

<b>DECISION-MAKER:</b>	CABINET COUNCIL
<b>SUBJECT:</b>	GENERAL FUND REVENUE BUDGET 2012/13 TO 2014/15
<b>DATE OF DECISION:</b>	6 FEBRUARY 2012 15 FEBRUARY 2012
<b>REPORT OF:</b>	CABINET MEMBER FOR RESOURCES, LEISURE AND CULTURE
<b>STATEMENT OF CONFIDENTIALITY</b>	
N/A	

## **BRIEF SUMMARY**

The purpose of this report is to set out the latest estimated overall financial position on the General Fund Revenue Budget for 2012/13 and to outline the main issues that need to be addressed in considering the Cabinet's recommendations to Council on 15 February 2012.

## **RECOMMENDATIONS:**

### **CABINET**

#### **It is recommended that Cabinet:**

- (a) Note the position on the estimated outturn and revised budget for 2011/12 as set out in paragraphs 9 to 18.
- (b) Approve that the Executive Director for Health & Adult Social Care enter into an agreement with NHS Southampton City (NHSSC) under section 256 National Health Act 2006 for a period of two years from 1 April 2011 to transfer a budget to the Council to spend on both services that benefit health and for post discharge services / reablement, as directed within the Local Government Finance Settlement announced on 13 December 2010. The sums to be transferred by NHSSC will be £3.8M and an estimated £4.4M in 2011/12 and 2012/13 respectively.
- (c) Delegate authority to the Executive Director for Health & Adult Social Care, in consultation with the Chief Financial Officer and the Head of Legal, HR & Democratic Services, to extend, renegotiate, or enter into any further agreements with NHSSC in relation to any funding streams allocated to NHSSC, or successor body, with the specific purpose of being transferred to the Local Authority under a S256 arrangement and add any such sums to the budget.
- (d) Note the position on the forecast roll forward budget for 2012/13 as set out in paragraphs 23 to 35.

- (e) Note and approve the arrangements made by the Leader, in accordance with the Local Government Act 2000, for the Cabinet Member for Resources, Leisure & Culture to have responsibility for financial management and budgetary policies and strategies, and that the Cabinet Member for Resources, Leisure & Culture will in, accordance with the Budget & Policy Framework Rules as set out in the Council's Constitution, be authorised accordingly to finalise the Executive's proposals in respect of the Budget for 2012/13, in consultation with the Leader, for submission to Full Council on 15 February 2012.
- (f) Recommends that Full Council
  - i) Notes the Consultation process that was followed as outlined in Appendix 1.
  - ii) Notes the Equality Impact Assessment process that was followed as outlined in Appendix 2
  - iii) Approves the revised estimate for 2011/12 as set out in Appendix 3.
  - iv) Approves the use of £563,000 of in year under spend to increase the Interest Equalisation Reserve in 2011/12 to ensure that adequate provision is made for the future increase in interest costs associated with the ongoing utilisation of variable interest rates.
  - v) Notes the position on the forecast roll forward budget for 2012/13 as set out in paragraphs 23 to 35.
  - vi) Approves the revenue bids set out in Appendix 4.
  - vii) Approves the efficiencies, income and service reductions as set out in Appendix 5.
  - viii) Approves the setting up of a Pay Reserve, as set out in paragraph 63.
  - ix) Approves the changes to the discretionary redundancy policy as set out in paragraphs 65 to 72.
  - x) Notes the position of the current negotiations with Trade Unions with respect to Terms & Conditions changes implemented on 11 July.as set out in paragraphs 55 to 64
  - xi) Agrees to accept the one off Council Tax freeze grant funding for 2012/13 of £2.1M
  - xii) Approves the General Fund Revenue Budget as set out in Appendix 6, which implements a council tax freeze.
  - xiii) Delegates authority to the Chief Financial Officer to action all budget changes arising from the approved pressures, bids, efficiencies, income and service reductions and incorporate any other approved amendments into the General Fund estimates.
  - xiv) Approves a revised minimum balance of £5.0M as recommended by the Chief Financial Officer in line with the policy guidance outlined in paragraphs 81 to 83.

- xv) Notes that after taking these items into account, there is an estimated General Fund balance of £5.1M at the end of 2013/14 as detailed in paragraph 84.
- xvi) Delegates authority to the Chief Financial Officer, in consultation with the Executive Director of Corporate Services, to do anything necessary to give effect to the recommendations in this report.
- xvii) Sets the Council Tax Requirement for 2012/13 at £83,205,500.
- xviii) Notes the estimates of precepts on the Council Tax collection fund for 2012/13 as set out in Appendix 8
- xix) Notes the Medium Term Forecast as set out in Appendix 9.
- xx) Authorises the Chief Executive and Chief Officers to pursue the development of the options for efficiencies, income and service reductions as set out in Appendix 5 for the financial years 2013/14 and 2014/15 and continue to develop options to close the remaining projected gaps in those years.

## **COUNCIL**

### **It is recommended that Council:**

- i) Notes the Consultation process that was followed as outlined in Appendix 1.
- ii) Notes the Equality Impact Assessment process that was followed as outlined in Appendix 2
- iii) Approves the revised estimate for 2011/12 as set out in Appendix 3.
- iv) Approves the use of £563,000 of in year under spend to increase the Interest Equalisation Reserve in 2011/12 to ensure that adequate provision is made for the future increase in interest costs associated with the ongoing utilisation of variable interest rates.
- v) Notes the position on the forecast roll forward budget for 2012/13 as set out in paragraphs 23 to 35.
- vi) Approves the revenue bids set out in Appendix 4.
- vii) Approves the efficiencies, income and service reductions as set out in Appendix 5.
- viii) Approves the setting up of a Pay Reserve, as set out in paragraph 63.
- ix) Approves the changes to the discretionary redundancy policy as set out in paragraphs 65 to 72.
- x) Notes the position of the current negotiations with Trade Unions with respect to Terms & Conditions changes implemented on 11 July as set out in paragraphs 55 to 64
- xi) Agrees to accept the one off Council Tax freeze grant funding for 2012/13 of £2.1M
- xii) Approves the General Fund Revenue Budget as set out in Appendix 6, which implements a council tax freeze.

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- xiv) Approves a revised minimum balance of £5.0M as recommended by the Chief Financial Officer in line with the policy guidance outlined in paragraphs 81 to 83.
- xv) Notes that after taking these items into account, there is an estimated General Fund balance of £5.1M at the end of 2013/14 as detailed in paragraph 84.
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- xvii) Sets the Council Tax Requirement for 2012/13 at £83,205,500.
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- xix) Notes the Medium Term Forecast as set out in Appendix 9.
- xx) Authorises the Chief Executive and Chief Officers to pursue the development of the options for efficiencies, income and service reductions as set out in Appendix 5 for the financial years 2013/14 and 2014/15 and continue to develop options to close the remaining projected gaps in those years.

## **REASONS FOR REPORT RECOMMENDATIONS**

1. The Constitution requires the Executive to recommend to Council on the 15 February 2012 its budget proposals for the forthcoming year. The recommendations contained in this report set out the various elements of the budget that need to be considered and addressed by the Cabinet in preparing the final papers that will be forwarded to Council.

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

2. Alternative options for revenue spending form an integral part of the development of the overall Budget Strategy that will be considered at the budget setting meeting on 15 February 2012. Alternative options may be drawn up by opposition groups and presented to the same meeting.

