MINUTES of
PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE
7 MARCH 2024

PRESENT

Vice-Chairperson (In the chair)	Councillor M E Thompson
Councillors	M G Bassenger, S J Burwood, N R Miller, R G Pratt, N D Spenceley, W Stamp, CC and J C Stilts

626. CHAIRPERSON'S NOTICES

The Chairperson welcomed everyone to the meeting and went through some general housekeeping arrangements for the meeting.

627. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor V J Bell.

628. MINUTES OF THE LAST MEETING

RESOLVED that the Minutes of the meeting of the Committee held on 18 January 2024 be approved and confirmed.

629. MATTERS ARISING

RESOLVED that the Matters Arising from the Minutes of the last meeting be noted.

630. DISCLOSURE OF INTEREST

There were none.

631. PUBLIC PARTICIPATION

No requests had been received.

632. INTERNAL AUDIT REPORT

The Committee considered the report of the Interim Chief Finance officer and associated Internal Audit reports from BDO LLP, attached on the agenda as follows:

- 7a – Progress report
- 7b - Follow-Up of Recommendations Reports

- 7c – Housing Benefits
- 7d – Homelessness and Temporary Accommodation
- 7e – Climate Change and Sustainability

Progress Report

Mr Aaron Winter (BDO LLP) presented his report to the Committee which summarised the 2023 / 24 audit plan and evidenced solid progress on the 2023 / 24 internal audit plans. Since the last update to this Committee in November 2023 a further three audits had been completed from the 2023 / 24 plan and final reports were being presented as part of this meeting. Members noted the update provide on the remaining audits for the year.

The Chairperson proposed that as per the recommendation on the report, the Committee considers, comments and approves this report. This proposal was duly seconded.

In response to a question regarding the review target relating to the Management of Section 106 Funds not being met, Members were advised that this related to BDO having had a delay in their assurance process and not being able to meet their internal three-week timetable.

The Chairperson moved the recommendation which was duly agreed.

RESOLVED that the Committee considered, commented and approved the Progress report at Agenda Item 7a.

Follow-Up of Recommendations Report

Mr Andrew Billingham (BDO LLP) presented the report and advised that of the four recommendations due to be followed up since the last meeting of this Committee, two recommendations had been completed / closed and updated received for the remaining two outstanding recommendations. It was noted that good work had been done to progress the outstanding recommendations, but they had not yet been fully implemented.

The Chairperson moved the recommendation as set out in the Officers' report. This was duly seconded.

In response to a number of questions raised by Members, the following information was provided:

- Cyber Security Audit - This recommendation related to Officers and not Members. The Assistant Director – Resources advised that a review of Member training was carried out and the weekly Members' bulletin contained a reminder for Members to ensure all training was completed.
- 2021 / 22 Management of Property - Mr Billingham advised that the bottom of action c) as detailed on page 25 of the agenda pack was missing and he would provide this information outside of the meeting.
- 2021 / 22 Management of Property Audit - The Commercial Manager provided an update in respect of the Council's Asset Management Strategy (due to be considered by the Strategy and Resources Committee at its meeting on 14 March 2024) and the ongoing work to collate all information about the Council's assets. The Assistant Director – Service Delivery explained that the delay had related to resources (staffing) and identification / implementation of suitable software to record and keep the information in a useful way. She reassured Members that a huge amount of work had been undertaken and good progress was being made, however it was expected that this would take six months longer than originally identified and therefore would not be ready by 31 March 2024. Members were informed that the Council was utilising an existing software package which would then feed into other Council systems.

The Chairperson moved the recommendation which was duly agreed.

RESOLVED that the Committee considered, commented and approved the Follow-Up of Recommendations report at Agenda Item 7b.

Housing Benefits

Mr Aaron Winter (BDO LLP) presented the report detailing the outcome of the recent Housing Benefits audit. This audit had attained an opinion of substantial on design opinion and moderate on design effectiveness. Members were advised that two minor recommendations had been raised but overall, it was a very positive report.

Members complimented the Housing Team on the results of this audit.

In response to a question regarding the overpayment of housing benefit, the Assistant Director – Service Delivery explained that this related to payments made to a customer incorrectly and could be for a number of reasons. She provided detail of the process followed and reassured the Committee that the Council made every effort to recover these monies, however there were some circumstances where monies could not be recovered. It was explained that the overpayments were not a cost to the Council and reviewed by the Government if they were above a set level which the Council had not reached for a number of years.

The Chairperson moved the recommendation set out in the Officers' report and this was duly agreed.

RESOLVED that the Committee considered, commented and approved the Housing Benefits report at Agenda Item 7c.

Homelessness and Temporary Accommodation

Mr Andrew Billingham (BDO LLP) presented the report detailing the audit recently carried out in respect of Homelessness and Temporary Accommodation. This audit had attained an opinion of moderate on both design opinion and effectiveness. He advised that this was a positive result for an area of high demand and highlighted that three minor recommendations had been raised.

In respect of the recommendation regarding the use of Bed and Breakfast (B&B) accommodation Mr Billingham provided further explanation. The Housing Solutions Manager outlined the process in operation at the time of the audit and the immediate changes implemented following the audit recommendation.

The Chairperson moved the recommendation as set out in the Officer report which was duly agreed.

RESOLVED that the Committee considered, commented, and approved the Homelessness and Temporary Accommodation report at Agenda Item 7d.

Climate Change and Sustainability

Mr Aaron Winter (BDO LLP) presented the report detailing the outcome of the recent Climate Change and Sustainability audit. This audit had attained an opinion of substantial on design opinion and design effectiveness. Members were advised that three observations had been raised but overall, this was an area of well-designed and fully operational control.

Councillor W Stamp declared an interest in this report as she was an Essex County Councillor.

A question was raised regarding the risks to the Council due to it not being aligned with the Essex County Council (ECC) pledge to reach net zero by 2050. In response, the Head of

Environmental Health, Waste and Climate Action explained how ECC had several cross-county strategies and the carbon reductions generated by these measures would not be implemented in the Maldon District until the date ECC had detailed. By being out of step from the coordinated approach could lead to an increase in the Council's challenges to effectively deliver changes. Members were advised that Officers were looking into this, and it would be brought back when the Climate Strategy was brought before Members.

Members asked that their congratulations be passed to Officers and the team for getting substantial assurance in relation to this area of work.

The Chairperson moved the recommendation set out the Officers' report which was duly agreed.

RESOLVED that the Committee considered, commented, and approved the Climate Change and Sustainability report at Agenda Item 7e.

633. REVIEW OF CORPORATE PERFORMANCE - QUARTER 3

The Committee considered the report of the Director of Strategy and Resources that required the Committee to undertake a quarterly review of the Thematic Strategies performance, as assurance that performance was being managed effectively to achieve the corporate outcomes as set out in the Council's Corporate Plan 2023 - 2027. Appendix 1 to the report provided an overview of performance as at the end of Quarter 3 (Q3) (October to December 2023).

The Chairperson introduced the report and deferred to the Assistant Director – Programmes, Performance and Governance to present the detail. The Assistant Director took the Committee through the report starting with section 3.1.1. which provided an overall delivery picture against each of the corporate priorities. It was noted that as of December 2023 all six priorities were either on track or on track with conditional elements.

The Chairperson proposed that the recommendations as set out in the report be agreed and this was duly seconded.

A debate ensued and in response to questions raised the following information was provided:

- Develop and launch of Maldon's youth engagement programme – A Project Officer to deliver Section 106 capital projects for youth facilities had started this week and would be working to a timetable of when projects had to be delivered by in order to reduce any risks to the Council of losing funding. Members were reassured that there would be early engagement with Members as well as stakeholders and the young.
- Councillor S J Burwood declared an interest in this item of business as he was a Heybridge Parish Councillor. He expressed an interest in being involved in any items relating to Heybridge. The Committee were advised that Ward Members would be involved.
- Deliver One Maldon District, multi-agency partnership action plan - Following a question regarding why the Council had only reached 30% and was therefore off its target, the Director of Service Delivery advised he did not have that information to hand and would therefore share it with Members outside of the meeting.

- Progress of Local Development Plan Review - The Committee were advised that the Nature Conservation Study and Employment Land and Premises Study had been considered by the Planning Policy Working Group (PPWG) and once the related written reports were received these would be made available to all Members via Mod.Gov or SharePoint.

- Members were advised that the Planning Policy Working Group reported to the Council. Its next report was due to be considered by the Strategy and Resources Committee at its meeting on Thursday 14 March 2024. There was some discussion at this point regarding Working Groups and the Committee were informed that all Working Group papers were available on Mod.Gov.

- Delivery of Prom Park Management Plan – Members were reminded that the detail contained in the report related to Q3 and there had been progress on this Management Plan as part of Quarter 4 work. In response to a question, the Committee were advised that 'Gateway Review' involved looking at all information and work that had been collected to date to understand if it was on track. The Director of Service Delivery reported that since this report was published a Gateway Review had been held and Officers were looking to refocus work to give it the delivery and a further update on this would be provided as part of the Quarter 4 report.

- The data which was used to form the resident satisfaction levels in both Riverside and Promenade Parks was based on the annual residents' survey. The Quarter 4 report to this Committee would provide the latest update.

- Projects delivered in partnership as part of the 'kick the car habit' pledge - In response to a question regarding the location of planned cycle routes and the request for an update on the Digital Steering Group meeting with Essex County Council (ECC) on 7 February, the Director of Service Delivery advised he did not have that information to hand but would pick up those questions outside of the meeting.

