



**MINUTES CONFIDENTIAL PART 1
FINANCE AND RESOURCES COMMITTEE**

Date: Tuesday 6 July 2021
Via Microsoft Teams
Time: 5:00pm

Chair	David Surdeau
Corporation Members	Bobby Seagull, Danny Ridgeway, Lorraine Reader, Martin Cumella, Paul Stephen (Principal)
In Attendance	Deputy Principal: Jamie Purser Executive Director, Strategy & Innovation: Matt Fawcett Chief Operating Officer: Judith Abbott
Clerk to the Corporation	Judith Nelson

Item No	Item of business
PRELIMINARY PROCEDURAL MATTERS	
1.	Chair's Welcome & Opening Remarks The Chair thanked and welcomed all in attendance.
2.	Apologies For Absence <ul style="list-style-type: none"> ▪ Bobby Seagull ▪ Danny Ridgeway
3.	Declaration of Interests Martin Cumella in respect of the Learning Revolution Trust
4.	<p>a. Minutes of the Last Meeting held on 10 March 2021 The minutes were approved as a true and accurate record.</p> <p>b. Matters Arising and Action Points from the Meetings All matters arising formed part of the agenda.</p>
ITEMS FOR CHALLENGE, MONITORING & REVIEW	
5.	<p>College Management Accounts Governors received the following noteworthy points:</p> <ul style="list-style-type: none"> i. College has recorded a YTD EBITDA surplus of £2,193k which is 8.34% of income. ii. Full year EBITDA forecast is unchanged from last month at £2,262k (6.3% income). A full reforecast will be undertaken following the June month-end, to give an accurate prediction of final out-turn for submission to the ESFA in July. iii. Cash balance at end-May is £9,284k and forecast for July is £8,760k and £9,320k for the Group (92 days). iv. Year end cash position has improved since HMRC have accepted the loan (total amount of £580k) to DSS was for charitable purposes so no tax is owed. v. The Principal's contingency, currently untouched at £500k is included in the full year consumables forecast vi. Income year to date is £2.4 million worse than budget although some recovery is anticipated by year end. vii. Staff costs for the year to date are £14,126k (63.3% of income generated) but include £282k Furlough payment. Most furloughed staff have now returned to work. viii. Non pay costs are £9,694k which is £1,181k better than budget of £10,876k although this includes timing differences including a £245k underspend on learner support funds due to a backlog of claims waiting to be processed (actions are under way to address this). ix. Bank covenants will be achieved, and the Financial Health Ratio forecast at Good.

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	<ul style="list-style-type: none"> ▪ High Needs, London Borough of Newham have paid the same figure year on year. It is the responsibility of the London Borough Newham (LBN) to apply to the ESFA for growth in funded places where there is clear evidence of demand. The College will be much more proactive in future in taking this forward with LBN with the new appointment of the Director of SEND. The Principal has met with the Director of Education last week and invited her to help the College with messaging this. ▪ Risks and opportunities - £1m Mark Street sale only 5% probability 0% by the end of the year. The COO has spoken with Pramod, some things have moved forward, there are only two members of staff on the books a manager and caretaker. The planning application has now been considered and assuming this is still in the order of £1m. The purchaser is Byfang, an investor who are also looking to open a University in Waltham Forest i.e. University of Portsmouth. <p>The Chair requested for an update on FTM:</p> <ul style="list-style-type: none"> ▪ The FTM is an anomaly and struggled under Covid. ▪ Pre Covid the FTM generated £650k without any overheads. ▪ The FTM is reporting a modest deficit this year of £30k, bringing them to a break even position. ▪ The FTM raised £200k approx. and received funding of £108k, the leadership of FTM are aware the finances have not been met.
6.	<p>a. Draft Budget 2021-2022 Governors received the following noteworthy points:</p> <p>The proposed budget for 2021/22 is in line with targets set in March are:</p> <ul style="list-style-type: none"> • EBITDA Surplus £2,205k, 6% of income, the budget also includes of a 2% pay increase and look at how we do on our learner number recruitment. • Adjusted operating surplus (excluding pensions adjustment) £450k, 1% of income • 99 Cash days at balance sheet date • Income £36.8 million • Bank covenants all met • Good financial health <p>To note:</p> <ul style="list-style-type: none"> • IoT capital expenditure is not included in the budget, this should net out to zero and we have not totally resolved how the cash flows, this remains to be resolved. • £400k procured AEB and apprenticeships where we are dependent on high starts. • Carrying a lot of costs relating to agency and hourly paid staff in the SEND department and there is an opportunity to review and cleanse this area. • Procured AEB – challenging and least stable income stream. The Executive Director added this is due to the lack of job centres opening up, which has become an obstacle in creating an opportunity for the community; being let down by collaborating partners, with our ability to manage those relationships. The COO is concerned this is the College's under-performing area in comparison with the demographics of the borough. • The College telephone system and website have been refreshed. • Business Skills Solutions (formerly DSS) do not have a great deal of commercial income, the contractual obligations became onerous. The BTL contract has started to pick up and bring in £200k. <p>RESOLVED: Governors recommend the draft budget 2021-2022 to the Corporation Board for Approval</p> <p>b. Draft Capital Budget 2021-2022 Governors noted the following key points:</p> <ul style="list-style-type: none"> ▪ One of the reasons given by Lloyds Bank for rejecting the College's request for additional loan funding in 2020 was the poor condition of its estate which the Bank perceived as a risk to sustainability of the College. ▪ As previously advised, 82% of the estate is in Category C condition and much of the IT hardware is at the end of its economic life. The campuses offer little in the way of positive student experiences and the flagship T Levels programmes need to be delivered in fit for purpose teaching spaces. There are many competing priorities for limited capital and it will take several years to catch up on backlogs due to historical under-investment. ▪ It is proposed to commit a £1.2 million budget to addressing the various priorities. Given other commitments to match fund capital grant applications, this is the maximum the College can spend while protecting its other targets of Good financial health and cash days in hand.