## **DETAIL (Including consultation carried out)**

### **CONSULTATION**

3. The draft proposals in the report presented to Cabinet on 24 October were published on 14 October in order to help facilitate widespread consultation with a range of stakeholders, including members of the public, affected organisations, the business community, staff and Trade Unions who were all invited to submit comments on the detailed proposals. More detail is provided in Appendix 1 on the methods used to consult with staff, residents and other stakeholders.

## **STAFF CONSULTATION**

4. The draft budget proposals were published on 14 October 2011 and this signalled the start of an extensive and ongoing consultation process with staff and Trade Unions which will continue until 6 February 2012. More detail is provided in Appendix 1 on the methods used to consult with staff and Trade Unions.

## **EQUALITY IMPACT ASSESSMENTS**

5. The Equality Duty is a duty on public bodies which came into force on 5 April 2011 and requires the Council to show that it has 'had regard' to the impact of its decisions on its equality duties and the need to advance equality of opportunity between people who have protected characteristics and those who do not. While the Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment (EIA), it does require public bodies to show how they considered the Equality Duty and that they have been consciously thinking about the aims of the Equality Duty as part of the process of decision-making. To comply with these requirements as well as the Community Safety legislation, the Council has used its existing Impact Assessment framework so that it can ensure the use of a consistent, council wide mechanism to evidence how decision making took into account equality and safety considerations.
6. Individual EIAs have been completed by Executive Directors and Senior Managers for those proposals contained in Appendix 5 that they identified require such an assessment. That is where it is felt that proposed savings could have an adverse impact on a particular group or individuals. The individual EIAs are available in Members' Rooms. An EIA in respect of the final proposals for changes to the discretionary redundancy scheme is being prepared and will be made available to Members prior to Council on 15 February 2012.
7. The individual EIAs have been analysed to consider the cumulative impacts the Council's budget proposals may have on particular groups and the mitigating actions that could be considered. The first draft was made available after the publication of the Executive's draft budget proposals on 14 October 2011 and a summary of the key potential cumulative impacts and the mitigating actions to be considered by the Council are detailed in Appendix 2.
8. In order to give the right perspective to the budget proposals, the Cumulative Impact Assessments have to be considered in light of the available information on the City's profile, service user and non-user information and staffing profiles as well as the proportion of the council's budget that is currently spent on targeted groups or communities. Further details on the updated Cumulative Impact Assessments are available in Members' Rooms.

## ESTIMATED OUTTURN AND REVISED BUDGET 2011/12

9. This report is concerned mainly with the revenue estimates for 2012/13. However, there are elements of the 2011/12 estimated outturn that will have an impact on the overall financial position. The planned draws from balances in the year have been reflected in the balances position shown in this report and take into account the overall financial position highlighted in the Corporate Monitoring report for the nine months ending December 2011.
10. The original revenue estimates for 2011/12 assumed a general addition would be made to balances of just over £1.7M. After reflecting the revised forecast position from Month 9, this addition increases by £141,000 to almost £1.9M as show in Appendix 3. The table below summarises the main changes:

	£000's
Increase in cost of Levies & Contributions	(60.7)
Decrease in Net Interest Paid	1,561.0
Contribution to Interest Equalisation Reserve	(563.0)
Exceptional Items	2,802.0
Corporate Savings	(1,786.0)
Contributions to Capital DRF Funding	(1,045.0)
Other Expenditure & Income	(767.3)
<b>Increase in Addition to Balances</b>	<b>141.0</b>

11. **Increase in Levies & Contributions**  
Additional charges have been incurred from Hampshire County Council for the provision of the Coroner's Service and it is estimated that the full year impact of this will be an over spend of £65,000, although this will be partially offset by small under spends on other levies and contributions. The Council bears a proportion of the cost of this service based on caseload statistics and this has increased above the estimated levels for 2011/12.
12. **Decrease in Net Interest Paid**  
Net interest payable is forecast to be below that originally estimated by £1.6M as a result of lower than anticipated borrowing costs. This has been as a consequence of lower borrowing levels due to slippage in the Capital Programme and also the fact that we have borrowed at lower rates than originally estimated. Lower rates have been achieved through a conscious decision to continue to utilise short term variable rate debt which remains available at lower rates than long term fixed rate debt due to the depressed market. The prediction based on all of the economic data available is that interest rates will remain lower for a sustained period of time and that this situation will therefore continue into 2012/13 and beyond.

13. **Contribution to Interest Equalisation Reserve**

In achieving interest rate savings, the Council has exposed itself to short term variable interest rate risk and whilst in the current climate of low interest rates this is obviously a sound strategy, at some point when the market starts to move the Council will need to act quickly to lock into fixed long term rates which may be at similar levels to the debt it has restructured. Furthermore, the volatility in the financial markets means that interest costs and investment income will continue to fluctuate for some time.

14. It was therefore recommended in the February 2009 Treasury Management Strategy report to Full Council that an Interest Equalisation Reserve be created from the savings arising from the switch to lower rate variable interest rate debt, and maintained at a prudent level to help to manage volatility in the future and ensure that there is minimal impact on annual budget decisions. It is recommended that an additional £0.5M is added to the Interest Equalisation Reserve in 2011/12 to ensure that adequate provision is made for the future increase in interest costs associated with the ongoing utilisation of variable interest rates.

15. However, it should be noted that the sum set aside in the Interest Equalisation Reserve is a one off sum of money to help manage the initial transitional period during which the council will convert its variable rate loan portfolio to longer term fixed rate debt. The actual ongoing recurring revenue impact of switching to fixed rate long term debt will still need to be factored in to the budget forecasts for future years. Based on the current predictions of lower for longer interest rate forecasts, it is unlikely that this pressure will emerge in the short term, but it is likely to become a reality towards the back end of the Council's current medium term forecast horizon.

16. **Exceptional Items**

As a result of the combination of two separate items a favourable variance of £2.8M has arisen which has partially been used to fund additions to the capital programme. The items are:

- Supporting People – In previous years this ring-fenced grant was not fully spent despite service plans being fully delivered and the balance was held separately for use in future years. This grant totalling £1.34M is no longer ring fenced and as such is available to use within the General Fund.
- Reduced Street Lighting PFI Payments – During the early stages of the PFI contract the Council is to receive 'service deductions' in view of the fact that the contractor will need time to undertake work to install new columns. These deductions are currently estimated to be £1.46M in 2011/12.

17. **Corporate Savings**

There has been slippage in the achievement of a number of the saving proposals to be delivered in 2011/12 resulting in an adverse forecast variance of £1.8M as follows:

- Delayed implementation of the changes to Terms & Conditions – When the budget was set in February an implementation date of 1 April was assumed on the basis that a collective agreement was still possible. The implementation date achieved was delayed as no collective agreement was reached with the Trade Unions, meaning that a notice period of three months was required. As a consequence, the changes were not implemented until 11 July resulting in a reduction in the saving to be achieved in 2011/12 of £1.3M.
- HMRC Mileage Rate – The changes to Terms & Conditions included a reduction in mileage rates to match the HMRC rate. This rate was 40p but shortly after the budget decision HMRC increased it to 45p which reduced the saving to be achieved in 2011/12 by £27,000. The full year impact of this is £107,800 and this will be reflected in the revised budget forecast position for future years.
- Management Restructure – As part of a range of measures designed to address the severe financial position facing Southampton City Council and reflect the wider significant changes to the public sector, the Chief Executive announced plans to implement a new organisation of Council services early in 2011/12. The plans are well underway and will deliver proposed savings in 2012/13 of approaching £1.0M. However, in 2011/12 the originally estimated implementation timescale has been revised resulting in an in year adverse variance of £443,000. Savings that accrue within 2011/12 will be included within Portfolio forecasts due to the fact that the changes are being managed locally taking into account service needs.