  The Assistant Director – Planning and Implementation advised that Officers were seeking for ECC to hold a further all Member engagement workshop with Members before the Maldon District Future Transport Strategy was finalised. Members were advised that they could contribute further feedback in the next engagement session relating to the Strategy.

- A Greener Future – Members were informed that the number of trees installed was expected to increase in the next quarter, the level planted during this quarter related to trees having to be planted at a particular time of year. In respect of electric vehicle charging points, some had been installed across the district, however these were not necessarily ones that Maldon District Council had influenced and could therefore not be counted as part of its delivery.

- Reference was made to recent information circulated to all residents regarding food recycling and information within this that stated 25% of general waste was food. In response to a question for clarification of this percentage, the Director of Service Delivery confirmed he would seek clarification as to where the figure had come from and whether it directly related to the Maldon District.

The Chairperson then moved the recommendations set out in the report and these were duly agreed.

RESOLVED

(i) That Members reviewed the information as set out in this report and Appendix 1 to the report, with priority focus given to the Strategic Priority level performance;

(ii) That Members confirmed they are assured through this review that corporate performance was being managed effectively.

634. REVIEW OF CORPORATE RISK - QUARTER 3

The Committee considered the report of the Director of Strategy and Resources that required Members to undertake a quarterly review of the Corporate Risk Register as assurance that the Council's corporate risks were being managed effectively. A table of the Corporate Risk Register, latest ratings and officer commentary was attached as appendix 1 to the report.

The Chairperson introduced the report and deferred to the Assistant Director - Programmes, Performance and Governance to address the detail. The Assistant Director advised that the report covered the Corporate Risks for the third quarter of 2023 / 24, (October - December 2023). Section 3.3 of the report highlighted the changes in risk since quarter two. It was noted that the risk rating for Risk 11 – Failure to Protect Commercially Sensitive Data had reduced. Appendix 1 provided the full Corporate Risk Register as at the end of December 2023 and Appendix 2 showed associated mitigating actions for risks, where relevant.

The Chairperson moved the recommendations set out in the report and these were duly seconded.

A debate ensued and in response to questions and comments raised, the following information was provided by Officers:

- Members noted that the Corporate Leadership Team (CLT) reviewed risk scoring every quarter.
- R5 – Damaging to the Council's reputation associated with delays to planned infrastructure deliver in the District by third parties which is due to support approved development – Members were advised that the description of this risk related to the damage to the Council's reputation opposed to the delivery of the infrastructure itself.

  The Council did not have a policy in respect of triggers for development, however Members were advised that Section 106 Agreements were subject to negotiation and informed by infrastructure providers indicating what / when contributions were needed. The Council was looking to have a Planning Obligation Supplementary Planning Document to support the Local Development Plan (once reviewed) which would stipulate more of the local terms by which planning obligations were to be negotiated.

  In response to a further question regarding triggers, the Assistant Director – Planning and Implementation advised that if Officers' would pick this up as an action and review if there was anything further that other Local Authorities were doing that the Council could implement as well.

  The Assistant Director provided further information in response to questions regarding developer viability and triggers relating to the building of schools.

- R7 – Failure to maintain a five-year supply of Housing Land – The Assistant Director – Planning and Implementation advised that the Five-Year Housing Land Supply (5YHLS) currently reported was 6.35 years. In response to why the risk had not been rescored, given the 5YHLS was over 5 years, he advised that he felt the consequences to the Local Planning Authority and the District if it did not have a 5YHLS were still high and therefore this risk rating was justified. Should the 5YHLS position improve over and above its current position then this may result in a drop in the likelihood level of this risk, which would change the overall risk score.

  In response to a request for explanation regarding recent Government changes which enabled a reduction of the 5YHLS to four years, the Assistant Director advised this did not apply to Maldon District Council as the change related to Local Authorities whose Local Plan had been adopted recently. He agreed to provide Members with further details of this outside of the meeting.

The Chairperson asked the Members where possible they bring detailed questions to Officers ahead of the meeting to allow the information and answers to be collated and therefore available at the meeting.

The Chairperson moved the recommendations as set out in the report and this was duly agreed.

RESOLVED

(i) That Members reviewed the Corporate Risk Register in Appendix 1 to the report and provided comment and feedback for consideration;

(ii) That Members reviewed progress of the Corporate Risk Mitigating actions in Appendix 2 to the report and provided comment and feedback for consideration;

(iii) That Members are assured through this review that corporate risk and is being managed effectively;

(iv) That Members challenged risk where the Committee felt that the Council's corporate goals may not be achieved.

635. BALANCE SCORECARD EXCEPTIONS

The Committee considered the report of the Director of Strategy and Resources that covered exceptions to operational service and provided visibility of any identified Balance Scorecard Key Performance Indicators (KPIs) that had met their threshold, supported by an action plan to ensure targets were met.

The Chairperson introduced the report and deferred to the Assistant Director, Programmes, Performance and Governance to present the detail. The Assistant Director drew Members' attention to the areas of operational performance where exceptions were evident, which included both under and overperformance. Internally, the Senior Management Team monitored this data and discussed it monthly to help address performance issues in real time where possible, with a six-monthly report provided to this Committee to show the exceptions and any areas of under / over performance.

This report covered July to December 2023, section 3.3 contained detail on underperforming areas and the action being taken. Section 3.4 highlighted four indicators where the Council was overperforming and section 3.5 flagged those areas

where closer monitoring was taking place. Finally, the Assistant Director advised that further performance data was set out at appendix 1 to the report.

The Chairperson moved the recommendations as set out in the report and this was duly seconded.

During the debate that ensued and in response to issues raised Officers provided the following information:

- In response to a question regarding the non-compliance relating to 'monthly service area reporting', the Assistant Director – Service Delivery advised that this related to a monthly report which had not been submitted to the Corporate Leadership Team in time due to a lack of resources. The Assistant Director reassured Members that these reports were now completed, and performance was being monitored on a monthly basis.
- The Head of Service – Housing and Community Safety provided the Committee with information in response to a question regarding London Authorities housing homeless people within Essex. It was noted this was not currently a problem for the Maldon District, however, the Director of Service Delivery reported that at a Chief Executive level in Essex the matter had been raised and they were looking to establish a protocol which would involve London authorities notify an authority where they were looking to place a homeless person.
- It was noted that sickness levels were improving and the Assistant Director – Resources reported that further improvement would be seen in Quarter 4. She advised the Committee of the employee support in place to assist staff, especially those returning to work. On a national average the Council was currently performing better than average. Whilst, mental health was difficult to measure overall, the Council had seen a peak post Covid but again this was managed effectively, with the Council supporting staff well.
- In response to a question regarding hybrid working, the Director of Service Delivery advised that the Council had always maintained officer accommodation space at the Council offices and a number of teams took the opportunity to come in. He referred to the staff survey, the results of which would be shared with Members at a later date.

The Chairperson then moved the recommendations which were duly agreed.

Some further debate ensued, and Officers provided the following responses:

In response to a question regarding performance monitoring of planning decisions, the Assistant Director – Planning and Implementation explained that the data presented were Delta returns, a national performance monitoring standard that the Council was required to report on by the Government. The measures were limited to what the Government asked the Council to report on.

The Assistant Director – Planning and Implementation advised that he would obtain a view from the Head of Development Management and provide the Committee with more insight regarding the reasons for the Q3 reduction in the performance measure relating to the percentage of planning applications granted and decided on time.

The format of the data contained within the Appendix was raised and Members were reminded by the Assistant Director – Programmes, Performance and Governance that the Committee had previously requested a greater drill down on planning data. However, a review of how this information was presented going forward could be undertaken. Members commented that a table format would be easier to view. The

Chairperson advised she would be happy to raise this with the Chairperson of the Committee (Councillor V J Bell).

RESOLVED

(i) That the Committee reviewed and commented on exceptions to service reporting provided in the report;

(ii) That Members noted the additional performance detailed in Appendix 1 to the report;

(iii) That Members confirmed they were assured through this review, that operational performance was being managed effectively.

636. REVIEW OF HEALTH AND SAFETY - QUARTER 3

The Committee considered the report of the Director of Service Delivery that provided an update on Health and Safety statistics and activity during Quarter 3 (Q3) (1 October to 31 December 2023). The Chairperson introduced the report and deferred to the Corporate Health and Safety Manager to present the detail.

The Manager took the Committee through the report advising on the numbers of accidents / incidents, near misses and unacceptable behaviour which were relatively low and dealt with according to Council policies with no particular trends identified during this period. He advised that in section 3.1.1 the incident that took place on 13-12-2023 was to be deleted as this was classified as a near miss elsewhere. The report provided further update in respect of the following areas:

- Health and Safety Groups – It was noted that the inaugural Health and Safety managers meeting had been scheduled.
- Staff resources – The Safety Action team for frontline staff had been finalised following receipt of nominations from managers.
- System resources
- Fire Risk Assessments
- Policies and procedures
- Health and Safety inspections
- Legionella
- Training – a number of training events had been undertaken during this quarter, including over 70 staff attending training on dealing with violence and aggression.
- Accident-near miss reporting

The Chairperson proposed that the recommendations as set out in the report be agreed and this proposal was duly seconded.

During the discussion that followed and in response to questions raised, the following information was provided:

- Members were advised that the hazard ‘first aid box in the maintenance depot workshop’ related to this first aid box not containing a contents list, resulting in difficultly knowing whether it was complete or not.

- Feedback was always sought for any training events undertaken. Members were advised that following feedback on the recent violence and aggression training Officers were proposing to change delivery of this training in the future. Two training options would be offered to staff with a fuller session provided for frontline staff.