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	RESOLVED: Governors recommend the draft capital budget 2021-2022 to the Corporation Board for Approval
7.	<p>Financial Plan 2021-2022 to 2022-2023 Governors noted the following key points:</p> <ul style="list-style-type: none"> ▪ Following the ESFA's introduction of the new integrated College Financial Forecast Return spreadsheet to be submitted in July, colleges are once again required to submit a 2-year forward plan. ▪ The Income and Expenditure, Cash Flow and Balance Sheet schedules for both years of the financial plan are shown in the attachments to the draft budget paper. ▪ Year 2 of the plan does not assume any year on year growth beyond including Institute of Technology year 1 incremental income and expenditure as previously presented to Finance & Resources Committee. It should be noted that, as 16-18 learners are funded on a lagged model, the College will not receive any income for IoT 16-18's until 2023/24 (unless the numbers are high enough to make an in-year growth case) ▪ Based on the assumptions in the Plan, for 2022/23, the College is forecasting an adjusted operating surplus of £450k and education-specific EBITDA of £2,457k (ie excluding pension adjustments) and Good financial health. <p>RESOLVED: Governors recommend the Financial Plan 2021-22 to 2022-23 to the Corporation Board for Approval</p>
8.	<p>Sub-Contractor Fees and Charges Policy 2021-2022 Governors noted the following key points:</p> <p>i. Sub-contractor Policy The ESFA subcontracting funding rules require colleges to have a subcontracting policy in place, reviewed and approved by their governing body prior to the start of the funding year.</p> <p>This needs to state the rationale for subcontracting and set out full range of fees retained and charges that apply. Once approved, the policy must be published on the college website by 31 October each year.</p> <p>The attached policy has been updated for 2021-22. The rationale for sub-contracting reflects the core principles identified by the ESFA in its recently-published guidance for those charged with governance of sub-contracting arrangements: Annex A: Role of those charged with governance in subcontracting - GOV.UK (www.gov.uk)</p> <p>RESOLVED: Governors recommend the Sub-contractor policy 2021-22 to the Corporation Board for Approval</p> <p>ii. Proposed Sub-contractor arrangements for 2021-22 The ESFA has recently set out its sub-contracting reforms which include a 25% cap on the absolute level of sub-contracting permitted within any funding stream.</p> <p>The College proposes to continue its long-term sub-contracting arrangements with A1Sports for 16-19 learners, subject to due diligence and contract. A1Sports meet the newly-published exceptions criteria for sub-contracting in the following ways:</p> <ul style="list-style-type: none"> • they provide better access to sports training facilities and more opportunities for competitive sport than the College can offer; • they enhance the opportunities available to young people and adults; • the arrangements support better geographical access for learners at the edge of the GLA area who do not wish to travel to the main College campus; • they work with disadvantaged group(s) successfully engaging a traditionally under-performing cohort, with high levels of retention and achievement; <p>In view of the ESFA sub-contracting reforms, the contract will be capped at 400 learners which is 20% of the College's allocation of 2,006. This is a year on reduction from 25% this year, in line with the ESFA's direction of travel to reduce subcontracting.</p>