18. **Contribution to Capital DRF Funding**

Additions to the capital programme to the value of just over £1.0M were included in the in the Capital Programme Update report approved by Council on 14 September 2011 to be funded from the savings set out in paragraph 16.

**TRANSFER OF FUNDING**

19. As part of the Local Government finance settlement in December 2010 it was announced that an additional £648M in 2011/12 and £622M in 2012/13 had been made available nationally to Primary Care Trusts (PCT's) for spending on social care services that also benefit the NHS. This funding must be transferred to Local Authorities under section 256 of the National Health Service Act 2006 to be spent on services to improve the overall health gain. NHS Southampton City, (NHSSC) have been allocated the sum of £3.1M for 2011/12 and just under £3.0M for 2012/13.



20. In addition it was announced that PCT's would also receive further funding of £150M in 2011/12 and £300M in 2012/13 for post discharge services / re-ablement. NHSSC have been allocated the sum of £703,000 for 2011/12 and an estimated £1.4M for 2012/13. This funding is to be used by PCT's in conjunction with local partners. There is not an obligation to transfer the funding to Local Authorities. However, upon agreement with NHSSC it is proposed that the entire sum of £703,000 is also included within the S256 agreement for 2011/12 and potentially £1.4M for 2012/13. In February 2011 it was requested and approved by Cabinet to enter into a S256 agreement for the sum of £3.1M. This has been brought back to Cabinet as it is now planned to add the sum of £703,000 for post discharge services / re-ablement to the agreement in 2011/12.
21. The allocation of additional funding by the Department of Health for Adult Social Care is increasingly being made through PCT's who are required to transfer the funds to Local Authorities under section 256 of the National Health Act 2006. For example, on 3 January 2012 it was announced by the Department of Health that a national allocation of £150M had been made available to PCT's for spending on social care services that also benefit the NHS during the 2011/12 winter period. NHSSC have been allocated the sum of £717,300. As required a spending plan totalling £717,300 has been agreed with colleagues within the PCT and the Executive Director for Adult Social Care & Health and is already being enacted upon to maximise the benefit to Southampton clients in 2011/12. The contractual arrangements to support the transfer will be made through the later addition of this sum to the S256 agreement for which approval is being sought.
22. For the Council to be able to respond effectively to the contractual and budgetary changes arising from any changes in, or future funding of this specific nature, it is proposed within this report that the Executive Director for Adult Social Care & Health, in consultation with Chief Financial Officer (CFO) and the Head of Legal, HR & Democratic Services, is given authority to act without any further approval by Cabinet, including adding any such sums to the budget.

#### **FORECAST ROLL FORWARD BUDGET 2012/13**

23. The report to Cabinet on 24 October 2011 identified a roll forward gap for 2012/13 of £15.2M before any further revenue developments, pressures or savings were taken into account. This figure has now been updated to reflect changes in the overall position since this date, including the outcome of the provisional Local Government Finance Settlement and changes highlighted in the Consultation Report. The revised roll forward gap is £13.8M, and the reasons which underpin this revised position are set out below.
24. **Provisional Local Government Settlement**  
The provisional Local Government Finance Settlement for 2012/13 was received on 8 December 2011. The provisional settlement position after also allowing for the impact of grants transferring into formula grant improved by £0.9M compared to that previously used for planning purposes and reported in October.

25. The Comprehensive Spending Review (CSR) announcement in October 2010 and the provisional Local Government Finance Settlement in December 2011 have confirmed that spending reductions on the scale planned are necessary to meet the actual reductions in Government grant that have now been announced. The grant settlement covered the two year period 2011/12 and 2012/13 and the Council's loss of formula grant is 10.1% and 6.6% in the two years respectively.
26. Though the CSR covers the four year period to 2014/15, the Government proposes to carry out a review of grant distribution arrangements prior to 2013/14; therefore the Government grant payable to the Council in 2013/14 and 2014/15 is uncertain. For the purposes of maintaining a three year planning horizon, a medium term financial plan covering the period beyond 2013/14 has been developed based on a further year on year reduction in funding of 7%. In addition, a reduction of 7% has also been assumed in all non-ring fenced grants per annum.
27. The final Local Government Finance Settlement has not been received prior to the publication of this report, but any changes resulting from the final settlement will be taken into account in a revised budget proposal for the Council meeting on 15 February. In addition, announcements in relation to a small number of grant funding streams are also still awaited and Officers will continue to review the impact of any grant cuts with a view to passing on the reduction where the grant supports other organisations spending or reducing expenditure where the funding is used to provide City Council services. In the event that this is not possible then a contingency has been provided for in the budget of £0.4M, which is an increase of £150,000 compared to the position presented in October and which can be drawn on if deemed necessary.
28. **Council Tax Base**  
The council tax base for 2012/13 has been set at 67,144 properties using delegated powers granted by Council on 17 January 2007, which has increased the tax base and leads to additional income of £0.3M over and above that previously assumed in October.
29. **Collection Fund Surplus**  
The estimated Collection Fund surplus at the end of 2011/12 was set at £254,100 for the purposes of the original forecast for 2012/13. Collection rates during the year have maintained, the bad debt provision has been reduced and there has been a continued review of exemptions and eligibility for discounts. As a consequence of these factors, the latest estimate of the surplus has increased by £119,100.
30. **The Risk Fund**  
The Risk Fund has been increased by £1.1M for 2012/13 which reflects provision for new risks. These relate to the provision of funding for early education places for two year olds, the timing and speed of take up of which is uncertain, and a reduction in income from schools for repairs and maintenance.
31. **Reduction in Net Interest Payable**

Since October changes have been made to a number of key variables which impact the forecast of net interest payable. These include changes as a result of the Capital Programme update which is to be presented to Council on 15 February, an updated assessment of the outlook for interest rates and an assumption that in year borrowing will be based on taking further short term variable rate debt which remains available at lower rates than long term fixed rate debt due to the depressed market

32. **Detailed Estimates Changes**

Other changes in the detailed estimates submitted by Portfolios and Trading Areas have also been reflected in the revised roll forward figures and show a favourable variance of £947,800. This favourable movement is mainly due to a contribution from the On-Street Parking Reserve towards highways capital expenditure which enables a saving to be made in the level of general fund direct revenue financing whilst maintaining the overall level of capital investment.

33. **Addition to Balances**

The forecast position currently allows for a contribution to be made to balances of £864,000 which is £57,000 more than assumed in October, and which can be used in future years.

34. The table below shows these net changes in the overall forecast position:

	<b>£000's</b>
<b>Forecast Deficit in October Cabinet Papers</b>	<b>15,240.1</b>
Net Impact of Provisional Local Government Finance Settlement	(891.1)
Increase in Contingency	150.0
Improved Council Tax Base	(309.7)
Collection Fund Surplus	(119.1)
Increased Risk Fund	1,100.0
Reduction in Net Interest Payable	(467.4)
Detailed Estimate Changes	(947.8)
Addition to Balances	57.0
<b>Revised Forecast Deficit</b>	<b>13,812.0</b>

35. This position shown in the table above represents the 'base' position from which all three political groups may develop their own budgets taking into account the proposals for new spending and savings options put forward by Officers. The specific proposals in this report as set out in the appendices and outlined in the following paragraphs represent the Executive's budget proposals for 2012/13.