The Chairperson then moved the recommendation which was duly agreed.

The Committee thanked the Corporate Health and Safety Officer for his report.

RESOLVED

(i) That Members considered the accident and incident statistics and incidences of unacceptable behaviour reported;

(ii) That Members considered progress of key health and safety themes (as set out in section 3.2 of the report).

637. INDEPENDENT PERSON OF THE PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE

The Committee considered the report of the Director of Strategy and Resources seeking Members' consideration of the principle of an independent person to the Performance, Governance and Audit Committee.

It was noted that following the Finance Peer Review in July 2023 there was a recommendation for an independent person to be appointed to this Committee. The Performance, Governance and Audit (PGA) Working Group had reviewed the detail set out in the report and agreed it be put forward to the Committee for consideration. The Assistant Director – Programmes, Performance and Governance drew members' attention to section 3.5 of report which highlighted the suggested benefits of an independent person being appointed to the Committee. It was noted that the Chartered Institute of Public Finance and Accountancy also encouraged an independent person as best practice.

Appendix 1 to the report detailed a suggested person specification and it was noted that a remuneration of £700 per annum was proposed if the appointment was agreed.

The Chairperson proposed that the recommendation be agreed. This was duly seconded and agreed.

RECOMMENDED

(i) That the principle of co-opting an Independent Person onto the Joint Audit and Governance Committee on a non-voting basis be approved;

(ii) That the person specification attached at **APPENDIX 1** to these Minutes be approved.

638. COMMITTEE SELF ASSESSMENT REVIEW

The Committee considered the report of the Director of Strategy and Resource presenting self-assessment options for review by Committee, following the recent Finance Peer Review.

Following the Council's referral of the Finance Peer Review action plan to the Finance Working Group several actions had been referred to the Performance, Governance and Audit (PGA) Working Group. One of these actions related to the PGA Committee undertaking an independent self-assessment every five years. The Assistant Director – Programmes, Performance and Governance presented the report and advised that the PGA Working Group had reviewed this matter and suggested that the tool as set out in paragraph 3.6 of the report be used for completing a self-assessment. She advised that if the Committee were mindful to agree completion of a self-assessment that either Members of the Committee be appointed to complete the self-assessment, or it be delegated to the PGA Working Group.

The Chairperson proposed that recommendation (i) as set out in the report be agreed. This proposal was duly seconded and agreed. It was noted that reference to section 3.5 in this recommendation should be 3.6.

Following a brief discussion, Councillor R G Pratt proposed that the Committee Self-Assessment be carried out by the PGA Working Group. This proposal was duly seconded and agreed.

RESOLVED

(i) That the Performance, Governance and Audit Committee complete and report a self-assessment using a tool such as referenced in paragraph 3.6 of the report;

(ii) That the Committee Self-Assessment Review should take place at a meeting of the Performance, Governance and Audit Working Group.

639. ANNUAL GOVERNANCE STATEMENT ACTIONS UPDATE

The Committee considered the report of the Director of Strategy and Resources providing an update to Members on the actions identified in the 2023 / 24 Annual Governance Statement (AGS). The Chairperson introduced the report and deferred to the Assistant Director Programmes, Performance and Governance, to present the detail.

The Assistant Director took the Committee through the report that covered the best practice governance actions identified in the 2023 / 24 AGS and an update on progress against these. At the Performance, Governance and Audit (PGA) Committee in June 2023, the AGS for 2022 / 23 was signed off and in addition to commenting on the Council's governance arrangements for last year, the report provided and update for Quarter 3 (end December 2023).

Section 3.5 of the report provided a table of those actions and an update of progress as of the end of December 2023. Actions highlighted in grey denoted actions completed and a further four actions were ongoing for the year, with updated text provided. The Assistant Director highlighted how the draft AGS for 2023 / 24 was due to be considered as a separate item on the agenda and would continue to build on best practice.

The Chairperson proposed that the recommendation as set out in the report be agreed. This proposal was duly seconded.

In response to a question, the Assistant Director – Planning and Implementation provided the Committee with further information regarding the Council's engagement with Parish Councils.

A question regarding reviewing Neighbourhood Plans (NHPs) and specific advice given to Burnham-on-Crouch Town Council (BTC) was raised and in response the Assistant Director advised that the five-year review related to strategic policies set out in the Local Development Plan rather than NHPs. However, he would have to speak to the team to determine what advice had been given to BTC.

The Chairperson then put the recommendation which was duly agreed.

RESOLVED that the Committee reviewed the Annual Governance Statement table at paragraph 3.5 and the updates within the report and challenged where necessary.

640. ANNUAL GOVERNANCE STATEMENT

The Committee considered the report of the Director of Strategy and Resources presenting the Annual Governance Statement (AGS) 2023 / 24 attached at appendix 1 for review and adoption by the Committee.

The Chairperson introduced the report and deferred to the Assistant Director – Programmes, Performance and Governance to present the detail. The Assistant Director advised that the AGS followed the Council's adopted template to reflect the Chartered Institute of Public Finance and Accountancy (CIPFA) best practice advice. It was noted that the report commented on MDC's position against the seven principles of good governance identified by CIPFA and the Society of Local Authority Chief Executives and Senior Managers (SOLACE) in 2016. In addition, comments on the Council's arrangements against the CIPFA financial management code had been provided, particularly standard C, which addressed an action suggested in the recent Local Government Association finance peer review.

The first page of the appendix highlighted the achievements of the 2023 / 24 financial year in terms of governance arrangements. Overall, the Council performed well against the criteria for good governance, which was also highlighted by the internal audit statement from BDO. An action plan was included in the report to address those areas of challenge identified in the BDO report. Members were advised that a comment and question mark had been left in the Appendix in error and would be removed.

The Chairperson proposed that the recommendations set out in the report be agreed. This proposal was duly seconded and agreed.

RESOLVED

(i) That the Annual Governance Statement (attached at Appendix A to the report) be approved and appended to the Statement of Accounts.

(ii) That the Performance, Governance and Audit Committee monitors the progress of the action plan identified in the Annual Governance Statement through a quarterly report.

641. CONTRACT PROCEDURE RULES EXTENSION

The Committee considered the report of the Director of Strategy and Resources seeking approval for a one year extension to the Council's current Contract Procedures Rules (attached at Appendix A to the report).

The Council's procurement activity was governed by its Contract Procedure Rules. Members were advised that as a result of Brexit, a new Procurement Reform Bill had

been introduced, received Royal Assent in October 2023 and was now set in Law as the Procurement Act 2023 (the Act). Implementation of the Act would commence in March 2024 with an expected go live date of October 2024. As the Council's Contract Procedure Rules would require some revision and updates following implementation of the Act it was requested that Members consider extending the next review date to February 2025.

Following the Officers' presentation, the Chairperson proposed that the recommendation as set out in the report be agreed. This proposal was duly seconded.

In response to a question regarding events, the Commercial Manager advised that a procurement process would not normally be undertaken for an event or concession coming into the Promenade Park. However, the Council would review applications coming forward and did have very robust Terms and Conditions.

The Chairperson then moved the recommendation which was duly agreed.

RECOMMENDED that the Contract Procedure Rules attached at **APPENDIX 2** to these Minutes be extended for a further year.

642. COUNCIL CONSTITUTION - PLANNING APPEAL PROTOCOL

The Committee considered the report of the Director of Strategy and Resources seeking a review of the Planning Appeal Protocol (the Protocol) (attached as Appendix A to the report).

The report provided background information regarding the review of the Planning Appeal Protocol which set out the role and involvement of Members in Planning Appeals, as good practice. It was noted that the Protocol should reflect practice advice issued by the Royal Town Planning Institute and further information around this was set out in the report. The Protocol had been considered by the Governance Working Group where it was agreed that the guidance should be strengthened to best protect the position of the Council when involved with Planning Appeals. The Working Group also felt that the Protocol should be raised with Chairpersons of Planning Committees and included in future Member training.

The Chairperson proposed that the recommendation as set out in the report be agreed. This proposal was duly seconded.

Councillor W Stamp raised a number of concerns regarding the Protocol and asked that it be recorded that she did not support this as a way forward.

During the debate that ensued, Members spoke both in favour and against the Protocol. The Chairperson reminded the Committee that it was not proposed to make the Protocol mandatory.

The Corporate Governance Project Officer explained how the current Protocol had not been consistently used and this was the reason why the Overview and Scrutiny Committee, as part of its work on decision making, had carried out a review. He provided some further detail in response to concerns raised regarding Members' having to give evidence at appeal hearings.

In response to comments, the Assistant Director – Planning and Implementation provided the Committee with detailed information regarding the sign off process for Officer reports (and recommendations on planning applications) coming forward to Planning Committees. He spoke about the planning application appeal process and

outlined the guidance of the Royal Town Planning Institute (RTPI) that a chartered Officer, regardless of the view of a Committee, had to uphold their professional view in respect of a planning application. An Officer would be in breach of their professional code of conduct if they were to defend a decision (even a Planning Committee one), if it was so far removed from their professional opinion. In these situations, the Council would search for a third party who was professionally able to support the decision the Planning Committee had made and ensure the decision was adequately articulated to the Planning Inspector at the appeal.

The Chairperson then moved the earlier proposal to accept the Officers' recommendations to amend the Protocol. Upon a vote being taken this Motion was declared lost. The Chairperson declared that therefore the status quo would remain. The Corporate Governance Project Officer confirmed that no recommendation to the Council was required as no change was proposed.

RESOLVED that no change be made to the Planning Appeal Protocol.