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	<p>Although the College sees its relationship with A1Sports as a long-term partnership, it is committed to further reducing reliance on subcontracting in future years. Additionally, next year, the curriculum delivery model has been revised so that some elements of teaching and learning will be provided by the College; and A1Sports will no longer be delivering at locations that could be considered as too geographically distanced from the College.</p> <p>The final contract value will depend on the age profile of the learners that are recruited, and a provision has been included in the budget for this cost.</p> <p>RESOLVED: Governors recommend the continued sub-contracting with A1 Sports to the Corporation Board for Approval</p> <p>iii. Contract The College has engaged Eversheds to update its current contract to ensure it reflects all published changes in funding and sub-contracting rules. This will be complete by early August when a contract will be issued to A1 Sports.</p>
9.	<p>Institute of Technology (IoT) Update</p> <p>The Corporation authorised the Executive to enter into contract with DfE to secure IoT designation and funding on 28 May 2021.</p> <ul style="list-style-type: none"> ▪ Progress on entering into contract has been slower than expected. DfE has appeared distracted by the award of Round 2 IoT projects, leading to delayed feedback on the London City IoT contracts and the raising of material new matters. ▪ There are two important new issues which remain outstanding: <ul style="list-style-type: none"> i. Agreement for Lease - Certification of practical achievement: There is now one material issue outstanding, relating to Ballymore’s position that the developer solely determines the achievement of practical completion. This affects the completion of the enhanced Category A works relating to air handling and the external fire escape, and we will need to understand how those works are delivered to an objective standard of performance. <p>The current position is that we have a right to inspect throughout the conduct of the works and Ballymore will give us 15 days notice before they intend to issue PC, we will then have the right to undertake substantive testing. We do not have an automatic right to reject, we will be relying on the contract administrator a firm called Acumen, who have a duty to award practical completion only when the building has been completed to the required specification.</p> <p>Our property advisors, legal advisors and property teams have confirmed they are comfortable with negotiations to date and they are recommending that this is a manageable risk as we have the right of inspection throughout the conduct of those works</p> ii. Legal Charge: The DfE is looking to protect its investment should the IoT fail to meet its obligations, with the right of DfE to demand repayment of the grant if the IoT designation is withdrawn and if the building is not used for “technical education” for a period of [20] years. <p>There was an asymmetrical understanding of what the DfE was looking for, essentially the legal charge in the event of a breach, would require us to pay back the full grant regardless of the ultimate value of the property, either through sale or through assignment. The volatility of the property cycle could potentially create a real risk now that we have seen the final version of the capital funding agreement.</p> <p>The DfE’s position is that it requires contractual protections to enforce what the College acknowledged in its second stage bid - ie a right to claw back grant funding over a 20 year period if our IoT designation is withdrawn AND the College fails to use the building for technical education, which is not defined. The DfE advise us that every IoT has signed the capital funding agreement on this basis, and they have used a legal charge wherever there have been 3rd party leases involved. London City Island has not been singled out for unusual treatment, and the clawback provision is consistent our stage 2 bid submission, albeit that the legal charge is a post-bid addition to the contractual conditions the IoT must meet.</p> <p>On that basis, the Principal stated neither of these outstanding matters feel like an existential</p>

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	<p>threat. We are now in receipt of the technical property and commercial legal advice, stating these arrangements are market standard and not inappropriate.</p> <p>The Chair expressed concerns on behalf of the Committee that the College would carry a long term liability simply for seeking to deliver a flagship educational policy of the Government. Governors asked whether the College would need to fund any shortfall between the proceeds of the lease and the grant owing to funders under the terms of the legal charge. The Principal confirmed that the risk does exist, although there are some mitigations before the risk materialises:</p> <ul style="list-style-type: none"> ○ As long as we are operating as an IoT, there can be no clawback. ○ If we stop operating as an IoT but continue to use the facility for technical education, there will not be any clawback at the 20th anniversary and the legal charge will fall away. ○ If, when the legal charge was exercised, the realisable value of the property was less than the value of the grant provided, and that this liability was material/existential, there would need to be a negotiation with funders since it was hard to see why DfE would knowingly damage the financial health of a provider through enforcing an unaffordable clawback. <ul style="list-style-type: none"> ▪ The remaining steps to get into contract are as follows: <ul style="list-style-type: none"> ○ Receive confirmation from DfE that all contracts and supporting documentation is approved and ready for signing. ○ Secure planning consent. This is expected to be imminent as a letter of support has been received from the Residents' Association, following a request by the planning officer to meet with the Residents' Association who came in with an out of time sort of question about whether this was going to reduce the value of their real estate. ○ We are pushing Tower Hamlets to give us the verbal or a written confirmation that planning consent has been granted by Thursday, 'Stephen Timms is planning on attending a soft launch and celebration of the of the London City IoT joining the rest of the Wave 1 IoTs. <p>The Chair thanked the Principal for attending the residents meeting and doing a great job soothing any concerns they may have had, which will probably be an ongoing relationship to manage.</p> <p><i>Governors RESOLVED, having received a detailed explanation from the Principal, and also on the basis of having confirmation from the technical property and commercial legal advice stating these arrangements are appropriate, to APPROVE both 'Agreement for Lease' and 'Legal Charge'</i></p>
10.	<p>Meeting Schedule for 2021-2022 @ 6pm</p> <ul style="list-style-type: none"> ▪ 15 September 2021 (rescheduled to 5 October) ▪ 24 November 2021 ▪ 26 January 2022 ▪ 09 March 2022 ▪ 06 July 2022 <p>The Clerk to liaise with Chair to ascertain his availability for the proposed meeting schedule dates.</p>