## **RISK BASED CONTINGENCY FUND**

36. In 2008/09 the Council established the Risk Fund as a financial planning mechanism to manage volatile risks within the budget. The Risk Fund includes a number of pressures which are volatile in nature, and which cannot be forecast accurately until data is collected during the financial year on the level of activity and costs (for example increasing numbers of older persons affecting care budgets).
37. The establishment of the Risk Fund means that not all the funding set aside to cover the estimated implications of pressures is allocated to Portfolios prior to the start of the financial year, but is retained centrally. The individual items retained within the Risk Fund are also risk adjusted, to reflect the fact that not all the volatile pressures will fully materialise during the year.
38. A sum of £6.3M is included in the budget for 2012/13, (an increase of £1.1M compared to the draft position presented to Cabinet in October 2011), to cover these pressures and will only be released during the year if evidence is provided to substantiate the additional expenditure against the specific items identified.
39. It should be noted that the issues covered by the Risk Fund represent real rather than speculative risk, and that in the current year (2011/12) there is only likely to be a small under spend against the Fund.

#### **REVENUE PRESSURES**

40. Part of the Budget process each year also looks at unavoidable pressures on services that will have a financial impact, many of which are outside of the control of the service itself. Examples of these would be contractual changes, which have a direct impact on costs (e.g. increase in service specification), legislative changes such as new functions and standards, or areas where the current budget simply does not reflect the level of activity within the service. No new pressures have been identified for 2012/13 which services have not been able to manage outside of the Risk Fund mechanism.

#### **REVENUE DEVELOPMENTS**

41. Each political group also has the opportunity to put forward new proposals for spending as part of the budget process which reflect their priorities for service provision. No new proposals have been included for 2012/13.

#### **REVENUE BIDS**

42. Services were also invited to put forward a series of bids in order to fund new spending initiatives. Unlike pressures, which are unavoidable, there is an element of choice in deciding whether to proceed or not with these items. The bids have been reviewed and the proposals for new expenditure put forward by the Executive total £30,000 in 2012/13. These are detailed in Appendix 4.

#### **EFFICIENCIES, INCOME AND SERVICE REDUCTIONS**

43. For the purposes of considering an overall budget package, it should be noted that the roll forward budget includes a 3% vacancy factor built in to all salary budgets as well as the ongoing effects of savings identified in previous budget rounds.
44. The 24 October Cabinet report set out draft budget proposals for consultation and at that point included efficiencies, income generation and service reductions to the value of just over £13.7M. This level of savings went most of the way towards bridging the revised budget gap which at that point in time was just over £15.2M. The changes set out in paragraph 34 reduced this gap to £13.8M, and this is the level of savings therefore required to balance the draft budget for 2012/13 at an assumed council tax increase of zero. This also allows for the receipt of one-off central government grant funding to 'reimburse' the Council for the loss of 2.5% of additional council tax income forgone through freezing council tax in 2012/13.
45. In arriving at this position a number of one off funding sources have been utilised which total almost £3.4M. These include contractual savings from the Street Lighting PFI project (£1.1M) and the utilisation of the New Homes Bonus for both 2011/12 and 2012/13 (£2.3M). These one off elements, whilst serving to reduce the gap in 2012/13, by their very nature do not impact on the medium term financial position.
46. In terms of closing the £13.8M shortfall and setting a balanced budget, the Executive's recommendations for efficiencies, income generation and service reductions now total over £12.8M and are set out in detail in Appendix 5. The remaining budget shortfall will be met from the proposed changes to the discretionary redundancy scheme, which are estimated to achieve a saving of £1.0M.

#### **STAFFING IMPLICATIONS**

47. The City Council employs more than 3,800 FTE of non school staff of which approaching 3,000 FTEs are funded by the General Fund, and staffing costs constitute a significant element of overall expenditure. Given that this is the case, it is inevitable that when the Council is faced with such a significant funding shortfall, that the savings proposals put forward by the Council will have an impact on staff cost and staff numbers.
48. Aware of this fact, the Council has continued to have in place a carefully planned approach to recruitment, ensuring that vacant posts have only been recruited to where absolutely necessary.
49. This proactive approach has meant that the Council has been able to hold a significant number of posts vacant which can now be deleted in order to make savings as part of the budget process. The deletion of vacant posts reduces the impact on staff in post and reduces the actual number of employees who will be made redundant.
50. Based on the savings proposals contained in this budget report 202.90 FTE posts are affected of which 103.85 are currently vacant and 99.05 are in post

and are at risk of redundancy. The FTE at risk of redundancy represents less than 3.0% of the overall FTEs employed and is 8.69 FTE lower than the figure anticipated in October.

51. Through the consultation process the Executive have been keen to explore all avenues with the Trade Unions and staff to identify wherever possible alternative options for delivering savings, in order that the level of proposed staffing reductions and redundancies can be reduced. The consultation has been extended to 6 February and any changes made after publication of this report will be highlighted to Council on 15 February 2012.
52. The Executive will also continue to ensure that impacted staff are aware of all the available options which can be used to avoid compulsory redundancies and this will include:
  - Early retirement,
  - Flexible retirement,
  - Voluntary redundancy and
  - Reduced hours.
53. In addition, the City Council has an excellent past record of using its redeployment policies to minimise any compulsory redundancies arising out of the budget proposals, and the Executive will seek to strengthen the support for employees who find themselves on the redeployment register as a result of savings implemented as part of the 2012/13 budget.
54. Moving forward, the Executive remain committed to minimising job losses within the Council, and this is reflected in the proposals to reduce redundancy costs in order to further minimise the impact on jobs in 2012/13 and beyond

#### **TERMS AND CONDITIONS CHANGES**

55. The scale of the reductions in local government funding has meant that the Council has been forced to look at radical options for reducing expenditure across services.
56. The Executive made it clear as part of the implementation of the 2011/12 budget that protecting front line services, and hence jobs, was a key priority. It was for that reason that the Executive's budget proposals for 2011/12, as implemented by Full Council, included a number of changes to staff terms and conditions, in order that employment costs could be reduced in lieu of further job losses. A commitment has been given by this Executive that no further changes to terms and conditions will be sought for the purpose of budget savings during this Administration, with the exception of changes to terms and conditions arising from non-budgetary matters, (for example to reflect legislative requirements).
57. Whilst implementation of the changes to Terms and Conditions came into effect on the 11 July 2011, this was without collective agreement with the Trade Unions, which as a consequence has led to a sustained period of industrial action.
58. Since the 11 July 2011, the Executive has put forward a number of proposals to the Trade Unions to reduce the impact of the changes to terms and conditions,

with an emphasis on further protecting the lower paid from the impact of the changes.

59. However, a negotiated settlement has not been reached. A final offer was made to the Trade Unions which the Trade Unions publicly acknowledged was the best offer that could be achieved through negotiation. This final offer was put to union members via a secret ballot. The Unison union made no recommendation to its members as to whether to accept or reject the final offer, whilst the Unite union recommended that its members reject the final offer. Following the ballot process, each of the recognised Trade Unions confirmed that their members had rejected the Executive's final offer.

