

**BRISTOL CITY COUNCIL**

**FULL COUNCIL**

**15 SEPTEMBER 2015**

**Report of:** Interim Service Director – Legal & Democratic Services, and Monitoring Officer

**Title: OVERVIEW AND SCRUTINY MANAGEMENT RULE 17 (j) – EXCEPTIONS TO CALL IN PROCEDURE**

**Ward:** Citywide

**REPORT FOR INFORMATION ONLY**

**Full Council is asked to note that exceptions to the call-in procedure have been made in respect of the following decisions taken by the Mayor at Cabinet:**

- a. Decision ref no. CAB 51.4/15 – Arena island site grant in kind & Cattle Market Road site acquisition (Cabinet date – 7 April 2015)**
- b. Decision ref no. CAB 8.6/15 – Waste services contract & the future discharge of the Council's waste collection function arrangements (Cabinet date – 11 June 2015)**
- c. Decision ref no. CAB 12.7.15 – Establishment and trading of an Energy and Technology Company (Cabinet date – 6 July 2015)**
- d. Decision ref no. CAB 13.7/15 – Funding for Weir House and affordable housing in Hillfields ward (Cabinet date – 6 July 2015)**
- e. Decision ref no. CAB 18.8/15 - Capital funding for Enterprise Zone property purchases (Cabinet date – 4 August 2015)**
- f. Decision ref no. CAB 23.9/15 – Appointment of Executive Directors to Bristol Technology and Energy (Supply) Limited (Cabinet date – 1 September 2015)**

## Background

1. The principle of call-in of executive decisions is firmly embedded within the Council's constitution (Overview and Scrutiny procedure rules).
2. In general, subject to the prescribed constitutional criteria being met, and the relevant procedure being followed, all executive decisions taken by the Mayor at Cabinet are potentially subject to the call-in procedure.
3. The constitution does provide (under Overview and Scrutiny procedure rule 17j) (OSR17j), however, for the call-in procedure not to apply in circumstances where an urgent decision needs to be taken by the executive, and where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. In these circumstances, the Head of Paid Service and the Monitoring Office must agree, in consultation with the Mayor, taking into account all relevant circumstances, that it is reasonable for the call-in procedure to not apply.
4. The constitution also requires that such exceptions to the call-in procedure are reported to the Full Council for information.
5. This report provides details of recent exceptions and the reasons for urgency.

## Exceptions to call-in procedure:

### a. **Decision ref no. CAB 51.4/15 – Arena island site grant in kind & Cattle Market Road site acquisition**

6. At the Cabinet meeting held on 7 April 2015, the Mayor took the following decision:
  1. *To accept the DCLG grant in kind of £5.425m of capital funds to finance the transfer of Arena Island including 1- 9 Bath Road from the ownership of the Homes and Communities Agency to Bristol City Council. This in turn will enable Bristol City Council to divert funds that would have been otherwise used to purchase Arena Island site for the acquisition of the Cattle Market Road site.*
  2. *To authorise the Strategic Director of Place (in consultation with the Service Director – Property) to commit to terms for grant in kind for*

*the purchase of Arena Island and, 1- 9 Bath Road and for the acquisition of the Cattle Market Road Site*

3. *The provision made within the Council's Capital Programme for the purchase price for land required for purchase of Arena Island to be reallocated for the acquisition of the Cattle Market Road site. Funds will be required summer 2015. This figure is not stated in this report as it is commercially sensitive.*

7. In taking the decision, the Mayor informed the Cabinet that in relation to this decision, in accordance with OSR 17(j), the City Director and Monitoring Officer, in consultation with himself, were satisfied that any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The call-in procedure would not apply to this particular decision on the basis that it needed to be implemented as a matter of urgency, the following factors being relevant: Negotiations with the owners of the Cattle Market Road site had been difficult, dealings with the public sector had previously come to nothing and there was current developer interest in this site. Any failure to exchange contracts at the earliest opportunity would mean that the negotiated purchase option was likely to be lost.