643. ADJOURNMENT OF THE MEETING.

The Chairperson advised that in accordance with Procedure Rule 1(6)ii the meeting would continue past 10:00pm with an aim to finish before 10:30pm.

RESOLVED that the meeting be adjourned at 10:00pm for a short comfort break.

644. RESUMPTION OF BUSINESS IN OPEN SESSION

RESOLVED that the meeting of the Performance, Governance and Audit Committee resumes in open session at 10:06pm.

645. COUNCIL CONSTITUTION - SCHEME OF DELEGATION - SERVICE DELIVERY

The Committee considered the report of the Director of Service Delivery seeking approval and recommendation to the Council of proposed changes to the Scheme of Delegation in light of the recent restructuring of the Service Delivery directorate.

The report provided background information regarding the recent restructure of the Service Delivery directorate and the suggestion that delegated powers be redistributed to the Assistant Directors to reflect their functional responsibility. Appendix A to the report outlined the proposed changes to the Scheme of Delegation.

The Corporate Governance Project Officer presented the report and following this the Chairperson proposed that the recommendations as set out in the report be agreed. This proposal was duly seconded.

In response to a question regarding whether this was the appropriate time to be making such changes in light of the ongoing work by the Council to review its organisation, the Director of Service Delivery advised that the changes proposed would not impact because the delegation was at an Assistant Director level. He thanked the Corporate Governance Project Officer for his work on the proposed changes.

The Chairperson moved the recommendation and upon a vote being taken this was duly agreed.

RECOMMENDED

(i) That the redistribution of the powers currently delegated to the Director of Service Delivery to the Assistant Directors - Service Delivery as proposed and shown at **APPENDIX 3** to these Minutes, be agreed;

(ii) That the consequential changes referred to in paragraphs 3.6 and 3.7 of the report, namely to the list of Proper Officer designations set out in the Scheme of Delegation (General Provisions) document in the Constitution, and the transfer of the delegated powers in relation to Neighbourhood Planning from the Director of Strategy and Resources to the relevant Assistant Director - Planning and Implementation, be agreed.

646. ANY OTHER ITEMS OF BUSINESS THAT THE CHAIRPERSON OF THE COMMITTEE DECIDES ARE URGENT

There were none.

647. EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under Section 100A (4) of the Local Government Act 1972 the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1of Schedule 12A to the Act, and that this satisfies the public interest test.

648. REVIEW OF COMMERCIAL PERFORMANCE - QUARTER 3

The Committee considered the report of the Director of Strategy and Resources that required this Committee to undertake a quarterly review of the Commercial Strategy performance, as assurance that it was being managed effectively to achieve outcomes set out in the Commercial Strategy 2022-2027. Appendix 1 to the report provided an overview of the Commercial Strategy performance as at the end of Quarter 3 (July to December 2023).

The Chairperson introduced the item and deferred to the Commercial Manager to take the Committee through the report. The Commercial Manager advised that the overall commercial strategy performance continued to progress positively for the projects within the Council's control. Where negative impacts had been realised, priority and focussed work had taken place, to bring output back on track. He advised that the Asset Management Strategy would be considered by the Strategy and Resources Committee at its meeting on 14 March 2024.

The Chairperson proposed that the recommendations as set out in the report be agreed. This proposal was duly seconded.

In response to a comment, the Director of Service Delivery advised that the Council was delighted to have been provisionally awarded up to £5 million on capital funding to support local culture projects in the district and the Council was awaiting further details from the Government.

In response to questions from Members, the Commercial Manager and Director provided some further updates in respect of current projects.

The Chairperson moved the recommendations which were duly agreed.

RESOLVED

(i) That Members reviewed the information as set out in this report and Appendix 1 to the report;

(ii) That Members confirmed they were assured through this review that Commercial performance was being managed effectively.

There being no other items of business the Chairperson closed the meeting at 10.30 pm.

M E THOMPSON
CHAIRPERSON

Person Specification – Independent Person of Performance, Governance and Audit Committee

- A broad range of experience, preferably in public, private, voluntary and charitable sector employment or service including self-employed, employed and voluntary positions.
- Understanding of the wider local government environment and accountability structures.
- Strategic / financial management responsibilities.
- Qualification in accountancy, finance, risk management, business management or internal audit.
- Good understanding of corporate governance and risk management and the key elements of audit, value for money and external scrutiny. The ability to formulate and evaluate solutions to the issues identified.
- Good understanding of the roles of internal and external audit.
- Ability to understand complex issues and make objective, evidence-based decisions.
- Strong interpersonal and communication skills.
- Willingness to participate in meetings and ask searching questions in order to challenge and hold to account council officers and the representatives of internal and external audit.
- Attend and prepare for each meeting of the Performance, Governance and Audit Committee
- Ability / willingness to attend any relevant training or development activities associated with the role.
- Independence of mind, objectivity, and impartiality.

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MALDON DISTRICT COUNCIL

MALDON DISTRICT COUNCIL

Contract Procedure Rules

Approved by Council February 2021

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All costs stated in these contract procedure rules are exclusive of VAT, Staff **costs** and fees. Terms appearing in the definitions appendix are ***italicised.***

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These contract procedure rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing or disposal must comply with these contract procedure rules when undertaking Procurement on behalf of the Council. Council employees and third-party service providers have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Monitoring Officer.

These rules apply to all relevant contracts.

These rules apply to Officers and Members.

The Chief Finance Officer may make minor changes to these Contract Procedure Rules.

Minor changes are defined as:

- Changes in statutory framework, such as references to new or updated legislation
- Changes in titles, names or terminology
- Changes consequential to other constitutional changes already made.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be electronically via email or the Councils e-tendering solution where required.

- Follow the rules if you purchase goods or services or order building work.
- Take all necessary legal, financial, and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct any *Best Value* review and appraise the purchasing need.
- Check whether there is an existing *Corporate Contract* you can make use of before undergoing a competitive process.
- Keep bids confidential.
- Complete a written contract or council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the purchasing need and *Value for Money* requirements.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

All purchasing and disposal procedures must:

- Ensure value for money and propriety in spending of public money; be consistent with the highest standards of integrity
- consider all necessary procurement, legal, financial and professional advice
- Comply with all legal requirements and these rules
- Ensure that the Council is not exposed to unnecessary risk and likelihood of challenge arising from non-compliant procurement activity
- Consider and incorporate necessary health and safety, inclusion and diversity, and safeguarding children and vulnerable adults' requirements.
- Not be influenced by Non-Commercial considerations other than those permitted by law.
- Comply with the Council's Procurement Strategy.
- Support the council's corporate and departmental objectives, plan and policies

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 O*fficers* responsible for purchasing or disposal must comply with these contract procedure rules, *Financial Regulations*, the Code of Conduct and with all UK binding legal requirements. *Officers* must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply.

All officers should undertake procurement in a manner which avoids any potential conflicts of interest.

2.1.2 *Officers* must:

- *Obtain all appropriate authorisations and check that appropriate budget provisions exist before procurement*
- Have regard to the guidance in the *Purchasing Guidance*
- Check whether a suitable *Corporate Contract* exists before seeking to let another contract; where a suitable *Corporate Contract* exists, this must be used unless there is an auditable reason not to keep the records required by Rule 6
- Take all necessary Procurement, legal, financial and professional advice.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, *Officers* must ensure that the Transfer of Undertaking (Protection of Employment) (*TUPE*) issues are considered and obtain legal advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Directors

2.2.1 *Directors* must:

- Ensure that their staff comply with Rule 2.1 Keep registers of: Contracts Completed by signature, rather than by the council's seal (see Rule 15.3)
- Arrange their safekeeping on council premises exemptions recorded under Rule 3.2.
- Ensure that where exemptions are obtained under section 3 that they are recorded and stored.

3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 The council has the power to waive any requirements within these contract procedure rules for specific projects

3.2 Where a proposed contract is likely to exceed the UK *Threshold*, *Directors* have no delegated powers, and the matter has to be determined by the council (see Rule 3.1). No exemption can be used if the UK Procedure applies unless in extreme cases of urgency and with Legal advice.

3.3 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, the *Officer* and the *Chief Finance Officer* may jointly approve the exemption but they must prepare a report for the next Strategy and Resources Committee to support the action taken.

3.4 All exemptions, and the reasons for them, must be recorded using the form in the *Purchasing Guidance*. Exemptions shall be signed by the *Officer* and countersigned by the *Chief Finance Officer* and where appropriate the Chairman of the Strategy and Resources Committee.

3.5 The *Lead Specialist Procurement* must be consulted prior to commencing any procurement process using Crown Commercial Services Contracts. The terms and conditions of contract applicable to any CCS arrangement, including the requirement to undertake competition between providers, must be fully complied with.

3.6 *Financial Officers* must monitor the use of all exemptions.

3.7 In order to secure *Value for Money,* the authority may enter into collaborative procurement arrangements. The *Officer* must consult the *Chief Finance Officer* and the *Monitoring Officer* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

3.7.1 All purchases made via a local authority purchasing consortium are deemed to comply with these contract procedure rules, and no exemption is required. However, purchases above the UK *Threshold* must be let under the *UK Procedure*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *UK Procedures* on behalf of the authority and other consortium members.

3.7.2 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the

contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules, and no exemption is required. However, advice must be sought from *the Lead Specialist Procurement.*

3.8 The use of e-procurement technology does not negate the requirement to comply with all elements of these contract procurement rules, particularly those relating to competition and *Value for Money*.