60. The Executive's final offer would have meant that :

- There would have been no pay reduction for any employee earning a basic equivalent pay of £22,000 or less (instead of a 2% pay reduction).
- There would have been a pay reduction of 2% for any employees on APT& C spinal column point 26 (a basic equivalent pay of £22,221) instead of 4.5%.
- Employees earning a basic equivalent pay between £22,222 and £35,000 would have received a pay reduction of 4% (instead of 4.5%).
- Employees earning a basic equivalent pay between £35,001 and £65,000 would have received a pay reduction of 4.5% (Instead of 5%).
- Employees earning in excess of a basic equivalent pay of £65,000 would have received a pay reduction of 5% (Instead of 5.5%).

The Executive's final offer was predicated on the Trade Unions withdrawing their collective employment tribunal claims, which the Trade Unions have so far refused to do. The Executive made it clear that given the Council's overall financial position, which at the time was a three year financial shortfall of £54M, that:

- There was no further funding available to improve the final offer.
- It would make no financial sense to put forward proposals to reduce the impact of the changes to terms and condition if the Trade Unions were going to proceed to employment tribunal and thus potentially put the Council's financial position at further risk in any event.
- If any award was made against the Council, then given the Council's budget shortfall, any award would almost inevitably impact on jobs, as there is no funding available to meet any award.

61. On the basis that the Executive's final offer has been rejected by the Trade Unions, and with the Trade Unions continuing to proceed with their

employment tribunal claims, the Executive have withdrawn this offer and now have no choice but to proceed with defending the claim made against the Council, and will seek to robustly defend it's position at the Tribunal. The Executive's final offer to the Trade Unions was made up of two distinct elements:

- £500,000 for market supplements for certain groups of front line social work staff.
- £670,000 to fund the reduction in the percentage pay reduction.

**62. Social Work Market Supplement**

The Executive committed to undertake a review of social workers pay, and in the interim agreed to fund a market supplement for certain groups of social workers in Children's Services. The estimated annual cost of paying market supplements for social workers in both Adult Social Care and Children's Services is £500,000. The outcome of the review is due shortly and at the present time the originally agreed market supplement remains in place. The Executive's budget proposal for next year includes an assumption that a market supplement will continue to be in place, and the proposed budget therefore includes £500,000 for this purpose.

**63. Reduction in Percentage Pay Reduction**

The cost of implementing the Executive's final offer to reduce the overall percentage pay reductions was estimated at £670,000 per annum on an ongoing basis. As the offer has been rejected and thus withdrawn, the Executive are recommending that £600,000 of this funding is now set aside in a Pay Reserve on a recurring basis to fund any costs, (including legal costs), arising from defending the Council's position at the employment tribunal.

64. Moving forward however, the Executive remains committed to reviewing Terms and Conditions in the future, if and when the Council's financial position improves.

**CHANGES TO THE DISCRETIONARY REDUNDANCY SCHEME**

65. The Executive has been clear that its priority is to protect jobs; however, as set out in the October report to Cabinet this position is undermined if the Authority is faced with redundancy costs which it cannot afford. Maintaining the current relatively generous scheme means that potentially more posts would have to be deleted in order to generate further savings to meet the cost of redundancies. Therefore, in order to protect jobs, the Cabinet believe that a reduced redundancy scheme which is affordable is an appropriate way of ensuring that services can be protected and consequently that the least number of posts are deleted as possible.

66. The Executive's draft budget therefore proposed that subject to consultation with the Trade Unions, the current redundancy scheme be replaced with a more affordable scheme. In reviewing options, the Executive are mindful of the need to develop a revised scheme which is fair but which does not pay excessive amounts.

67. The financial forecast represented by the 'base' position includes £5.0M in each of the next three financial years to cover the cost of redundancies and any associated pension costs based on the current scheme. The budget



proposed by the Executive reflects the impact of a revised redundancy scheme which the Executive anticipates will see costs reduced by a minimum of £1.0M per annum.

68. **Current Discretionary Severance Scheme**

The scheme at present, ignoring the in year enhancement for voluntary redundancies, is as follows:

***£ Actual weekly pay***

***X Statutory Weeks Payable (up to maximum of 30 weeks based on age and length of service)***

***X Discretionary multiplier of 1.6***

(The discretionary multiplier was enhanced to 2 for voluntary redundancies and it has been agreed to apply this to all staff whose employment with the Authority ends by 31 March 2012).

69. **Executive's Initial Proposed Discretionary Severance Scheme:**

The proposed scheme put forward for consultation with staff and the Trade Unions for both compulsory redundancy and voluntary redundancy was as follows:

***£ Actual weekly pay (capped at top of Grade 13)***

***X Statutory Weeks Payable (up to maximum of 30 weeks based on age and length of service)***

The proposed new scheme would have no discretionary multiplier.

70. **Trade Union's Proposed Discretionary Severance Scheme:**

The Trade Unions have put forward a revised proposal as follows for both compulsory and voluntary redundancy:

***£ Actual weekly pay (capped at top of Grade 10 – SCP 46)***

***X Statutory Weeks Payable (up to maximum of 30 weeks based on age and length of service)***

***X Discretionary multiplier of 1.5***

71. The Trade Unions alternative proposal has been modelled and does not deliver the £1.0M level of saving required as part of the 2012/13 budget. In addition, the proposal creates a differential position for individual employees on Grade 11, due to the overlap with Grade 10. This would mean that individuals undertaking the same roles would be subject to different redundancy packages. For these reasons the Executive is reluctantly unable to accept the Trade Unions' alternative proposal.

72. **Executive's Revised Proposed Discretionary Severance Scheme for Implementation from 1 April 2012:**

The Executive recognise that maintaining a differential between the

compulsory and voluntary redundancy payments is more likely to encourage individuals to come forward for a voluntary severance. On that basis, the Executive is recommending that Full Council implement the following revised discretionary severance policy:

Compulsory Redundancy:

**£ Actual weekly pay (capped at top of Grade 13)**

**X Statutory Weeks Payable** (up to maximum of 30 weeks based on age and length of service)

Voluntary Redundancy:

**£ Actual weekly pay (capped at top of Grade 13)**

**X Statutory Weeks Payable** (up to maximum of 30 weeks based on age and length of service)

**X Discretionary multiplier of 1.25**

This proposal will still ensure that the £1.0M saving target for a reduction in overall budgeted redundancy costs can be achieved.

**PROPOSED BUDGET PACKAGE**

73. Summarised below is the proposed budget package put forward by the Executive for consideration. The detailed analysis is reflected in the General Fund Revenue Account set out in Appendix 6 and shows the changes from the base position outlined in paragraph 34. The proposals are based on a Council Tax freeze and include a contribution from balances of £136,000.

	<b>£M</b>
<b>Total GF Spending (After Draw From Balances)</b>	<b>97,017.5</b>
Bids (Appendix 4)	30.0
Efficiencies, Income and Service Reductions (Appendix 5)	(12,842.0)
Changes to the Discretionary Redundancy Scheme	(1,000.0)
<b>Council Tax Requirement</b>	<b>83,202.5</b>

74. Any changes made to this proposed budget package, for example in response to the ongoing consultation with staff which has been extended to run until 6 February 2012, will be highlighted to Full Council on 15 February 2012.

**COUNCIL TAX**

75. The Executive are recommending a Council Tax freeze for 2012/13. The Council Tax Requirement shown in Appendix 6, which takes into account Government Grants and an assumed surplus on the collection fund at the end of 2011/12 of over £373,200, is the level of council tax required to provide a balanced budget for 2012/13. This is then divided by the council tax base set by the CFO, following consultation with the Cabinet Member for Resources, Leisure & Culture to give the basic amount of council tax for the year of £1,239.21, which is a zero percent increase. The full calculation is set out in

Appendix 7. The proposed Council Tax increase is zero, which would mean that the council tax payable per band would remain at the same level as for the current financial year if the Executive's recommendation on council tax is accepted by Full Council.

