indicators – any significant failures or concerns should be brought to ICB at the next available opportunity, especially where contract termination is being considered\*;
- Review and endorse the use of extension options within the contract, this should be at least 6 months prior to the need of the contract to allow full consideration of options. The ongoing performance review and KPIs discussed in the first point above will provide evidence of how a contract is performing and, while not the sole determinant on contract extension, will be a key element in this decision.
- Review and endorse any significant variations to the contract or the capital programme, either in scope, size or value – variations would be over 15% change to the original contract position, which would be made up from the scope, size and/or value of the programme/contract;
- After each major project/programme a lessons learnt report should be created for immediate feedback on the work. Then after an agreed period of time (standard will be one year) a benefits realisation report should then be produced for ICB to report the outcome of the activity against the original objectives.

\*Contract performance will start to be captured in the new e contract management system, which will in due course be able to provide updates to the ICB on Corporate contract performance.

- 5) Stages 1 to 3 will be subject to formal decisions to commit the Council being made by the appropriate executive decision makers (Cabinet, Portfolio Holder or Corporate Director) in accordance with the Constitution and the established decision-making procedures.
- 6) The Stages can be combined or deemed not required if agreed with the Chair or facilitators prior to seeking the relevant approvals, for example Stages 1 and 2 may be undertaken at the same point where appropriate to do so or stage 1 may not be appropriate for example for low value capital expenditure. Further details can be found on the Investment and Commercial Board intranet page.
- 7) Step 4 timing will be agreed at the Step 3 part of the process or when called in by the ICB as appropriate.
- 8) All investment opportunities and revenue expenditure that require the ICB and its Sub Board's endorsement will, in the first instance, need to be considered and approved by the relevant Directorate Leadership Team (DLT).

- 9) Two weeks prior to ICB there will be an agenda planning meeting to consider future items and agree delegations to the sub boards. This group will primarily be the Chair, Service Director - Resources and Service Director – Commercial Services. At this planning meeting legal, and if required IS, will also attend to confirm that the items have had their engagement and approval to proceed to the board.
- 10) The ICB will also receive a Capital Programme Overview and Commercial Services Forward Plan at regular meetings for review.

### **Section 3: Composition of the ICB and its Sub Board**

- 11) Membership of the ICB is:

Chief Operating Officer (and Section 151 Officer) (Chair)  
Service Director – Resources (and Deputy Section 151 Officer)  
Service Director – Commercial Services  
Service Director – Neighbourhood and Public Protection  
Service Director – Transport and Infrastructure  
Service Director - Environment

- 12) Substitutes will be at a deputy level and ideally agreed in advance of the meeting with the Chair.
- 13) The Quorum will be the Chair, Service Director Resources and Service Director Commercial Services.
- 14) Where the Chair is not in attendance the meeting will be chaired by either the person nominated by the Chief Operating Officer (and Section 151 Officer) as their deputy for the meeting or, where there has been no such nomination, by the person elected to the Chair by the majority of those attending and that person shall have all of the powers of the Chair of the ICB as set out in these terms of reference.

#### **Sub Boards and Delegations**

- 15) The ICB can agree to setup Sub Boards to consider either general business that is delegated or specific programmes of work, i.e. property.
- 16) The Main Sub Board will consider revenue items between £250k and £500k in value and also any items delegated from the pre agenda planning meeting of the ICB. It will also consider capital projects between £250k and £500k at the Process and Award and Benefits Realisation stages.
- 17) The programme specific sub boards can be setup with set parameters to operate underneath the authority of the ICB. This approach will include spend thresholds, types of decision making and an agreed

approach for highlight reports and escalation of issues/decisions to the main ICB.

- 18) Membership of the main Sub Board is:
- Service Director, Commercial Services (Chair)
  - Head of Exchequer and Pensions
  - Head of Legal Services
  - Business & Incident Manager
  - Senior Commissioning Representative, CFA
- 19) Substitutes will be at a deputy level and ideally agreed in advance of the meeting with the Chair.
- 20) The Quorum will be the Chair, Head of Exchequer and Pensions and the Assistant Head of Governance and Information.
- 21) In the rare event that neither a Sub-Board Member nor their nominated Substitute are able to attend, the Sub-Board Member can put forward their formal views for consideration to the Secretariat. This will need to be received by the Secretariat before 5pm on the day before the scheduled meeting.