4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these contract procedure rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods;
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to:
  - The recruitment of staff
  - Financial and Consultancy Services
  - Legal Services

4.2 ***Relevant Contracts* do not include:**

- Contracts of employment which make an individual a direct employee of the authority, or
- Agreements regarding the acquisition, disposal, or transfer of land (for which *Financial Regulations* shall apply).
- Contracts for retention of legal Counsel, or the appointment of expert witnesses in legal proceedings.

4.3 **Contract Value Calculation**

- Contract value means the estimated aggregate or recurring value payable in pounds sterling inclusive of Value Added Tax over the entire contract period including any extensions of the contract.
- Where the contract term without fixed length the estimated value of the contract should be calculated by monthly value of spend multiplied by 48 in accordance with The Public Contracts Regulations 2015.
- Contracts must not be artificially underestimated or disaggregated into two or more separate contracts where the effect is to avoid the application of Contract Procedure Rules or English Law.
- Where a framework agreement is planned the contract value must be calculated to include the total value of all of the individual contract arrangements envisaged under the Framework Agreement.

4.4 **Extensions and Variations**

- Contracts may only be extended or varied if all of the following conditions have been met;
- The extension or variation is in accordance with the terms and conditions of the existing contract;

- The contract has not been extended before the extension or variation has an approved budget allocation;
- For advice regarding acceptance thresholds for contract extensions and variations please contact the Director of Resources.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The *Officer* must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any guidance in the *Purchasing Guidance*, by:

- Taking into account the requirements from any relevant *Best Value* review appraising the need for the expenditure and its priority defining the objectives of the purchase.
- Assessing the risks associated with the purchase and how to manage them considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring.
- Drafting the terms and conditions that are to apply to the proposed contract setting out these matters in writing if the *Total Value* of the purchase exceeds £50,000

5.2 and by confirming that:

- There is Council or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the *Constitution*

6. RECORDS (ACQUISITIONS AND DISPOSALS)

6.1 Where the *Total Value* is greater than £500 but less than £50,000, the following records must be kept:

- Invitations to quote and *Quotations;*
- A record:
  - of any exemptions and the reasons for them;
  - of the reason if the lowest price is not accepted.
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the *Total Value* exceeds £50,000 the *Officer* must record:

- The method for obtaining bids (see Rule 8.1);
- Any *Contracting Decision* and the reasons for it;
- Any exemption under Rule 3 together with the reasons for it;
- The *Award Criteria* in descending order of importance;
- *Tender* documents sent to and received from *Candidates;*

- Pre-tender market research;
- Clarification and post-tender negotiation (to include minutes of meetings);
- The contract documents;
- Post-contract evaluation and monitoring;
- Communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful *Candidates* may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS

7.1 Identifying and Assessing Potential Candidates

7.1.1 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value,* might be of interest to potential *Candidates* located in other member states, a sufficiently accessible advertisement is published.

7.1.2 Generally, the greater the interest of the contract to potential bidders from other member estates, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- The council's website
- The Council's e-tendering solution
- Portal websites specifically created for contract advertisements such as 'Contracts Finder' and 'Find a Tender'

7.1.3 *Officers* are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process shall establish that the potential *Candidates* have sound:

- Economic and financial standing;
- Technical ability and capacity to fulfil the requirements of the authority.

7.2 Approved Lists

The Council does not as a rule agree the use of Approved Lists. Where the use of an approved list may be required, you should seek guidance from the Lead Specialist Procurement. a full business case and Director level approval must be obtained, prior to appointing an approved list.

7.3 Framework Agreements

7.3.1 The term of a *Framework Agreement* should not exceed four years without appropriate justification and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

7.3.2 Contracts based on *Framework Agreements* may be awarded by either:

- applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
- inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders;*
- fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
- awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The *Officer* must calculate the *Total Value* over the term of the contract including any extensions.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, *Officers* must seek the advice of the Lead Specialist Procurement.

8.1 Purchasing – Competition Requirements

8.1.1 Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed. *Sign off to award* shall be done by the persons specified in the third column.

Total Value	Award Procedure	Approval to Award
Up to £5,000	At least one and preferably up to three *Quotations.* (confirmed in writing where the *Total Value* exceeds £500)	*Officer*
£5,001 to £50,000	The Receipt of minimum three written Quotations	*Line Manager*
£50,001 to UK *Threshold*	Obtain at least three tenders following advertisement by public notice on the Councils e-tendering solution	*T2 Manager/ Director*
Above UK Threshold	Public Contracts Regulations apply full competitive process with tenders following full advertisement on 'Find a Tender'	*Line Manager/T2 Manager/Director*

8.1.2 An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these contract procedure rules.

8.1.3 Where the *UK Procedure* is required, the *Officer* shall consult the Lead Specialist *Procurement* to determine the method of conducting the purchase.

8.2 Assets for Disposal

8.2.1 Assets for disposal must be sent to public auction (including electronic auction sites such as eBay) except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the *Director of Resources*.

8.2.2 The *Chief Finance Officer has the discretion* to agree other methods for disposal of Assets up to a value of £5,000 in consultation with the relevant *Director.*

8.2.3 In the first instance surplus vehicles, plant and equipment should be offered to Parish Council's within the District at a fair price (sold as seen) agreed by the *Chief Finance Officer* in consultation with the relevant *Director*.

8.3 Providing Services to External Purchasers

8.3.1 The *Chief Finance Officer* and *Financial Regulations and procedures* must be consulted where contracts to work for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

8.4.1 Collaborative and partnership arrangements are subject to all UK procurement legislation and must follow these contract procedure rules.

8.4.2 If in doubt, *Officers* must seek advice from the *Lead Specialist Procurement.*

8.5 The Appointment of Consultants to Provide Services

8.5.1 Consultant architects, engineers, surveyors and other professional Consultants shall be selected, and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined below.

8.5.2 The O*fficer* must produce suitable Terms of Reference (ToRs) setting out the scope of the assignment/study. This should be used to invite proposals from the Consultant[s]

8.5.3 The *Officer* must be satisfied that the fees and charges are reasonable and that appropriate procedures have been followed having regard to the type of work, prevailing market conditions and the particular knowledge or expertise of the consultant. Records of consultancy appointments shall be maintained in accordance with Rule 6.

8.5.4 All consultants used must have:

- performed satisfactory work of a similar nature within the previous two years, or provided satisfactory evidence of relevant work carried out for other similar organisations within the last three years;

- relevant specialist knowledge and experience which is likely to be of value to Maldon;
- Hold professional indemnity of a sufficient level to protect the Councils interest

8.5.5 Records of consultancy appointments shall be maintained in accordance with Rule 6

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

9.1 The *Officer* responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*
- Must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition, and should seek advice from the *Lead Specialist Procurement*

10. STANDARDS AND AWARD CRITERIA

10.1 The *Officer* must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The *Officer* must include those standards which are necessary properly to describe the required quality. The *Director* must be consulted if it is proposed to use standards other than UK standards.

10.2 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority. The award criteria must take into account:

- ‘Lowest price’ where payment is to be made by the authority;
- ‘Highest price’ if payment is to be received; or
- ‘Most economically advantageous’, where considerations other than price also apply.
- Savings over the life of the contract
- Sustainable Procurement
- Social Value
- The subject matter of the contract

Relevant considerations to the contract should also include service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

10.3 *Award Criteria* must not include:

- *Non-commercial Considerations*
- Matters which discriminate against suppliers or signatories to the *Government Procurement Agreement*.

11. INVITATIONS TO TENDER / QUOTATIONS

11.1 The *Officer* responsible must ensure they have the budget and appropriate approvals in place to commence the purchase. Where the value of the contract exceeds £50,000 then a tender process must be followed using the Councils nominated e-tendering portal. Guidance should be sought from the *Lead Specialist Procurement* as to the correct process to follow. All spend over £5000 is subject to the Transparency Agenda.

11.2 Where legally permissible the Council shall ensure that for purchases of a value of up to £50,000 that at least one SME/Local supplier is invited to quote or tender for suitable and relevant contracts. While there are no legislative timescales for return of quotes the deadline given to suppliers should be proportionate to the level of work expected for their submission. All documents and communications should be kept and where the lowest price is not accepted this must be recorded.

11.3 Once approval to proceed has been obtained by the necessary delegated authority *(Request for Quote procedure note*) the process should include the following:

(a) Details of the requirement must be completed on an RFQ template and include a specification of requirement.

(b) Identify potential suppliers, (a minimum of 3 must be invited to quote) set a deadline for return of quotes, evaluate all returns, and select supplier.

(c) Document the reasons for your choice and gain approval to award (see 8.1.1)

(d) Once all suppliers have been notified of the outcome, all documentation/evidence and approval to award must be recorded and updated on the contracts register.

(e) Manage the contract in line with the Contract Management guidance

11.4 Where Contracts are of a type and value which means that they are subject to the UK Rules then there are five main types of procedures available. These are the Open and Restricted the Competitive Dialogue, Competitive Procedure with Negotiation and the Innovative Partnership. In the vast majority of cases the Open and Restricted procedures will be chosen the other procedures are generally used for more complex contracts. *Officers* should obtain guidance on the best route from the Lead Specialist Procurement.

11.5 All *Invitations to Tender* shall include the following:

(a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.

(b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).

(c) A requirement for tenderers to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.

(d) Notification that *Tenders* are submitted to the council on the basis that they are compiled at the tenderer's expense.

(e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.

(f) All tender submissions should be via the Council's e-tendering solution.

(g) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered with the exception of the Council's electronic tender portal.

(h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

11.6 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 15).