**b. Decision ref no. CAB 8.6/15 – Waste services contract & the future discharge of the Council's waste collection function arrangements**

8. At an Extraordinary Cabinet meeting held on 11 June 2015, the Mayor took the following decision:

*That the following be approved:*

1. *To bring the current contract between Bristol City Council and Kier MG Ltd (dated 15 July 2011) for the provision of waste services to an end on such terms as the City Director considers appropriate.*
2. *To carry out all actions required:*
  - a. *To establish a company (Bristol Waste Company), wholly owned and controlled by the City Council; and*
  - b. *For that company to provide the waste services to the Council for a period of at least 12 months (Bristol City Council entering into a contract with Bristol Waste Company to provide the waste services).*
3. *Once transferred, for Bristol City Council to consider the future options for the delivery of waste services.*

9. In taking the decision, the Mayor informed the Cabinet that in relation to this decision, in accordance with OSR 17(j), the City Director and Monitoring Officer, in consultation with himself, were satisfied that any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The call-in procedure would not apply to this particular decision on the basis that it needed to be implemented as a matter of urgency, the following factors being relevant:  
The need to ensure that the current contract was terminated as quickly as possible on terms considered appropriate by the City Director; to safeguard waste services provision and to enable work to begin as quickly as possible on establishing a company (Bristol Waste Company) wholly owned and controlled by the City Council.

Note: this particular meeting of the Cabinet was arranged as a matter of urgency and was held in exempt session. Given the circumstances, members of the Neighbourhoods Scrutiny Commission were given an opportunity to examine the exempt report (and were given an opportunity for a briefing) in advance of the Cabinet meeting. Arrangements were also made to formally adjourn the exempt session of the Cabinet meeting to enable the Mayor and Cabinet to hear the views of Neighbourhood Scrutiny Commission members on this matter and to enable commission members to ask questions relating to the proposal before the decision was taken.

**c. Decision ref no. CAB 12.7.15 – Establishment and trading of an Energy and Technology Company**

10. At the Cabinet meeting held on 6 July 2015, the Mayor took the following decision:

1. *That approval be given to the governance approach of Bristol Energy, the principal elements being:*
  - a. *The establishment of a shareholder's group consisting of the Mayor, the assistant Mayors, and two independent advisors, one specialising in ethics and the other in finance. The Chair of the Overview and Scrutiny Management committee will be an observer. The Chair of Bristol Energy will be chosen by the Shareholder.*
  - b. *The shareholder's group will review the operation of Bristol Energy from a shareholder's perspective, typically at the AGM in July and the annual business plan investment meeting in December.*



8. *That approval be given to recruit permanent staff to Bristol Energy.*
9. *That it be agreed that all council staff time and other appropriate resource spend in establishing the company will be loaned as a debt on the company's accounts to be repaid at commercial market rates.*
10. *That it be noted that the establishment of Bristol Energy is a principal key output of the ELENA programme.*
11. In taking the decision, the Mayor informed the Cabinet that in relation to this decision, in accordance with OSR 17(j), the City Director and Monitoring Officer, in consultation with himself, were satisfied that any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The call-in procedure would not apply to this particular decision on the basis that it needed to be implemented as a matter of urgency, the following factors being relevant: Any delay in implementing the decision could result in significant commercial / financial risk particularly in relation to:
  - recruitment of key staff.
  - additional costs which may need to be incurred.
  - potential alteration of the conditions for market entry, that could affect the financial position / viability of the company.

Note: Members of the OSM Board and Place Scrutiny Commission discussed this proposal at the OSM Board meeting on 26 June and were given an opportunity to examine the exempt appendix (detailed business plan relating to Bristol Energy) in advance of the Cabinet meeting.

