

Meeting:	Cabinet
Meeting date:	Thursday 14 December 2017
Title of report:	Public Accountable Body for NMiTE
Report by:	Cabinet member finance, housing and corporate services

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

All Wards

Purpose and summary

To seek approval for the council to act as the accountable body for public funding allocated to the new Hereford university, NMiTE (new model in technology & engineering), during its establishment phase.

Accountable body status means that the council will be accountable for funding allocated to the new university project by central government. Accountability involves receiving funds from central government, ensuring those funds are allocated and spent in accordance with any funding

conditions specified, and providing reports on that expenditure.

The council has been approached by NMiTE to provide this role and, if approved, would work to support independence as soon as practical.

Recommendation(s)

That:

- (a) the responses to the recommendations of the general scrutiny committee at appendix 4 be approved;**
- (b) Herefordshire Council act as accountable body for public funding to support establishment of a new university in Hereford; and**
- (c) the chief finance officer be authorised, following consultation with the monitoring officer and cabinet member corporate strategy and budget, to complete such legal documentation as is appropriate to protect the council's interests and take all operational decisions necessary to implement the above recommendations.**

Alternative options

1. Not to act as accountable body for NMiTE. This is not recommended because, in the absence of an accountable body acceptable to the Department for education and the Marches Local Enterprise Partnership the funds are unlikely to be released and elements of the funding may be withdrawn if not used within the timescales specified by the funders.

Key considerations

2. On 26 October the Department for Education (DfE) announced up to £15m funding over three years to support the establishment of the new university in Hereford, NMiTE (New Model in Technology & Engineering). In addition to this funding, NMiTE is due to receive further funding, £8m, through the Marches Local Enterprise Partnership (LEP). The recommendation is for the council to act as the accountable body for the DfE funding announced and a project accountable body role in support of the Marches LEP funding.
3. NMiTE aims to become the first new 'greenfield' university in the UK for 30 years, addressing the growing need for engineering talent in sectors such as advanced manufacturing, artificial intelligence and cyber-security.
4. The funding relies on the meeting of a set of milestones and criteria and will be used to develop the faculty, campus and curriculum, creating a new institution.
5. NMiTE aims to take its first cohort of students in September 2020, with development cohorts in 2018 and 2019.
6. The council providing accountable body status involves making approved government funding will available to NMiTE on the basis of the project meeting specified milestones and criteria in order to satisfy that it is delivering value for money. This will be detailed in legal documentation that are appropriate to protect the Council's interests. As at the date of this report the Council has been presented with a memorandum of understanding (MOU) which is currently being constructed. The Council's legal services team are also recommending that there should be a legally binding funding agreement that the Council

enters into with the Department for Education, and a separate legally binding 'flow-down' agreement that the Council enters into with NMiTE. This document structure and the documents themselves need to be agreed with the Department and NMiTE but are likely to include:-

- a. Payment schedule
 - b. Agreed milestone evidence specification
 - c. NMiTE governance
 - d. Agreed formal change request procedure
 - e. NMiTE agreed monthly financial reporting template
7. By being the accountable body the council is required to ensure that funding is provided against the achievement of reaching agreed milestones as detailed in the MOU. The council will also be required to ensure funding is released to NMiTE in line with the agreed payment schedules. In addition the accountable body needs to be satisfied that:-
- a. expenditure is in line with the relevant financial and contract procedure rules, attached at appendix 1.
 - b. commitments are not made until income is secured.
 - c. effective systems for auditing and monitoring expenditure are established and maintained.
 - d. a proper audit trail is maintained with appropriate records and copy invoices for expenditure incurred and justifiable commitments to meet the needs of NMiTE to support the release of funds
 - e. all supporting records are maintained in line with the appropriate retention schedule.
8. The existing partnership agreement will be reviewed and revised as appropriate to reflect any change in roles and responsibilities and maintain effective partnership governance arrangements in accordance with our framework for partnership governance.

Community impact

9. Acting as accountable body will help support the establishment of NMiTE which will in effect support the council's corporate plan priorities of giving young people a great start in life and support the growth of our economy.
10. The opportunity of attending a new university in Hereford could also help to promote the life chances of those children we, as the council, are parents to.