11.7 The Invitation to Tender or Quotation must state that the council is not bound to accept any Quotation or Tender.

11.8 All Candidates invited to Tender, or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.9 All tendering procedures including obtaining quotes from planning to contract award and signature, shall be undertaken in a manner so as to ensure that the following is secured

(a) Sufficient time is given to plan and run the process
(b) Equal opportunity and equal treatment
(c) Openness and transparency
(d) Probity
(e) Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

11.10 **Public Services Social Value Act (2012)**

The Council has a legislative duty to consider the social, economic and environmental benefits of the service being delivered at the pre-procurement stage by way of:

- How what is being procurement might improve the economic, social and environmental well-being of the Councils area and;
- How in conducting the process of procurement, it might act with a view to securing that improvement
- Prior to commencing a tender process guidance should be sort from Procurement with regard to Social Value requirements.

12. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

12.1 Candidates must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirement.

12.2 All Tenders must be returned via the Council's e-tendering solution.

12.3 Tenders received by fax or other electronic means (e.g. email) must be rejected, unless they have been sought in accordance with an electronic tendering system

13. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

13.1 Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in a UK Procedure where this might distort competition, especially with regard to price.

13.2 Post Tender negotiations within a UK Procedure can only be carried out where the correct procedure has been used and advertised with guidance from *Lead Specialist Procurement* and where necessary with *Legal advice.*

13.3 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

14. EVALUATION, AWARD OF CONTRACT, & DEBRIEFING CANDIDATES

14.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of *Quotations, Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*.

14.2 Contracts must be evaluated and awarded in accordance with the *Award Criteria*. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

14.3 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their *Tender*. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the *Tender* invitation as being dominant, an amended *Tender* price may be requested to accord with the rates given by the tenderer.

14.4 *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules and, in respect of proposed contracts that are expected to exceed £250,000, the approval of the relevant Committee has been secured.

14.5 For tenders up to the UK threshold it is best practice to inform all tenderers of the intention to award and give unsuccessful tenderers an opportunity to request feedback on their submission. Only useful feedback needs to be provided. A 10-day standstill period shall not apply.

14.6 For all tenders over the UK Threshold a full debrief in writing must be given to all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the Solicitor:

1. How the *Award Criteria* were applied
2. The prices or range of prices submitted, in either case not correlated to *Candidates* names (anonymised) apart from the winning *Candidate*.
3. Proposed winning *Candidates* name[s]

14.7 If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 days of the request. the debriefing information at Rule 14.6 above should also be sent to *Candidates* who were deselected in a pre-tender *Shortlisting* process and not advised unsuccessful at that time.

SECTION 4: CONTRACT AND OTHER FORMALITIES

15. CONTRACT DOCUMENTS

15.1 Relevant Contracts

15.1.1 All *Relevant Contracts* that exceed £50,000 shall be in writing.

15.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- the provisions for payment (i.e. the price to be paid and when);
- the time, or times, within which the contract is to be performed;
- the provisions for the council to terminate the contract.

15.1.3 The council's order form (electronic order system) or standard terms and conditions issued by a relevant professional body must be used wherever possible.

15.1.4 In addition, every *Relevant Contract* of purchase over £50.000 must also state clearly as a minimum:

- that the contractor may not assign or sub-contract without prior written consent;
- any insurance requirements;
- health and safety requirements;
- ombudsman requirements;
- data protection Act 2018 (General Data Protection Regulation (GDPR) requirements, if relevant;
- that charter standards are to be met if relevant;
- race relations requirements;

- Disability Discrimination Act requirements;
- Freedom of Information Act requirements;
- where *Agents* are used to let contracts, that *Agents* must comply with the council's contract procedure rules;
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.

15.1.5 The formal advice of the *Lead Specialist Procurement* and where necessary Legal advice should be obtained must be sought for the following contracts:

- where the Total Value exceeds UK Threshold;
- those involving leasing arrangements;
- where it is proposed to use a supplier's own terms;
- those involving the purchase of application software with a Total Value of more than £50,000;
- those that are complex in any other way.

15.2 Contract Formalities

15.2.1 Agreements (Contracts and Orders) shall be completed as follows:

Total Value	Method of Completion	By
Up to £5,000	Electronic order	*Authorised buyer* (see Rule 15.2.3)
£5,001 to £50,000	Electronic order	*Authorised Buyer* approved by *Line Manager* (see Rule 15.2.3)
Above £50,001	Signature on written contract	*Director* (see Rule 15.2.3)

15.2.2 All contracts must be concluded in writing or by email before the supply, service or construction work begins.

15.2.3 The *Officer* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

15.2.4 All contract documents must be placed in the central repository in accordance with *Financial Regulations*.

15.3 Sealing

15.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be signed in accordance with the Council's constitution.

15.3.2 Every council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

15.3.3 A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end;

- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services.

16. BONDS AND PARENT COMPANY GUARANTEES

16.1 The *Officer* must consult the *Chief Finance Officer* about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of a parent company and:

- the *Total Value* exceeds £250,000; or
- award is based on evaluation of the parent company; or
- there is some concern about the stability of the *Candidate*.

16.2 The *Officer* must consult the *Chief Finance Officer* about whether a *Bond* is needed:

- where the *Total Value* exceeds £250,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate*.

17. PREVENTION OF CORRUPTION

17.1 The *Officer* must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 17.2 below.

17.2 The following clause **must** be put in every written Council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or

(b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or

(c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

18. DECLARATION OF INTERESTS

18.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a pecuniary interest as described in the Code of Conduct has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer. The Monitoring Officer shall report such declarations to the appropriate *Committee*.

18.2 The *Monitoring Officer* shall maintain a record of all declarations of interests notified by members and Officers

18.3 The Director of *Strategy, Performance and Governance* shall ensure that the attention of all *members* is drawn to the Council's Code of Conduct when taking office.

SECTION 5: CONTRACT MANAGEMENT

19. MANAGING CONTRACTS

19.1 *Directors* in sponsoring departments are to name contract managers for all new contracts. All contracts must have a named council contract manager for the entirety of the contract.

19.2 Contract Managers must follow the procedures set out in the council's *Purchasing Guidance*.

20. RISK ASSESSMENT AND CONTINGENCY PLANNING

20.1 A business case must be prepared for all procurements with a potential value over the *UK Threshold*. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

20.2 For all contracts with a value of over £50,000, contract managers must:

- maintain a risk register during the contract period;
- undertake appropriate risk assessments and for identified risks;
- ensure contingency measures are in place.

21. CONTRACT MONITORING, EVALUATION AND REVIEW

21.1 All Contracts over the tender threshold of £50,000, and those deemed to be *High Risk, High Value or High Profile* must have robust and actionable KPIs (Key Performance Indicators) set prior to going to tender. KPIs are a measurable value that demonstrates how the contract is performing.

KPIs should be relevant to the specific contract and include a clear definition of how they link to an outcome, process, activity, or solution. The officer must keep records of KPI monitoring over the life time of the contract.

KPIs can include but are not limited to;

- performance;
- compliance with specification and contract cost;
- any *Value for Money* requirements;
- user satisfaction and risk management.

21.2 All contracts which have a value higher than the *UK Threshold* limits, or which are *High Risk*, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted.

21.3 For all contracts with a value higher than the *UK Threshold* limits, or which are *High Risk*, an annual report must be submitted to the relevant Committee.

21.4 The Council's approved *project management methodology* must be applied to all contracts deemed to be *High Risk*, *High Value*, or *High Profile*.

21.5 Where the *Total Value* of the contract exceeds £250,000, the *Officer* must make a written report to the relevant Committee evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

DEFINITIONS APPENDIX

Agent	A person or organisation acting on behalf of the council or on behalf of another organisation.
Approved Buyer	*Officer* Designated by a *Director* who is authorised to generate electronic orders on behalf of the Council.
Approved List	A list drawn up in accordance with Rule 7.2.
Award Criteria	The criteria by which the successful *Quotation* or *Tender* is to be selected (see further Rules 10 and 11.2e).
Award Procedure	The procedure for awarding a contract as specified in Rules 8, 10 and 14.
Best Value	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the council. This terminology has now in many instances been superseded by *Value for Money*.
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the council against a level of cost arising from the contractor's failure.
Candidate	Any person who asks or is invited to submit a Q*uotation* or *Tender*.
Chief Finance Officer	The Officer Designated Chief Finance Officer (Section 151 Officer) by the Council.
Code of Conduct	The respective codes regulating the conduct of Members and *Officers.*.
Committee	A Committee which has power to make decisions for the Council, for example a joint Committee with another local authority, but not the scrutiny Committee.
Commissioning & Procurement Strategy	The document setting out the council's approach to commissioning and procurement, setting out key priorities for the next few years.
Constitution	The constitutional document approved by the council which: • allocates powers and responsibility within the council and between it and others; • delegates authority to act to the *Committees*, and *Officers;* • regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.
Contracting Decision	Any of the following decisions: • composition of *Approved Lists;* • withdrawal of *Invitation to Tender;* • whom to invite to submit a *Quotation* or *Tender;* • *Shortlisting;* • award of contract; • any decision to terminate a contract.
Corporate Contract	A contract let by the *Council* to support the council's aim of achieving *Value for Money*.
Director	One of three Directors responsible for operational delivery of services and designated as such in the *constitution*
Director of Resources	Director responsible for financial and procurement activities and internal audit
UK Procedure	The procedure required by the UK where the *Total Value* exceeds the UK *Threshold*.
UK Threshold	The contract value at which the UK public procurement directives apply.
European Economic Area	The members of the European Union, and Norway, Iceland and Liechtenstein.
Financial Officer	The most senior *Officer* representing the *Chief Finance Officer* or designated by him/her to provide financial advice to the *Director*.
Financial Regulations and procedures	The financial regulations and procedures outlining *Officer* responsibilities for financial matters issued by the *Chief Finance Officer* in accordance with the *Constitution.*
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong,