76. The estimates of the payments from the Collection Fund in the form of precepts for 2012/13 are set out in Appendix 8. This includes preliminary figures for the Police and Fire authorities, for whom proposed council tax increases of zero percent have been assumed. The Appendix therefore shows that when these items are added to Southampton's council tax, the overall increase remains at zero percent. These figures will not be confirmed until the budget setting day at Full Council on 15 February 2012.
77. The Executive is well aware of the impact of large Council Tax increases on households within the City. In previous years, the Conservative Group has adopted a policy of keeping proposed Council Tax as low as possible with the level last year being frozen.
78. This remains a key commitment of the Executive and the previously approved Older Persons council tax discount of 10% for households where all occupants are over 65 will be maintained, as will the 100% discount for Special Constables.
79. **Council Tax Freeze Grant**  
The Government announced in October that it will fund a further Council Tax freeze in 2012/13. It has been confirmed that this funding will take the form of a one off non-recurring grant payable in 2012/13 to those Authorities who implement a zero percent increase in Council Tax for that year. The grant receivable will represent additional funding equivalent to increasing Council Tax by 2.5% in 2012/13 and for Southampton, the level of additional funding is in the order of £2.1M and this has been reflected in the revenue position presented in Appendix 6.
80. In recommending to Full Council that it accepts this grant, the Executive are cognisant of the CFO's advice that the one off nature of the grant creates a recurring budget shortfall/pressure of £2.1M for 2013/14 onwards. This impact is therefore reflected in the financial forecast and hence increases the budget gap by a further £2.1M from 2013/14.

#### **GENERAL FUND BALANCES**

81. It is important for Cabinet and Council to consider the position on balances. Balances are used either to:
- support revenue spending,
  - support the capital programme, or
  - provide a 'working' balance at a minimum level suggested by the CFO with any projected excess being available to fund any one-off expenditure pressures or to reduce the council tax on a one-off basis.

The latter option is not recommended by the CFO.

82. Several years ago, CIPFA issued guidance on a risk based approach to setting an appropriate level of reserves. The CFO at the time produced a calculation for the City which took into account factors such as:

- Exposure to pay and price inflation
- Volatile areas of income generation
- Demand led service expenditure
- Exposure to interest rate variations
- Contractual commitments
- Achievement of budget savings
- VAT partial exemption risk

83. This calculation is reviewed annually and updated to reflect current levels of expenditure and income and treasury management operations and also new considerations such as partnership arrangements. This level has been reviewed this year and in recognition of the risks facing the Council the CFO has recommended that the minimum level of balances is increased from £4.5M to £5.0M in line with good practice guidance.

84. The table below shows the position for balances after taking into account the outturn for 2010/11, the estimated outturn for 2011/12, the budget proposals set out in this report and the current update of the capital programme.

	2011/12	2012/13	2013/14	2014/15 & 2015/16
	£000's	£000's	£000's	£000's
<b>Estimated Opening Balance</b>	<b>17,393.9</b>	<b>14,249.7</b>	<b>5,696.6</b>	<b>5,294.7</b>
Net Draw from / (to) Revenue	3,145.0	(136.0)	4,000.0	8,000.0
Draw to Support Capital	(203.0)	(492.0)	(250.0)	
Draw for Strategic Schemes	(6,086.2)	(7,925.1)	(4,151.9)	(8,164.7)
<b>Closing Balance</b>	<b>14,249.7</b>	<b>5,696.6</b>	<b>5,294.7</b>	<b>5,130.0</b>

85. Whilst the level of balances by 2015/16 remains marginally above the minimum required amount of £5.0M, at this stage it is not intended to use this to support the revenue budget in 2012/13 but this will be available to fund future initiatives or contribute to the revenue budget in future years.

#### **MEDIUM TERM FORECAST**

86. A roll forward forecast has been estimated for 2013/14 and 2014/15 taking into account the future years effects of the proposed pressures and savings as set out in this report. The forecast is included as Appendix 9. The funding gap will be reviewed and addressed as part of the ongoing development of longer term financial planning and Members are being asked to authorise the Management Board of Directors to pursue the development of future years options highlighted in Appendix 6.

**87. Local Government Settlement**

The CSR announced in October was for a four year period but the provisional Local Government Settlement released in December was only for two years. As no figures are available beyond 2012/13 it is difficult to move any further towards a more robust rolling three year financial plan. This is exacerbated by the economic climate, uncertainty about Government spending plans in future years and possible changes to local authority funding.

**88. Local Government Resource Review**

The Government is completing a local government resource review which started in January 2011 with the aim of implementing changes from 2013. The Council has and will continue to contribute actively to the resource review. The review is likely to result in radical changes in the funding councils receive, which increases the uncertainty inherent in forecasts for 2013/14 and beyond.

89. Further work will be undertaken in the next few months to ensure that the assumptions built into the forecast for 2013/14 are robust and reflect the latest predications in relation to key variables such as inflation and interest rates. The intention is that an updated forecast will be presented to Council in the Summer if appropriate. The most significant risks to achieving financial stability are the level of Government grant beyond 2012/13 and the vulnerability of Health Funding provided by Government. Whilst a prudent assessment has been made regarding these two aspects of Government funding, there is a significant degree of uncertainty regarding the outcome of the Local Government Resource Review and the Health review and any significant changes arising from these will require the assumptions in the medium term forecast to be reviewed.

**90. Business Rate Retention**

The first stage of the resource review deals with options for providing greater financial autonomy to Local Authorities through the return of Business Rate income to a local level, but with protection for low yield authorities through a 'tariff' and 'top-up' equalisation model.

91. The Council has historically been a net contributor to the national business rate pool (it has paid in more than it has received) due to a combination of a relatively buoyant economy in the South but a low per head distribution of grant under the funding formula. This means that under the proposed new model, the Council would be required to pay a 'tariff' from the beginning of the scheme which would rise with inflation in future years. To benefit from the scheme therefore, business rate growth across the City would need to exceed inflation on an annual basis.

**92. Localisation of Council Tax Benefit**

The second stage of the review deals with the localisation of support for council tax. It was announced as part of the CSR in 2010 that support for council tax would be localised from 2013/14 and expenditure reduced by 10% from the same date. Localisation is part of a policy of decentralisation that the government believe will give local authorities increased financial freedoms and a greater stake in ensuring local tax payers are supported into work and deciding how resources are used to achieve that.