#### **Section 4: Operation of the ICB and its Sub Board**

- 22) The ICB will work in accordance with the existing Council-approved Capital Investment Plan (December 2013).
- 23) Any decisions made by the ICB or its Sub Board (s) will be restricted to the matters within the remit of those bodies as articulated in these Terms of Reference.
- 24) In the absence of a consensus or majority view, the Chair of the ICB will have authority to determine matters referred to the ICB.
- 25) Notwithstanding the authorities of the ICB, Sub Board (s) and Chair of the ICB in the preceding paragraphs, any substantive decisions that are required to be made that bind the Council to a particular course of action must be made by the person or body with the principal or delegated responsibility in accordance with the requirements of the Council's Constitution. Generally this will mean that the approval or otherwise of a proposal will result in a referral to Cabinet or the responsible Portfolio Holder or Strategic Director for formal decision.
- 26) All decisions made by or on behalf of the ICB or Sub Board (s) must be made having proper regard to the advice of the Section 151 Officer and the Monitoring Officer (or the persons substituting for them, whether in their statutory role or their substantive Head of Service role).
- 27) The Sub Board (s) will report direct to the ICB. The Sub Board (s) will exercise the same decision making powers as the ICB but in relation to

the matters within its remit, whether by virtue of the value as set out in these terms of reference, or delegation from the ICB. The same requirements as to formal executive decisions apply to matters that have been considered by the Sub Board (s) as apply to matters that have been considered by the ICB.

- 28) The ICB may delegate projects to the Sub-Board (s) and the Sub Board (s) may refer projects to the ICB.
- 29) Wherever possible, Agendas will be circulated at least five clear working days prior to the meeting and minutes will be circulated within two working days of the meeting being held.
- 30) The ICB will meet every month, with meetings being rescheduled only in exceptional circumstances.
- 31) The main Sub-Board will meet every two weeks, with the length of the meeting expected to be about 1 hour, subject to agenda items.
- 32) Formal records of the decisions of the ICB and its Sub-Board (s) will be communicated to the lead/responsible/senior responsible officers in a timely manner, either on a proposal by proposal basis or by circulation of the minutes, and unless inappropriate by email.
- 33) The ICB will receive reports on the numbers and value of Exemptions and Breaches issued during the month since the last meeting.
- 34)** Technical and administrative support will be provided by the Resources and Commercial Services Services.

## **Section 5: Thresholds and Scope**

- 35) All capital schemes (over £10,000) shall be endorsed by the ICB at Stages 1 and 2 for onward recommendation, in line with the Council's Constitution, to the Cabinet (or other executive decision maker) and, where the capital programme requires amendment, Council.
- 36) All revenue proposals endorsed by the Board will then need to be referred to the Cabinet or responsible Portfolio Holder or Corporate Director for any formal decisions to be made, in accordance with the Council's Constitution.
- 37) Where Capital Programmes have an associated Project Board providing oversight, the ICB may take its assurance for individual projects from the relevant Project Board within pre-agreed parameters. This shall be agreed with the ICB at Stage 1 or 2.

- 38) Once considered by the ICB, Capital schemes will be subject to the same commercial assurance as all revenue expenditure following the thresholds defined below in Table 1.

TABLE 1 – Commercial Assurance and Authorisation Process

<b>Goods, Works and Services Total Contract Value</b>	<b>Summary of minimum required Commercial Assurance and Authorisation</b>
Below £50,000	The Service area with the requirement will be responsible for taking a proportional approach to justification of the spend and holding of supporting documentation for audit and reporting purposes.
£50,000 – below £250,000	Accelerated Commercial Assurance and Authorisation Procedure with commercial endorsement by the appointed Senior Responsible Officer within the Service and Commercial Services as outlined in [ <a href="#">Procedure Note 3 - Commercial Assurance and Authorisation</a> ].
£250,000 – below £500,000	Full Commercial Assurance and Authorisation Procedure with commercial endorsement by the Investment and Commercial Sub-Board
£500,000 and over	Full Commercial Assurance and Authorisation Procedure with commercial endorsement by the Investment and Commercial Board as outlined in [ <a href="#">Procedure Note 3 - Commercial Assurance and Authorisation</a> ].

- 39) All expenditure with an estimated whole life cost of greater than £500k will need to be submitted to the ICB at all stages, subject to delegation to the Sub Board where appropriate.
- 40) All expenditure with an estimated whole life cost of between £250k and £500k will need to be submitted to the Sub-Board at all stages, subject to escalation to the ICB where appropriate.
- 41) In relation to Framework Agreements, the proposal to enter into the Framework Agreement will be presented to the ICB or its Sub Board. Future call offs against that Framework Agreement will be presented to the ICB or Sub-Board where the responsible Strategic Director considers it appropriate to do so or the ICB requires any particular call-off to be referred.
- 42) Fleet expenditure will be considered by the main Sub Board except in exceptional circumstances.

## **Section 6: Forms & Reporting**

- 43) Relevant forms for completion at each stage of the process are held on the ICB intranet site.

### **Section 7: Review**

- 44) This Terms of Reference will be reviewed at regular intervals to ensure the continued effectiveness of the ICB and its Sub-Board (s).

**July 2017**