	China, Liechtenstein and Singapore.
High Profile	A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the UK *Threshold* values.
Invitation to Tender	Invitation to tender documents in the form required by these contract procedure rules.
Key Decision	Decisions that are defined as key decisions in the *Constitution.*
Line Manager	An *Officer* designated by a *Director* to exercise the role reserved to the Line Manager by the contract procedure rules, this will be a Level 2 Manager (i.e. managers that report directly to a Director).
Members	Persons currently elected to serve on the Council
Monitoring Officer	The *Officer* defined as such in the *Constitution*
Nominated Suppliers and Sub-contractors	Those persons specified in a main contract for the discharge of any part of that contract.
Non-commercial Considerations	a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters'). b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only. c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy. d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes'). e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors. f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees. g) Financial support or lack of financial support by contractors for any institution to or from which the

	authority gives or withholds support. h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best *Value*; or where there is a transfer of staff to which the Transfer of undertakings. (Protection of Employment) Regulations 1981 (*TUPE*) may apply.
Officer	The Officer designated by the Director to deal with the contract in question.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: • if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.
Procurement Strategy	The document setting out the council's approach to procurement and key priorities for the next few years.
Project Management Methodology	The process set up by the Council to ensure that a project is executed in a disciplined and structured manor
Purchasing Guidance	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these Contract Procedure Rules. The guidance is available on the council's intranet.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an *Invitation to Tender)*.
Relevant Contract	Contracts to which these contract procedure rules apply (see Rule 4).
Resources Directorate	The directorate of the Council that includes responsibility for discharging the Council's procurement responsibilities
Service	The services provided by the Council are currently broken down into three directorates, each under the responsibility of a *Director.*
Solicitor	Any Solicitor designated by the Council's Chief Executive or the Monitoring Officer.
Supervising Officer	The *Line Manager's* immediate superior.
Tender	A *Candidate's* proposal submitted in response to an *Invitation to Tender*.

Total Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows: (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period. (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months. (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48. (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result. (e) for *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.
TUPE **(Transfer of Undertakings (Protection of Employment) Regulations 2006)** **(SI 2006 No.246)**	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.
Value for Money	Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

TO: Assistant Director (Planning and Implementation)

Development Management

All decisions or representations on planning and other applications (having taken into account views from Members of the public being contrary to the proposed decision or where the issues raised are not material in planning terms), responses to prior notifications and enforcement matters falling to be considered by the District Council as Local Planning Authority, save those to be made by the District Planning Committee or the Area Planning Committees. Such decisions shall include:

1. Applications for major or large scale development which the Assistant Director of Service Delivery is minded to recommend refusal on the basis of strong policy reasons or because the proposal is contrary to the development plan, subject to first consulting with the Chairperson of the District Planning Committee as to the scope of the proposed reasons for refusal.

2. The determination of applications for minor alterations and additions to developments approved by a Planning Committee where there are no objections.

3. Where a planning application has been determined by a Committee, and unless otherwise required by the determining Committee, the approval or refusal of reserved matters and matters the subject of conditions such as materials, boundary treatments, landscaping etc.

4. In consultation with the Chairperson of the relevant Area Planning Committee to respond to consultations on applications submitted to neighbouring authorities.

5. Applications where the site area exceeds 1 hectare in size, and this is the only reason the application is defined as a 'major development', which the Assistant Director of Service Delivery is minded to recommend approval on the basis the proposal is in accordance with the development plan and subject to the Assistant Director of Service Delivery first consulting with the Chairperson of the Council or relevant Planning Committee (or the Vice-Chairperson in the Chairperson's absence) and the ward members.

6. Applications for major or large scale development which the Assistant Director of Service Delivery is minded to recommend approval on the basis the proposal is in accordance with the development plan and is made under Section 73 of the Town and Country Planning Act (1990) (as amended) only, subject to the Assistant Director of Service Delivery first consulting with the Chairperson of the relevant Planning Committee (or the Vice-Chairperson in the Chairperson's absence) and the ward members.

7. In consultation with a legal advisor, the determination of requests for the variation of a Section 106 Planning Obligation provided that the approved principle of development is unaffected and that the variation does not affect the securing of the payment of monies to the Council.

8. In consultation with the Chairperson of the relevant Planning Committee, to review the accuracy of agreed planning conditions due to the passage of time between the Committee decision and the issue of a decision notice consequent upon the completion of a Section 106 Planning Obligation.

Enforcement of Planning Control

9. In consultation with the Ward Member(s), the issue of Planning Enforcement Notices (Town and Country Planning Act 1990, Section 172) and Listed Building Enforcement Notices (Planning (Listed Building and Conservation Areas) Act 1990, Section 38), and the withdrawal or variation of such proceedings.

10. The issue of Planning Contravention Notices, and the hearing and consideration of representations arising from those notices.

11. The issue of Breach of Condition Notices and Temporary Stop Notices.

12. The issue of notices under Section 215 of The Town and Country Planning Act 1990 requiring the proper maintenance of land.

13. The issue of Remedial Notices (Part 8, Anti-Social Behaviour Act 2003 - High Hedges).

14. In consultation with a Legal Advisor, the institution of legal proceedings for failure to comply with: Planning Contravention Notices, Enforcement and Stop Notices, Breach of Condition Notices, Notices under Section 215 of the Act, and Listed Building and Conservation Area Enforcement Notices, Temporary Stop Notices and Remedial Notices (High Hedges).

15. The removal or obliteration of posters and placards under Section 225 of the Town and Country Planning Act 1990.

16. On the grounds of urgency, and in consultation with the Chairperson of the relevant Area Planning Committee wherever possible and a Legal Advisor, the issue of Stop Notices including, if not already authorised, any necessary enforcement notice; provided that these actions are reported to Members of the relevant Area Planning Committee.

17. In consultation with a Legal Advisor to institute legal proceedings for offences in relation to listed buildings, conservation areas, preserved trees, advertisements and hedgerows. Such proceedings to be reported to Members of the relevant Area Planning Committee

Environment and Conservation

18. To take action on the following matters:

    a) Dangerous trees - Section 23 and 24 Local Government (Miscellaneous Provisions) Act, 1976.

    b) Tree Preservation Orders and Trees in Conservation Areas - Sections 198 – 201, 207 and 209 Town and Country Planning Act, 1990.

    c) Building Preservation Notices and Urgent Repairs to Listed Buildings - Sections 3 and 54 Planning (Listed Buildings and Conservation Areas) Act 1990.

19. To respond to Hedgerow Removal Notices (under regulation 5) and to give notice requiring the replanting of hedgerows (regulation 8) under the Hedgerows Regulations 1997.

20. To approve grants for repairs to historic buildings and improvements in conservation areas falling within the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Local Authorities Historic Buildings Act 1962 and other environmental improvements.

Building Control

21. To determine all matters falling within the provisions of the Building Act 1984 and Building Regulations 2000, Local Government (Miscellaneous Provisions) Act 1976 and associated legislation excluding authorisation of legal action but including:

    a) Determination of all applications.

    b) Service of all statutory notices.

    c) Authorisation of appropriate action in connection with dangerous structures under the Building Act 1984.

    d) Determination of relaxation applications.

    e) Authorisation of pre-approval design calculation checks in connection with D.o.E. Circular 39 of 1969.

    f) Dispensation of post-approval inspections as set out in the Building Regulations Policy Statement.

22. To carry out the following functions under the Party Wall etc. Act 1996.

    a) To nominate an appropriate officer of the Council as the Appointing Officer.

    b) To keep a select list of Party Wall Surveyors for the purpose of the above Act.

23. To carry out the technical inspections and other relevant requirements in relation to Premises Licences.

Others

24. To carry out functions in respect of Ordnance Survey.

25. To carry out all functions relating to street numbering under the requirements of the Town Improvements Clauses Act 1847 and Section 17 of The Public Health Act 1925.

26. In consultation with the Ward Member(s), the consideration of proposals for the naming of streets (Public Health Act 1952, Section 16).

27. To authorise officers and duly appoint contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Assistant Director of Service Delivery.

28. To carry out all functions under the Business and Planning Act 2020 – sections 1-10 - for the licensing of the use of highways for the consumption of food and drink outdoors, including the grant, revocation and enforcement of such licences.

TO: Assistant Director (Place and Community)

Housing

1. The determination of applications for Renovation Grants, Disabled Facilities Grants and Home Repair Assistance under the Housing Grants, Construction and Regeneration Act 1996.

2. The determination of Home Loss Payments and Disturbance Payments under the Land Compensation Act 1973 to occupiers displaced as a result of the making of a Closing Order or Demolition Order under the Housing Act 1985.

3. The determination of grants and signing notices under the Housing Grants, Construction and Regeneration Act 1996.

4. Housing the homeless including the determination of applications by persons to be considered as homeless under the Housing Act 1996.