93. The replacement for council tax benefit will have to be carefully designed and modelled to ensure expenditure is in line with that budgeted, as any excess has to be met by the council. There are many risks around this, but one of the most obvious is that it exposes the council to possible swings in the economy which result in an increase in claims.
94. There will be difficult decisions about who should be paid and in what circumstances. The exclusion of pensioners from any reductions required to achieve the 10% saving required means the burden falls heavily on other groups. This becomes even more complex when trying to ensure there are no barriers to working. A model scheme may be developed as a guide, but local decisions will still be needed.
95. **Technical Reforms to Council Tax**  
In the late autumn of 2011 the CLG also consulted on technical reforms proposed to council tax. The consultation considered options in relation to the council tax liabilities of second home owners, and of the owners of empty properties, in England. It also considered potential reforms of several details of the council tax system including modernising arrangements for payment of council tax by instalments, for delivering the information to be supplied with demand notices, and the treatment of annexes to dwellings; and some broadly administrative matters.
96. Responses to the consultation were to be submitted by 29 December 2011 and the outcome has yet to be published but may afford the Council opportunities to make changes to the current arrangements the financial impact of which will be relevant for the medium term forecast once known.
97. **Council Tax Referendum**  
The effect on local taxpayers is also a critical element in making decisions on council tax levels, particularly given the legislation for Council Tax referendum contained in the Localism Act. The Localism Act abolishes Whitehall capping in England and puts local referendums in its place. If councils increase council tax above the level agreed by government, currently set at 3.5% for 2012/13, this will trigger a referendum and if people vote against the increase the local authority will have to revert to a lower council tax rise
98. **Forecast Government Grant**  
The intention remains, however, to produce a high level plan containing longer term objectives that can be pursued outside of the annual budget process and the current forecasts assume a further reduction of 7% per annum in Government funding for 2013/14 and 2014/15. In addition, a reduction of 7% has also been assumed in all non-ring fenced.
99. In more general terms, the main impact upon the Council's medium term financial planning relates to the level of Government grant, grant support in respect of capital investment and government policy relating to the exercise of council tax capping powers. In particular, the outcome of the Resource Review currently underway, alongside the Government's funding on Health regarding its impact upon Adult Services funding are likely to have a significant impact.

**100. Future Year Savings**

Appendix 9 also includes an increasing sum for future options for efficiencies, income and service reductions in later years that the Management Board of Directors need authorisation to develop and progress. Future savings have also been included in the medium term forecast of £8.1M in 2013/14 rising to £11.8M in 2013/14. These items are work in progress and will be further developed in the coming year.

**RESOURCE IMPLICATIONS**

**Capital/Revenue**

**Capital**

101. The revenue implications of funding the capital programme through supported and unsupported borrowing are reflected in the 2012/13 estimates presented in Appendix 6.

**Revenue**

102. As set out in the report

**Property/Other**

103. None

**LEGAL IMPLICATIONS**

**Statutory power to undertake proposals in the report:**

**INTRODUCTION**

104. It is important that Members are fully aware of the full legal implications of the entire budget and Council Tax making process, when they consider any aspect of setting the Council's Budget. Formal and full advice to all Members of the Council protects Members, both in their official and personal capacity, as well as the Council. If Members have received the appropriate professional legal and financial advice and act reasonably, generally the courts will not interfere in their decisions.

**GENERAL POSITION**

105. The first and overriding legal duty on Members is their fiduciary duty to weigh the needs of service users against the interests of local taxpayers. In planning the budget, Members are under a fiduciary duty to act prudently, responsibly, in a businesslike manner and in their view of what constitutes the best interests of the general body of local taxpayers. In deciding upon expenditure, the Council must fairly hold a balance between recipients of the benefits of services provided by the Council and its local taxpayers. Members should note that their fiduciary duty includes consideration of future local taxpayers as well as present local taxpayers.
106. There is a general requirement in administrative law that a local authority decision must be rational, authorised by law and must take account of all relevant considerations, whilst ignoring any irrelevant ones. It should also be noted that the concept of proportionality, given great emphasis in the Human Rights Act 1998, is also becoming a relevant factor for determining the reasonableness of any decision and should be borne in mind by Members.

107. An authority commits an illegal act if it acts beyond or in abuse of its statutory powers or in breach of its fiduciary duty. It will also act illegally if it fails to take relevant considerations into account or acts in outrageous defiance of reason

### **OBLIGATION TO MAKE A COUNCIL TAX**

108. The legal significance of the Annual Budget and setting a Council Tax derives from the Council's duty under the Local Government Finance Act 1992 (the 1992 Act) to set a balanced budget and Part 5 Chapter 1 of the Localism Act 2011. This is achieved by calculating the aggregate of:
- i. the expenditure it estimates it will incur in the year in performing its functions in the year (including an allowance for contingencies),
  - ii. the payments it estimates it will make in the year in defraying expenditure already incurred and
  - iii. expenditure it will incur in funding costs before a transfer of funds is made from the Collection Fund and then deducting such sums as will be paid into the General Fund, (i.e. income). Calculations made under this section must be made before 11 March in the preceding financial year.
109. In order to fulfil this duty, the Council must prepare detailed estimates of its expenditure for the coming year and of the resources which will be available to meet this expenditure. Account must be taken of any deficit brought forward from a previous year and the amount needed to cover contingencies. The resources include income from rents, fees and charges and any available balances. All of these issues must be addressed in the budget report. The estimation of the detailed resource and expenditure items is the main reason for the budget process. The budget must balance, i.e. proposed expenditure must be met from proposed income from all sources, with any shortfall being the precept on the Collection Fund.
110. Failure to make a lawful Council Tax on or before 11 March could have serious financial results for the Council and make the Council vulnerable to an Order from the Courts requiring it to make a Council Tax.
111. Section 151 of the Local Government Act 1972 places a general duty on local authorities to make arrangements for "the proper administration of their financial affairs".
112. Information must be published and included in the Council Tax demand notice. The Secretary of State has made regulations, which require charging authorities to issue demand notices in a form and with contents prescribed by these regulations.
113. There is also a duty under Section 65 of the 1992 Act to consult persons or bodies appearing to be representative of persons subject to non-domestic rates in each area about proposals for expenditure (including capital expenditure) for each financial year.



## **DEFICIT BUDGETING**

114. A deficit budget, one which does not cover all anticipated expenditure with resources reasonably expected to be available, is unlawful. Any Council Tax which rests on such a budget will be invalid. Councils are constrained to make a Council Tax before all the separate elements, which will constitute available resources or anticipated expenditure, have been identified and quantified fully. Best estimates have to be employed.
115. Where these best estimates include sums for unallocated savings or unidentified expectations of income, extreme care must be taken to ensure that the estimates are reasonable and realistic and do not reflect an unlawful intention to incur a deficit. It might be appropriate at budget setting time to require regular monitoring throughout the financial year of such estimated savings or income. Prompt action to reduce spending must be taken, if at any stage it seems likely that a balance between income and expenditure will not be achieved.

## **BORROWING**

116. The rules and regulations governing a local authority's ability to borrow money were altered significantly by the introduction of the Local Government and Housing Act 1989 and subsequent regulations. This has now been abolished and replaced by the self regulating Prudential Code.

## **OTHER RELEVANT LEGISLATION**

117. The Local Government Finance Act 1988 (the 1988 Act) created the (now repealed) Community Charge and the current National Non- Domestic Rating regime and deals with grants, funds, capital expenditure and the financial administration of a local authority.
118. Under Section 114 (2) and 114 (3) of the 1988 Act, the CFO is required to make a report, if it appears to him/her that a decision or course of action the Council or an officer has agreed or is about to make is unlawful, or that expenditure is likely to exceed resources available.
119. Members have a duty to determine whether they agree with the CFO's statutory report issued under Section 26 Local Government Act 2003. If Members were to disagree, they would need to set out cogent reasons for so doing. Unless such reasons could be set forward, Members' action in disagreeing with the CFO's views on the basis of his/her professional judgement would be likely to be held unreasonable and constitute wilful misconduct. It should be noted that under the Members' Code of Conduct, Members are required to take account of any advice issued by CFO (and the Monitoring Officer) acting in their statutory capacities.
120. The Localism Act 2011 contains provisions (Part 5, Chapter 1) which relate to the setting of Council Tax, including the arrangements for Council Tax Referendums.