Equality duty

11. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

12. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

13. The DfE grant funding, which comprises both capital and revenue funding, will only be released upon the reaching of agreed milestones as defined in the MOU. It is the accountable bodies' role to provide this assurance. The MOU sets out the financial arrangements which have been agreed to support the central Government Section 31 Grant funding of New Model in Technology & Engineering.
14. The funding will be received through a section 31 grant of the Local Government Act 2003 which enables a grant to be paid to the council on terms as determined. The associated terms will be shared following reaching agreement on the joint MOU.
15. The LEP grant funding, which is capital funding, will only be released upon NMiTE demonstrating that it has incurred qualifying capital expenditure i.e. the money has been spent on capital items. The project accountable bodies' role is to provide this assurance to the Marches LEP.
16. Use of funds will be in accordance with HM Treasury's guidance entitled 'Managing Public Money' which can be accessed via the following link <https://www.gov.uk/government/publications/managing-public-money>
17. No council funds will be payable to NMiTE however the management of the flow of funds between the accountable body and NMiTE and the discharging of the obligations of being an Accountable Body and project Accountable Body will require resourcing. The cost of resourcing these additional operational tasks is to be financed from a share of the grant allocation.
18. Accountable body status only applies to the grant funding stream, private funding to NMiTE would be managed directly by NMiTE and be visible to the council on the cashflow documentation, included at appendix 2

Legal implications

19. The grant funding is to be transferred to the council by the Department for Education under section 31 of the Local Government Act 2003, which confers upon a Minister of the Crown the power to pay a grant to a local authority in England towards expenditure incurred or to be incurred by it. The amount of a grant, the manner of its payment and the conditions attaching to it are to be such as the Department may determine; these conditions may, in particular, include provisions as to the use of the grant and provisions as to circumstances in which the whole or part of the grant must be repaid. It will be apparent that the council may have limited scope to negotiate the terms of this grant. However, the council will ensure that the provisions of the grant are 'flowed-down' to NMiTE under a separate legally binding agreement that is to be entered into with them. This will similarly address matters such as amount of a grant, the manner of its payment and the conditions attaching to it, including its use and repayment by NMiTE. The memorandum of understanding which has been presented to the Council is a three-way agreement that is to be entered into between the Council, the Department for Education

and NMiTE. It is expressed not to be legally binding and accordingly will need to refer to and reflect the terms of the two funding agreements that the council will enter into.

20. Similar agreements will be entered into in respect of the Marches Local Enterprise Partnership funding.
21. There is no formal legal status of, nor responsibilities flowing from, the council being a 'publically accountable body' in receipt of the grant funding. However, the council's general duties relating to the use of public money and expenditure would continue to apply, In addition, the s31 terms need to be observed. The council will need to ensure that these terms are flowed down to and are observed by NMiTE.
22. The council does not have a duty to enter into these arrangements but it has the power to do so under Section 1 of the Localism Act 2011 which confers upon the council a power to do anything that individuals generally may do (the general power of competence); any pre-commencement restrictions or post-commencement limitations which would apply to the exercise of this power have been identified.

Risk management

23. The legal documentation will clarify the risks of entering this arrangement. Ultimately the Department for Education could require the Council to repay the grant funding that it has received and which it will have paid to NMiTE. Whilst this obligation will also be passed down to NMiTE through the flow-down agreement, it is possible that NMiTE would not be able to make any required repayment, which would therefore leave the Council out of pocket. The risk of any claw-back can be managed/mitigated by ensuring compliance with the grant funding terms through the monitoring and reporting obligations that will be put in place.
24. In addition the council needs to be aware that if ineligible expenditure is incurred by NMiTE this would not be covered by the grant and could therefore cause a cashflow concern to NMiTE which may lead to a reputational risk.
25. These risks will be identified and monitored within the corporate finance risk register.
26. The draft MoU has a right for the Council, the Department for Education and NMiTE to terminate on giving not less than three months' notice. However, this document is not expressed to be legally binding and appropriate rights of termination will need to be included in the legally binding funding agreements that will also be entered into

Consultees

27. The proposals are scheduled for consideration by general Scrutiny Committee at its meeting on 11 December. Any recommendations of the committee, and the proposed response to those recommendations, will be published as a supplement to the agenda as soon as available.

Appendices

- Appendix 1 NMiTE control procedures
- Appendix 2 NMiTE cashflow
- Appendix 3 Presentation

Appendix 4 recommendations from general scrutiny committee and proposed responses
(to follow as a supplement)

Background papers

None identified