Environmental Health and related licensing/regulatory matters

5. Enforce and execute the duties and functions of the Council (including authorising in consultation with a Legal Advisor the institution of legal proceedings, and also works in default where the works can be undertaken within existing budgets) under the following statutory provisions and Regulations made thereunder:
   - (a) Animal Welfare Act 2006
   - (b) Anti-social Behaviour Crime and Policing Act 2014 (Part 7)
   - (c) Breeding and Sale of Dogs (Welfare) Act 1999
   - (d) Building Act 1984 (Part III)
   - (e) Caravan Sites and Control of Development Act 1960 (as amended, and to include the varying of site licence conditions)
   - (f) Clean Air Act 1993
   - (g) Clean Neighbourhoods and Environment Act 2005
   - (h) Control of Pollution Act 1974
   - (i) Dangerous Dogs Act 1991
   - (j) Dangerous Wild Animals Act 1976
   - (k) Dogs Act 1906
   - (l) Dogs (Fouling of Land) Act 1996
   - (m) Environment Act 1995
   - (n) Environmental Protection Act 1990 (as amended by the Environment Act 1995)
   - (o) Food and Environment Protection Act 1985 (Parts I & III)
   - (p) The Food Safety and Hygiene (England) Regulations 2013
   - (q) Food Safety Act 1990 (as amended)
   - (r) Health Act 2006
   - (s) Health and Safety at Work etc Act 1974 (and any other relevant statutory provisions as defined in Section 53 of the Act)
   - (t) Housing Act 1985
   - (u) Housing Act 2004
   - (v) Housing Grants (Regeneration and Construction) Act 1996

(w) Land Compensation Act 1973
(x) Land Drainage Acts 1976 and 1991
(y) Litter Act 1993
(z) Local Government Act 1894
(aa) Local Government and Housing Act 1976
(bb) Local Government (Miscellaneous Provisions) Act 1976
(cc) Local Government (Miscellaneous Provisions) Act 1982 (Sections 13 to 17)
(dd) Mobiles Homes Act 2013
(ee) National Assistance (Amendment) Act 1951 (so far as it relates to an application to a Magistrates Court for an order to remove a person to a place of safety)
(ff) Noise and Statutory Nuisances Act 1993
(gg) Noise Act 1996
(hh) Official Feed and Food Controls (England) Regulations 2009
(ii) Pollution Prevention and Control Act 1999
(jj) Prevention of Damage by Pests Act 1949 – (Part I)
(kk) Public Health Acts Amendment Act 1890 – Section 42
(ll) Public Health Act 1936
(mm) Public Health Act 1961
(nn) Public Health (Control of Disease) Act 1984
(oo) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
(pp) Refuse Disposal (Amenity) Act 1978
(qq) Regulation (EC) No. 178 / 2002
(rr) Regulation (EC) No. 852 / 2004
(ss) Regulation (EC) No. 853 / 2004
(tt) Regulation (EC) No. 854 / 2004
(uu) Regulation (EC) No. 882 / 2004
(vv) Regulation (EC) No. 2073 / 2005
(ww) Sunbeds (Regulation) Act 2010
(xx) Sunday Trading Act 1994
(yy) Trade in Animal Related Products Regulations 2011
(zz) Water Industry Act 1991 (Sections 67 – 86)
(aaa) Zoo Licensing Act 1981

6. Subject to notification to the Ward Members and report to the Committee, the determination of Closing Orders under Section 278 of the Housing Act 1985.

7. To authorise Officers and duly appointed Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Director of Service Delivery.

NOTE: The following are authorised to act as enforcement and investigating officers for the purposes of the Food and Environmental Protection Act 1985:

(a) Head of Environmental Health, Waste & Climate Action

(b) Environmental Health Team Leaders, Environmental Health Officers and Technical Officers

Licensing

8. In consultation with a Legal Advisor and the Chairperson of the Licensing Committee, the institution of legal proceedings in respect of any of the Council's licensing powers.

9. To authorise Officers and duly appoint Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Assistant Director or other Officers.

TO: Assistant Director (Customer Services and Operations)

Community and Leisure

1. Operational issues relating to off-street, on-street and residents parking and Parking Orders.

2. The approval of lettings of the Council's parks and open spaces for funfairs and circuses and similar purposes.

3. In consultation with the Director of Strategy and Resources, the setting of the level of fees to be levied for events agreed under 2 above.

4. Operational issues relating to:

   a) Parks and public open spaces;

   b) Formal recreation area and any buildings therein and the letting of any stalls, kiosks and other operations thereon including lettings such as funfairs, circuses and other short-term lettings;

   c) Sponsorship of areas of land such as roundabouts released by the highway authority;

   d) Enforcement of byelaws and regulations made by the Council in respect of land and premises under its control;

   e) Implementation of Action Plans in relation to the cultural strategy and other approved strategies;

   f) Promotion and development of sport, the arts, heritage, play and other related activities;

   g) Management of facilities provided by the Council including the client role for the management of the contracts for the Blackwater Leisure Centre and the Dengie Hundred Sports Centre.

5. In consultation with a Legal Advisor, to give a direction under Section 77 of the Criminal Justice and Public Order Act 1994 (and notify Ward Member(s)) regarding the removal of unauthorised campers.

6. Operational issues relating to the Council's community halls and centres.

7. Operational issues relating to specialist community transport schemes.

8. All matters under the Anti-social Behaviour Act 2003, Sections 2-4, 6 and 30-36, and the Anti-Social Behaviour, Crime and Policing Act 2014, Parts 1 – 6.

9. To approve and issue the Grant of Deeds of Exclusive Rights of Burial for the Council's Cemeteries.

10. Operational issues relating to cemeteries and mortuaries if provided, and public conveniences.

11. To authorise Officers and duly appointed Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Assistant Director of Service Delivery.

12. In consultation with the Ward Member(s), responding to informal consultations by the South Essex Parking Partnership on proposed traffic regulation orders and related measures for parking restrictions.

13. In consultation with the Council's representative on the South Essex Parking Partnership and the Ward Member(s), to make recommendations to the Parking Partnership on proposed traffic regulation orders for parking restrictions in the light of representations received following formal publication.

14. Operational issues relating to the operation of concessionary travel pass schemes.

15. Subject to no objections being received, and in consultation with the Chairperson of the Licensing Committee and the Ward Members(s), the approval of temporary road closures and the making of Orders under Section 21 of the Town Police Clauses Act 1847.

Asset Management

16.

(a) To authorise the grant of easements over Council land at market value or other value as deemed appropriate.

(b) To approve any letting of property for a period of up to seven years at market rent to which statutory security of tenure will not apply.

(c) To procure agents to advise upon terms for sales, leases, purchases, easements, compensation claims and similar matters or otherwise in connection therewith.

(d) To negotiate the terms of new leases, including interim and initial rent both at market rent and in those cases where existing tenants have a statutory right to call for a new lease on expiry of the current term, and to authorise completion of such new leases up to an annual value of £15,000 and duration not exceeding seven years.

(e) In consultation with the Chairperson or Vice-Chairperson of the Strategy and Resources Committee and the Leader, as (d) above in relation to leases with an annual value in excess of £15,000, but not exceeding £25,000, or tenure in excess of 7 years but not exceeding 14 years.

(f) To negotiate the terms of, and accept, early surrenders of leases.

(g) To negotiate and agree rent payable on rent reviews of existing leases based on the advice of a suitably qualified valuer.

(h) To grant yearly licenses for pedestrian and vehicular access to private property over Council owned land.

(i) To authorise the grant of way-leaves to other statutory undertakers where Council-owned land is affected.

(j) To negotiate the terms of, and authorise the granting of, landlords licences and consents and variations under existing leases in consultation with a Legal Advisor.

(k) To dispose of any surplus small plot of land (up to an area of quarter of an acre with a maximum value of £10,000) at market value upon the advice of a suitably qualified valuer and upon such terms and conditions as he considers appropriate in consultation with the relevant Director and in accordance with Council policy on land disposals.

Rivers Management

17. Subject to no objections being received, the issue of licences in respect of fishing and fishermen in the River Blackwater and the use of the Hythe Quay, Maldon and other related facilities within the control of the District Council.

18. In consultation with a Legal Advisor, the institution of legal proceedings for any contravention of any of the byelaws relating to the River Blackwater.

19. The grant of annual mooring licences to individuals and the renewal of licences to clubs and other organisations for periods not exceeding 5 years.

20. Reviewing fees payable under river licences in accordance with the advice of a qualified valuer or in accordance with the Council's policy on mooring fees generally where it is not economic to employ a valuer.

21. To authorise officers and duly appoint contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Assistant Director of Service Delivery.

22. The exercise of statutory responsibility under the Merchant Shipping Act 1995 in relation to safety on the River Blackwater.

Others

23. Exercise of the powers contained in Part 8 of the Anti-Social Behaviour Act 2003 relating to High Hedges.

24. To consider and decide on nominations for listing of Assets of Community Value received under the Localism Act 2011 (Community Right to Bid).

Retained by Director of Service Delivery

Development Management

1. In consultation with the Leader of the Council, the Chairperson of the Strategy and Resources Committee, and a Legal Advisor to commence proceedings to challenge appeal decisions on a point of law.

Staffing

2. To approve the filling of vacancies other than the posts of Directors, Monitoring Officer and Section 151 Officer (this shall not apply to those managers that report directly to any of the Directors until after 31 December 2019).

3. To approve the regrading of posts providing that such regrading can be achieved within approved budgets.

4. Where difficulty is experienced in filling a vacant post, to approve the addition to the salary scale of that post of a market supplement not exceeding 15 per cent of the basic salary scale subject to approved directorate budgets.

5. To approve the repayment of training fees for prospective employees where their previous employer requires such repayment.

6. To award up to £100 for staff suggestions.

7. To approve requests from staff for unpaid leave of absence.

8. To award discretionary points on an officer's salary scale within approved directorate budgetary limits.

9. To approve voluntary staff redundancy or voluntary dismissal for those staff who are below Directors, in the interests of the efficient discharge of the Council's functions.

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