## **BEST VALUE: LOCAL GOVERNMENT ACT 1999**

121. The Local Government Act 1999 (the 1999 Act) introduced a duty of Best Value, which came into force on 1 April 2000. Members need to be aware of and take account of the impact on the Council of this duty.

## **THE CONSTITUTIONAL POSITION: LOCAL GOVERNMENT ACT 2000 (THE 2000 ACT)**

122. The 2000 Act has had a fundamental effect on the governance of the Council and in particular has resulted in a change to the working arrangements of Council, with the requirement for a Constitution setting out executive (Cabinet) and scrutiny and overview arrangements. The 2000 Act also provides a power for Councils to promote the economic, social and environmental well-being of their areas and develop community strategies. In addition, the 2000 Act establishes an ethical framework.
123. Of particular importance to the Council Tax setting process and Budget Meeting of the Full Council is the Council's Budget and Policy Framework Procedure Rules set out in Part 4 of the City Council's Constitution. These provide a legal framework for the decision making process whereby the Budget of the City Council is determined, and the Council Tax is set. In addition, Members need to be aware that these Rules provide a route whereby the Leader may require the Full Council to reconsider their position if they do not accept the Executive's recommended budget without amendment.
124. In addition, the Constitution contains a range of further material relevant to the setting of the Council Tax and the Budget Setting meeting:
- i. Article 12 contains guidance on decision making and the law;
  - ii. The Council Procedure Rules in Part 4 regulate the conduct of the Full Council meeting (although traditionally, some of the rules relating to the conduct of the debate are suspended to allow different arrangements during the budget debate);
  - iii. The Members' Code of Conduct must be followed by Members; and
  - iv. The Officer/Member Protocol contains guidance both on pre-budget discussions, but also on how officers and Members should interact with specific guidance about budget preparation issues.

## **PERSONAL LIABILITY AND SURCHARGE**

125. The 2000 Act abolished the local government surcharge provisions and replaced them with a new statutory offence of 'misuse of public office'. This new statutory offence covers two situations, namely unlawfully incurring expenditure or incurring expenditure as a result of wilful misconduct. It also covers the exercise of a public function in a manner that involves dishonesty or oppression or malice. The Courts (rather than the District Auditor) would impose penalties. The Council could sue for losses/deficiencies sustained.

## **LEGAL STATUS OF POLITICAL PROMISES AND DOCUMENTS**

126. It is appropriate for Members to consider their own position as some Members may have expressed support publicly for policies that are not policies of the Council.
127. Political documents do not represent a legal commitment on behalf of the Council. To treat any political document as a legal commitment by the Council would be illegal. Where there is a valid choice before Members, then, at that stage and only at that stage, Members may take political documents into account.

128. All decisions must be taken within the framework of the formal decision making process of the Authority. Members must take into account all relevant matters and disregard all irrelevant ones. Decisions taken at a political meeting, such as a political group meeting, have no status within this process. A Member, who votes in accordance with a group decision which has been reached, having regard to relevant factors and who has addressed their mind independently to those factors and to the decision itself, will be acting within the law.
129. The Courts have also advised on the balancing exercise to be undertaken by a Council when deciding whether to pursue a particular policy:  
*A local authority must exercise its statutory powers in the public interest and for the purpose of which those powers have been conferred. Political views, as to the weight to be attached to the various relevant considerations and as to what is appropriate in the public interest in the light of those considerations, may properly influence the exercise of a statutory discretion. A decision will not be unlawful merely because some political advantage, such as electoral popularity, is expected to flow from it, so long as the decision is made for a legitimate purpose or purposes. Because at some stage in the evolution of a policy an improper political purpose has been espoused, does not mean that the policy ultimately adopted is necessarily unlawful. However, a political purpose extraneous to the statutory purpose can taint a decision with impropriety. Where there is more than one purpose:-*
- a) The decision will generally be lawful provided that the permitted purpose is the true and dominant purpose behind the act. This is so even though some secondary or incidental advantage may be gained for some purpose, which is outside the authority's powers.*
  - b) The decision will be invalid if there are two purposes one ultra vires and one intra vires and the ultra vires purpose is a (even if not the) major purpose of the decision. Accordingly a decision substantially influenced by a wish to alter the composition of the electorate would be unlawful.*
  - c) Where there is some evidence justifying enquiry, the Court will consider whether an apparently lawful purpose e.g. home ownership is merely a colourable device to conceal an illegitimate purpose e.g. electoral advantage.*
  - d) Even if those voting for a particular policy at a Council meeting have perfectly proper reasons in mind, the policy can be tainted by the improper motives of others who have taken part in the formulation of that policy although not actually present to vote. As a matter of law it is possible for a corrupt principal to cause a result through an innocent agent.*

#### **Other Legal Implications:**

130. The financial forecasts contained in this report have been prepared and are submitted as part of the budget process set out in the Council's Constitution. As part of the review process by the MBD, the proposals contained in this report have been checked from a legal viewpoint.

131. It should be noted by both Cabinet and Full Council that the decisions they are making, in terms of 'Budget setting' are effectively preliminary decisions setting the framework for anticipated spending by the Council for 2012/13 to 2013/14. That framework and the matters set out in the budget influence and inform the strategic direction the Council will take during the budget period but specific proposals will require further implementation decisions (either at Cabinet or Officer decision levels as appropriate) in order to be given effect.
132. The Council, as the decision-maker, will take a preliminary decision in relation to its budget, fully aware that the implementation of proposed policies may have an impact on the affected users, but is not committing itself to the implementation of specific policies within the budget framework until it has carried out a full and detailed assessment of the likely impact as and where necessary. Those decisions will in turn address further equalities, consultation and practical matters without their outcome having been 'predetermined' by the approval of the budget.
133. Decision makers may also receive further representations, and/or choose to undertake further consultation on specific proposals. Decision makers will, as a result of further representations, consultation and other material considerations, be free to approve or reject implementation of specific matters proposed as part of the overall budget framework and it will, as a result, be for Council to determine how to meet any budget gap that may arise as a result of such implementation decisions.

#### **POLICY FRAMEWORK IMPLICATIONS**

134. The Medium Term Plan and the Budget are key parts of the Policy Framework of the Council and a Budget and Council Tax for 2012/13 must be proposed by the Executive (Cabinet) for consideration by the Full Council under the Constitution.

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**KEY DECISION?** Yes/No

<b>WARDS/COMMUNITIES AFFECTED:</b>	
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### **SUPPORTING DOCUMENTATION**

**Non-confidential appendices are in the Members' Rooms and can be accessed on-line**

#### **Appendices**

1.	Budget Consultation Report
2	Equality Impact Assessments
3.	Revised General Fund Revenue Budget 2011/12
4.	Summary of Revenue Bids
5.	Summary of Efficiencies, Additional Income and Service Reductions
6.	2012/13 General Fund Revenue Account
7.	2012/13 Council Tax Calculation
8.	2012/13 Collection Fund Estimates
9.	Medium Term Financial Forecast
10.	Statutory Power To Undertake Proposals In The Report
11.	Chief Financial Officers View On The Budget

#### **Documents In Members' Rooms**

1.	Budget Proposals - Equality and Safety Impact Assessment
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#### **Integrated Impact Assessment**

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	Yes/No
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#### **Other Background Documents**

**Integrated Impact Assessment and Other Background documents available for inspection at:**

Title of Background Paper(s) Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	GENERAL FUND REVENUE BUDGET 2012/13 TO 2014/15 – CABINET 24 OCTOBER 2011	
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