At the Cabinet meeting, the Mayor and Cabinet members took into account a document setting out responses to issues raised by the OSM Board and by the Green Group, together with a document entitled "Legal rationale for energy company governance proposal", and an exempt document entitled "Supporting evidence and rationale for excluding call-in for the 'Establishment and trading of an Energy and Technology Company' Cabinet report." These documents were made available at the Cabinet meeting to those OSM Board and Place Scrutiny Commission members who attended the meeting (by invitation from the Mayor). Arrangements were also made to formally adjourn the relevant section of the Cabinet meeting to enable the Mayor and Cabinet to hear the views of OSM Board and Place Scrutiny Commission members on this matter and to enable those members to ask further questions relating to the proposal before the decision was taken.

**d. Decision ref. CAB 13.7/15 – Funding for Weir House and affordable housing in Hillfields ward**

12. At the Cabinet meeting held on 6 July 2015, the Mayor took the following decision:
1. *That a grant provision of up to £626,000 be made available from commuted sums or the enabling budget for affordable housing in the Hillfields ward.*
  2. *That approval be given to provide a grant of £750,000 for 30 flats to be made to Merlin Housing Association for a development at Weir House, Whitby Road.*
13. In taking the decision, the Mayor informed the Cabinet that in relation to this decision, in accordance with OSR 17(j), the City Director and Monitoring Officer, in consultation with himself, were satisfied that any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The call-in procedure would not apply to this particular decision on the basis that it needed to be implemented as a matter of urgency, the following factor being relevant:
- Merlin Housing Association must enter into a build contract with the developer by 31 July 2015.

**e. Decision ref. CAB 18.8/15 - Capital funding for Enterprise Zone property purchases**

14. At the Cabinet meeting held on 4 August 2015, the Mayor took the following decision:
1. *Agreement to the provision of up to £5,000,000 from capital to be available for the purchase of properties within the Bristol Temple Quarter Enterprise Zone.*
  2. *Authorisation to the Strategic Director: Place to approve purchase of specific properties within the Zone, even where the purchase price is in excess of £500,000 subject to remaining funds from the overall amount approved and subject to:*
    - a. *Briefing of the Mayor or Assistant Mayor for Place on the proposed property purchase including the relevance of control through ownership by the Council to contribute to the overall improvement of the regeneration and economic growth in the Zone.*

*b. Advice from the Service Director: Property recommending the terms proposed for the purchase.*

In taking the decision, the Mayor informed the Cabinet that in relation to this decision, in accordance with OSR 17(j), the City Director and Monitoring Officer, in consultation with himself, were satisfied that any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The call-in procedure would not apply to this particular decision because the opportunity to purchase these properties was of high importance in terms of the success of the overall development of the BTQEZ. In relation to a particular property, the direct commercial opportunity for the current owner of the property was in conflict with the need to retain flexibility as to the future use of the property whilst wider transport, access and regeneration planning was progressed. If the Council was to be able to protect this wider strategic position, it needed to be able to act with urgency.

**f. Decision ref. CAB 23.9/15 – Appointment of Executive Directors to Bristol Energy and Technology Services (Supply) Limited**

15. At the Cabinet meeting held on 1 September 2015, the Mayor took the following decision:

1. *That approval be given for the company to appoint as company directors and agree remuneration packages accordingly in respect of the:
  - a. *Managing Director; and*
  - b. *Finance Director*of Bristol Energy And Technology Services (Supply) Limited (registered company 09135084)*
2. *That the appointment of the City Director as a company director of Bristol Energy and Technology Services (Supply) Limited be confirmed.*

In taking the decision, the Mayor informed the Cabinet that in relation to this decision, in accordance with OSR 17(j), the City Director and Monitoring Officer, in consultation with himself, were satisfied that any delay caused by the call-in process would seriously prejudice the Council's or the public's interest. The call-in procedure would not apply to this particular decision due to the imperative need to recruit a high quality leadership team as soon as possible and bearing in mind the commercial sensitivity around these appointments.

Note: In taking the decision, the Mayor also advised that he had taken on board comments of the Shareholder Group which had met earlier that day and which included the Chair of Overview and Scrutiny Management Board as an informed observer.

**Note:** this report sets out details of exceptions made during the last 6 months. In future, any exceptions will be reported to the next available Full Council meeting.

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